9th Circuit No. 10-55879
S199639

IN THE SUPREME COURT OF CALIFORNIA
En Banc

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Plaintiff and Appellant,

v.

MICHAEL GARCIA, AN INDIVIDUAL

Defendant and Appellant.

OPENING BRIEF OF PETITIONER LOS ANGELES UNIFIED SCHOOL DISTRICT

DIANE H. PAPPAS, #102855
Associate General Counsel
DONALD A. ERWIN, #194517
MAMPRE R. POMAKIAN, #197606
Assistant General Counsel
OFFICE OF GENERAL COUNSEL
LOS ANGELES UNIF. SCH. DIST.
333 S. Beaudry Avenue, 20th Floor
Los Angeles, CA 90017
Telephone: 213.241.7600
Facsimile: 213.241.3311
Attorneys for Petitioner
LOS ANGELES UNIFIED
SCHOOL DISTRICT

BARRETT K. GREEN, #145393
DANIEL GONZALEZ, #223517
LITTLER MENDELSON PC
2049 Century Park East,
5th Floor
Los Angeles, CA 90067.3107
Telephone: 310.553.0308
Facsimile: 310.553.5583
Attorneys for Petitioner
LOS ANGELES UNIFIED
SCHOOL DISTRICT

9th Circuit No. 10-55879
S199639

IN THE SUPREME COURT OF CALIFORNIA

En Banc

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Plaintiff and Appellant,

v.

MICHAEL GARCIA, AN INDIVIDUAL

Defendant and Appellant.

OPENING BRIEF OF PETITIONER LOS ANGELES UNIFIED SCHOOL DISTRICT

DIANE H. PAPPAS, #102855
Associate General Counsel
DONALD A. ERWIN, #194517
MAMPRE R. POMAKIAN, #197606
Assistant General Counsel
OFFICE OF GENERAL COUNSEL
LOS ANGELES UNIF. SCH. DIST.
333 S. Beaudry Avenue, 20th Floor
Los Angeles, CA 90017
Telephone: 213.241.7600
Facsimile: 213.241.3311
Attorneys for Petitioner
LOS ANGELES UNIFIED SCHOOL DISTRICT

BARRETT K. GREEN, #145393
DANIEL GONZALEZ, #223517
LITTLER MENDELSON PC
2049 Century Park East, 5th Floor
Los Angeles, CA 90067.3107
Telephone: 310.553.0308
Facsimile: 310.553.5583
Attorneys for Petitioner
LOS ANGELES UNIFIED SCHOOL DISTRICT

TABLE OF CONTENTS

TABLE OF CONTENTS
(CONTINUED)

PAGE

TABLE OF AUTHORITIES

PAGE

CASES

STATUTES

TABLE OF AUTHORITIES
(CONTINUED)

PAGE

TABLE OF AUTHORITIES
(CONTINUED)

PAGE

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(CONTINUED)

PAGE

I. ISSUE TO BE BRIEFED (Rule 8.520(b)(2))

> Does California Education Code § 56041 — which provides generally that for qualifying children ages eighteen to twenty-two, the school district where the child's parent resides is responsible for providing special education services — apply to children who are incarcerated in county jails?

See California Supreme Court Order filed March 28, 2012, in *Los Angeles Unified School District v. Michael Garcia*, 2012 Cal. LEXIS 2948, approving request of Ninth Circuit Court of Appeals in in *Los Angeles Unified School District v. Michael Garcia*, 669 F.3d 956, 958 (9th Cir. 2011).

II. INTRODUCTION AND STATEMENT OF THE CASE

Under the Individuals With Disabilities Education Act ("IDEA"), the federal government allocates funds to the states and, in exchange, the states agree to provide special education services to disabled students.

The IDEA provides that in some circumstances even jailed adult inmates are eligible to receive special education services.

However, the IDEA does not delineate which public agency is required to provide these services to jailed adult inmates.

Rather, the IDEA regulations explain that the federal government leaves it to the states to decide how the services will be implemented. *Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46686 (2006).

In this case, a jailed adult inmate (Plaintiff Michael Garcia) sought special education services, and initially filed suit against the California Department of Education ("CDE") and various other agencies, but not against his former school district the Los Angeles Unified School District ("LAUSD"), demanding that he be provided the services in jail.

There is no California statute that expressly delineates which California agency must provide services to jailed inmates.

In a related class action filed by Garcia against the Los Angeles County Sheriff's Department and other public agencies, the CDE openly acknowledged that there is a gap in the statutory framework, leaving responsibility for jailed inmates unaddressed, as follows:

> [By Counsel for CDE]
>
> Yes, unfortunately, no one thought about inmates being transferred from juvenile hall, where they get all of the benefits, into an adult jail setting where special education -- there is no provision for it. But as soon as we heard about it, we took action and we got Mr. Garcia his benefits, and we are working on the others.
>
> * * *
>
> It's that the law, in itself, didn't come down quite this far and the I.D.E.A. didn't anticipate. We [have] laws for inmates of prisons and the prisons have to provide that.

> We have them for under 18. This niche, the Legislature didn't see, and we're fixing it.
>
> * * *
>
> But it comes down to the issue as who's going to pay for it in an interim period until we can get something legislative or some clarification of who should be paying for this.

ER[1] at 24, 25, 26, 27. [Transcript of April 21, 2010 hearing on motion for class action certification at 29:20-25, 48:23-49:2, and 10:5-15.]

In a very similar situation in Arizona, the Arizona Department of Education likewise overlooked the provision of special education services to inmates in county jails, leading to the filing of class action lawsuit against the Arizona Department of Education. (*Doe v. Arizona Department of Education*, 111 F.3d 678 (9th Cir. 1997).)

