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KEVIN HUFFMAN
COMMISSIONER

MEMORANDUM

TO: Directors of Special Education

FROM: Joseph E. Fisher 
Assistant Commissioner, Division of College and Career Readiness

DATE: August 11, 2011

RE: Public Chapter 426, Acts of 2011, Residential Mental Health Facilities

The purpose of this memorandum is to provide guidance to local education agencies regarding children with disabilities who are admitted to state licensed residential mental health facilities pursuant to Public Chapter 426 of the Acts of 2011, effective July 1, 2011.

Public Chapter 426 provides:

- (a) *A local board of education shall allocate funding in an amount equal to the per pupil state and local funds received by the LEA to state licensed residential mental health facilities on a prorated daily basis for the student's length of stay, provided all of the following criteria have been met:*
- (i) *The residential mental health facility operates as a Category I special purpose school pursuant to State Board of Education rules and regulations;*
 - (ii) *The student admitted to the residential mental health facility is enrolled in the LEA; and*
 - (iii) *The student is admitted to the residential mental health facility under a licensed physician's written order and such order is based on medical necessity.*
- (b) *The funding specified in subsection (a) shall be in addition to funds allocated pursuant to federal law and regulation, including, but not limited to, Title I and ESEA funds.*

Admission to a residential mental health facility pursuant to Public Chapter 426 is based on medical necessity, not educational necessity. Admission is initiated by a child's parents and supported by a licensed physician, not the local education agency.

Admission to a residential mental health facility pursuant to Public Chapter 426 is neither a change of educational placement determined necessary and agreed upon by an Individualized Education Program (IEP) Team, nor is it a unilateral parental placement pursuant to the Individuals with Disabilities Education Act (IDEA). It is an educational option funded with per pupil state and local general education funds.

Stays by "children with disabilities", as defined by IDEA, at residential mental health facilities must not be entirely funded with local, state or federal special education funds. Although an allocation of state funds pursuant to Public Chapter 426 is based on average daily membership (ADM), local education agencies must administer federal IDEA funds based on reimbursement of expenditures for appropriately budgeted and educationally relevant services.

Special instruction and related services contained in the IEP of a child with a disability must be provided at the facility for the length of the child's stay and the local education agency remains responsible for the provision of a free appropriate public education.

A residential mental health facility must operate as a Category I special purpose school, therefore special instruction and related services may be provided by qualified staff at the facility. The IDEA requires regular education and special education teachers to be "teachers of the child" and those positions on the IEP Team may be filled by qualified regular education and special education teachers at the facility for the length of the child's stay.

A residential mental health facility is not a local education agency and the local education agency representative must continue to fulfill his or her responsibilities on the IEP Team.

The IDEA Regulations at 34 C.F.R. §300.34(a) define related services as services required to assist a child with a disability to benefit from special education. 34 C.F.R. §300.34(c)(5) defines "medical services" as services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services. Admission to a residential mental health facility pursuant to Public Chapter 426 is neither for the purpose of determining a child's medically related disability, nor educational necessity. Therefore, treatment at a residential mental health facility should not be included as a related service in an IEP.

Requests for initial evaluations for IDEA eligibility received during a student's stay in a residential mental health facility should be addressed, and initial evaluations should be conducted, in the same manner as requests received while a student is in a local education agency school.