

Educationally Related Mental Health Services: Laws on Assessment and Services

Assessments

- Assessments must be performed by “trained and knowledgeable personnel.” 34 C.F.R. § 300.304(c)(iv).
- The assessor must be capable of “[o]btaining, integrating, and interpreting information about child behavior and conditions relating to learning.” 34 C.F.R. § 300.34(c)(10).
- Assessments must identify all needs “whether or not commonly linked to the disability category in which the child has been classified.” 34 C.F.R. § 300.304(c)(6).
- CDE: If your child needs ERMHS, “request that your school district assess your student to determine the services that your child may require ... The school district must respond to your request in 15 days.”
CDE FAQ, <http://www.cde.ca.gov/sp/se/ac/mhsfaq.asp> (10/14/11)
- Assessments must use a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child.” 34 C.F.R. § 300.304(b)(1).

Services

- **Psychological Services** includes: “(i) Administering psychological and educational tests, and other assessment procedures; (ii) Interpreting assessment results; (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations” 34 C.F.R. § 300.34(c)(10). “Planning and managing a program of psychological services, including psychological counseling for children and parents;” 34 C.F.R. § 300.34(c)(10)(v) *see also* Cal. Educ. 56363(b)(10)
- **Psychological Services required by IEP may be provided by:** a licensed educational psychologist, licensed MFT, Licensed Clinical Social Worker, licensed psychologist, or someone with a pupil personnel services credential that authorizes them as a school psychologist. Cal. Regulations section 3051.10.
- **Parent training:** “(i) Parent counseling and training means assisting parents in understanding the special needs of their child; (ii) Providing parents with information about child development; and (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child’s IEP or IFSP.” 34 C.F.R. § 300.34(c)(8); *see also* Cal. Educ. § 56363(b)(11). “Planning and managing a program of psychological services, including psychological counseling for children and parents;” 34 C.F.R. § 300.34(c)(10)(v); *see also* Cal. Educ. 56363(b)(10)
- **Social work services:** “(i) Preparing a social or developmental history on a child with a disability; (ii) Group and individual counseling with the child and family; (iii) Working in partnership with parents and others on those problems in a child’s living situation (home, school, and community) that affect the child’s adjustment in school; (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and (v) Assisting in developing positive behavioral intervention strategies.” 34 C.F.R. § 300.34(c)(14); *see also* Cal. Educ. 56363(b)(13). “(iii) Working in partnership with

parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;" 34 C.F.R. § 300.34(c)(14); *see also* Cal. Educ. 56363(b)(13)

- **Day treatment:** Not expressly listed in the statutes, but *E.g.: Tracy N. v. Dept. of Educ., Haw.*, 715 F.Supp. 2d 1093, 1112, 1114 (D. Haw. 2010) (a day treatment program was appropriate for a large youth with frequent behavioral outbursts)
- **Case management:** Social work includes "Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program" 34 C.F.R. § 300.34(c)(14)(iv); *see also* Cal. Educ. 56363(b)(13).
- **Positive behavior intervention:** Psychological Services includes "Assisting in developing positive behavioral intervention strategies" 34 C.F.R. § 300.34(c)(10)(vi) *see also* Cal. Educ. 56363(b)(10). Social work includes: "Assisting in developing positive behavioral intervention strategies." 34 C.F.R. § 300.34(c)(14)(v); *see also* Cal. Educ. 56363(b)(13)
- **Medication management:** Related services include "medical services for diagnostic or evaluation purposes." .34(a); *see also* Cal. Educ. § 56363(a)
- **"School health services and school nurse services:** means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person." 34 C.F.R. § 300.34(c)(13); *see also* Cal. Educ. § 56363(b)(12). Health related services that "enable a disabled child to stay in school during the day" are considered to provide the child with meaningful access to education, and therefore fall within the covered category of "supportive services." *Cedar Rapids Cmty Sch. Dist. v. Garret*, 526 U.S. 66, 73 (1999), including: continuous nursing service throughout the day (*Cedar Rapids*, 526 U.S. at 73); services that a nurse or other qualified person may administer when doctor prescribes and supervises (*Irving Indep. Sch. Dist. v. Tatro (Tatro)*, 458 U.S. 883, 890 (1984)); and administration of psychotropic medication, emergency injections, and oral medications. (*Tatro*, 458 U.S. at 893; *see also John A. v. Bd. of Educ. for Howard County*, 400 Md. 363, 384 (Ct. of App. MD 2007) (administration of psychotropic medication is a related service)).
 - *Taylor By and Through Taylor v. Honig*, 910 F.2d 627, 630 (9th Cir. 1990) (upholding preliminary injunction to maintain child in a residential placement program providing an on-site school program to prevent truancy, psychotherapy including family, individual, and group sessions to treat depression, an on call psychiatrist to prescribe and manage anti-depressant medication, an on site nurse, and a "responsive adult" to administer medication);
 - *Twip. of Bloomfield Bd. of Educ. v. S.C. ex rel. T.M.*, 2005 U.S. Dist. LEXIS 21424, *31 (D. N.J. Sep. 22, 2005) (holding that where "psychiatric stabilization is a necessary part of [student's] educational program. This is a continuing, interrelated process in which his psychological difficulties and his education continue in tandem. While medical doctors and psychiatrists may diagnose and evaluate T.M. and aides may provide continuing counseling and monitoring, it is part of an educational process. Without the diagnosis and evaluation and without the counseling and monitoring the educational process could not take place.")
 - *Brown v. Wilson County Sch. Bd.*, 747 F Supp 436 (M.D. Tenn. 1990), *modified by* 1990 U.S. Dist. LEXIS 12490 (M.D. Tenn. May 30, 1990) (school district financially responsible for student's costs at residential program, where student suffering from unpredictable, severe behavioral disorder required 24-hour behavioral modification program to learn, because doctor visits accounting for less than one hour per month did not change nature of program from "education" to "medical" since services and medical evaluations provided by program were all specifically listed as "special education and related services")

- *Dep't of Educ. State of Hawaii v. Cari Rae S.*, 158 F.Supp.2d 1190 (D. Haw. 2001) (hospitalization costs related to diagnosis and evaluation, where the child was diagnosed with family discord, oppositional defiant disorder, and marijuana dependence were deemed for diagnostic and evaluation purposes, and thus recoverable under the IDEA, despite that the care was in response to a medical crisis);
- *see also Manchester Sch. Dist. v. Charles M. F.*, 1994 U.S. Dist. LEXIS 12919, 1994 WL 485754, *7-*8 (D.N.H. Aug. 31, 1994) (allowing reimbursement for inpatient psychiatric and psychological hospitalization costs where costs were "for evaluative purposes to determine the proper educational/treatment program" for the child).
- **Residential placement:** "If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child." 34 C.F.R. § 300.104
 - *If a student is living in a residential placement, the school district where the student's *education rights holder lives* is responsible for educating them. Cal. Educ. Code section 56028; *Orange County Dep't of Educ. v. Cal. Dep't of Educ.*, 650 F.3d 1268 (9th Cir. 2011)