

Primer Concerning Federal Funds Available To School Districts with Respect to Some of The Health-Related Services that they Provide to Special Education Students

I. Applicable Federal Statutes

There are several Federal statutes that have applicability with respect to the various health-related services that School Districts¹ provide to Special Education students². These include, but are not necessarily limited to, the following:

- ✦ *Individuals With Disabilities Education Act (IDEA);*
- ✦ *Family Educational Rights and Privacy Act (FERPA);*
- ✦ *Health Insurance Portability and Accountability Act of 1996 (HIPAA);*
- ✦ *Title XIX/Social Security Act/Medicaid;*
- ✦ *Title XXI/Social Security Act/State Children’s Health Insurance Program (SCHIP); and*
- ✦ *Deficit Reduction Act of 2005.*

II. Applicable Concepts

- ✦ Per *IDEA*, States – and, by extension, School Districts – are required to provide “a free and appropriate education” (“FAPE”) to all school age children who have one or more of the thirteen (13) disabilities that are specified in the *IDEA* statute³.
- ✦ Since 1988, School Districts have been allowed to claim *Title XIX/Medicaid* reimbursement for some of the health-related services that they provide to those Special Education students who are “eligible” for that program, provided that (a) the

¹ The term “School Districts” is used in a generic sense throughout this document. In this regard, the term includes, but is not necessarily limited to, the following: Education Service Centers; Education Service Units; Local Education Agencies; Local School Districts; Unified School Districts; Etc.

² The term “Special Education students” is used in a generic sense throughout this document. In this regard, the term includes, but is not necessarily limited to, the following types of students: “Exceptional”; “Special Populations”; Etc. In addition, the term “Special Education students” – and the term “IDEA-qualified students” – are used interchangeably throughout this document.

³ Those thirteen disabilities are as follows: Autism; Deaf/Blindness; Deafness; Emotional Disturbance; Hearing Impairment; Mental Retardation; Multiple Disabilities; Orthopedic Impairment; Other Health Impairment; Specific Learning Disability; Speech/Language Impairment; Traumatic Brain Injury; and Visual Impairment/Blindness.

services are included in the State’s “*Title XIX/Medicaid State Plan*” or they are required per the Early Periodic Screening, Diagnostic and Treatment (EPSDT) program⁴; (b) the services are provided by a properly-qualified Service Provider whose certificate/license is current; and (c) the delivery of the services is appropriately documented⁵ (Note: Since 1997, School Districts have also been allowed to claim *Title XXI/SCHIP* reimbursement for these same services, provided that their State has included this designation in its “*Title XXI/SCHIP State Plan*” – and provided that all of the other above-listed criteria are satisfied).

- ✦ Per the *Title XIX/Medicaid* program, States – and, by extension, School Districts – are also eligible to receive Federal reimbursement for some of the costs they incur in providing “Administrative Outreach” activities with respect to that program⁶.
- ✦ Per *42 U.S.C 1396b (c)*, the Federal government is required to provide *Title XIX/Medicaid* reimbursement – and, more recently, *Title XXI/SCHIP* reimbursement – for any “medically necessary” services that are provided to *IDEA*-qualified students before any *IDEA* funds are used to provide same. In this regard, this is the sole exception to the generally applicable rule that Medicaid/SCHIP is the “payor of last resort”.
- ✦ School Districts that claim Federal reimbursement for some of the health-related services that they provide to *IDEA*-qualified students must meet their respective State’s applicable Service Provider qualifications – and they must have entered into a “Service Provider Agreement” with their State’s Medicaid agency. In this regard, the type – and the amount – of health-related services provided by School Districts varies from State to State (Note: The most commonly provided School-based, health-related services include the following: Speech Therapy, Physical Therapy, and Occupational Therapy – and Diagnostic, Preventative and Rehabilitative Services).
- ✦ Regardless of whether their respective “*Title XIX/Medicaid State Plan*” and/or “*Title XXI/SCHIP State Plan*” so specifies, every State must offer Early Periodic Screening, Diagnostic and Treatment (EPSDT) services to any eligible child under the age of 21, regardless of whether the child is *IDEA*-qualified (Note: Per the EPSDT program, States must provide any service or equipment that is deemed to be “medically necessary” in

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⁵ The applicable reimbursement rate for these so-called “Direct Services” varies from State to State. In this regard, the current range is 56% to 82%.

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- Once a student is deemed to be *IDEA*-qualified, the affected School District must:
 - develop, in conjunction with the Special Education student’s parents, teachers, and others, an “Individualized Education Plan” (IEP) – which is a written agreement that details the educational and supportive services that the School District will provide to the student;
 - provide all of the services that are specified in the IEP;
 - review each IEP at least once per year – and make appropriate adjustments thereto; and
 - re-evaluate the student’s need for services as appropriate – but at least once every three (3) years.
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- In addition to providing “Special Education Services” to *IDEA* qualified students, School Districts must also provide the “Related Services” that are required to help an *IDEA*-qualified student benefit from those “Special Education Services”. In this regard, those “Related Services” may include some/all of the following:
 - Audiology Services;
 - Counseling Services;
 - Medical Services;
 - Occupational Therapy Services;
 - Physical Therapy Services;
 - Psychological Services;
 - Social Work Services;
 - Speech/Language Therapy Services; and
 - Transportation Services.
- In addition to the above-referenced “Related-Services”, School Districts must also provide, as necessary and appropriate, “Assistive Technology” to *IDEA*-qualified students. In this regard, this may include such items as special computer software; assistive mobility devices; etc.