The Court of Appeals for the Ninth Circuit ultimately dismissed the Arizona lawsuit on exhaustion grounds when the Arizona Department of Education explained that, once the oversight had been brought to its attention, the Department had remedied the problem by providing services:

---

[1] "ER" refers to the District's Excerpts of Record, as filed in the Ninth Circuit Court of Appeals.

The heart of Doe's case is that the Department of Education gave no attention to children with disabilities detained at the Pima County Jail. For this reason, he says, the class went unserved for several months, receiving neither notice nor hearing before being deprived of educational services.

* * *

For its part, the Department acknowledges that there was a period of time that Doe was not served, because it did not know that juveniles were housed in adult jails. Yet it points out that once it became aware that juveniles with special education needs were housed at the Jail, it tried to ensure that identification processes, evaluation, notification, and required special education services were provided in accordance with the IDEA. Thus, the Department suggests, its original failure to address Doe's needs was not inherent in its program but was rather due to an oversight that was remedied after notice; exhaustion would not, therefore, have been futile or inadequate.

* * *

Once alerted to its oversight by the lawsuit (and there is no indication that it could not have been told just as effectively by letter, or resort to the administrative process), the Department took steps to begin to remedy it. Thus, unlike the parties in *Heldman* [*Heldman v. Sobol*, 962 F.2d 148, 159 (2d Cir. 1992)], *Doe* and the *Department* aren't at odds over issues of law or policy: the Department isn't arguing that it was right to let the Jail slip through the cracks.

Id., at 680, 682.

The Court of Appeals in *Doe v. Arizona*, *supra*, noted that (unlike California), Arizona's education statutes expressly cover county jails:

> Arizona's education statutes cover county jails. Ariz. Rev. Stat. § 15-765 (students in county correctional facilities "are the responsibility" of the facility); *id.* § 15-913.01 (every county jail "shall offer an education program" consistent with the IDEA); see Ariz. Admin. Code § R7-2-401 (defining "public agency" under IDEA as a "political subdivision of the state which is responsible for providing education to handicapped children"). Doe suggests that the Pima County Jail is not included in the definition of "public agency" and that no interagency agreement exists to force compliance by the Sheriff. However, under Ariz. Rev. Stat. § 15-765(A), the Jail assumes "responsibility" for the special education of children who previously were receiving special education.

Id., at 683.

Specifically, Arizona Revised Statutes, § 15-765, entitled, "Special education in rehabilitation, corrective or other state and county supported institutions, facilities or homes," provides as follows:

> § 15-765. Special education in rehabilitation, corrective or other state and

> county supported institutions, facilities or homes
>
> A. For the purposes of this section and section 15-764, children with disabilities who are being provided with special education in rehabilitation, corrective or other state and county supported institutions or facilities are the responsibility of that institution or facility, including children with disabilities who are not enrolled in a residential program and who are being furnished with daily transportation. Special education programs at the institution or facility shall conform to the conditions and standards prescribed by the director of the division of special education. . . .

In contrast, there is no California statute that explains how special education services are to be provided in county jails.

In the absence of such a provision, the California Office of Administrative Hearings ("OAH") took the position that a general California Education Code provision enacted in 1997 – Education Code § 56041 – should be read to impose the requirement for providing special education services on the school district in which a jailed inmate's parents resided at the time the jailed inmate turned 18 years of age.

It is the OAH's construction of § 56041 that ultimately is at issue in this case.

Education Code § 56041 provides as follows:

> Except for those pupils meeting residency requirements for school attendance specified in subdivision (a) of Section 48204, and notwithstanding any other provision of law, if it is determined by the individualized education program team that special education services are required beyond the pupil's 18th birthday, the district of residence responsible for providing special education and related services to pupils between the ages of 18 to 22 years, inclusive, shall be assigned, as follows:
>
> (a) For nonconserved pupils, the last district of residence in effect prior to the pupil's attaining the age of majority shall become and remain as the responsible local educational agency, as long as and until the parent or parents relocate to a new district of residence. At that time, the new district of residence shall become the responsible local educational agency.
>
> (b) For conserved pupils, the district of residence of the conservator shall attach and remain the responsible local educational agency, as long as and until the conservator relocates or a new one is appointed. At that time, the new district of residence shall attach and become the responsible local educational agency.

III. SUMMARY OF ARGUMENT

1. The IDEA allows states to decide whether to provide special education services directly to adult students in county jails, or

whether to assign this responsibility to local educational agencies such as school districts.

2. California has not expressly assigned to school districts the responsibility for providing special education services to eligible adult students in county jails.

3. It is highly unlikely that the Legislature intended for Education Code § 56041 to implicitly govern the provision of special education services to county jail inmates because:

a. Whenever in the Education Code the Legislature has assigned responsibility for special education services outside of a school district setting, it has done so in an express and thoughtful manner.

b. The legislative history does not support a finding that § 56041 applies. Rather, the legislative history reflects that the limited purpose of § 56041 was to maintain interagency funding obligations when a student, placed by one school district, turns 18 and would otherwise be the funding responsibility of a new district that was not involved in the initial educational placement decision.

3. OAH's proposed construction would lead to absurd results and would be impractical to implement. For example, If

OAH's construction were accepted, a school district in Sacramento could be responsible for providing special education services 500 miles away in San Diego to a student residing in Sacramento but who committed a crime in San Diego.

4. In Education Code §§ 1900 through 1909.5, 41840 through 41841.8, and 46191, the California Legislature expressly authorized the establishment of education services in California jails. Under this program, county boards of education are authorized to provide regular (non-special education) services to students in jail. Given these provisions, it seems highly unlikely that the Legislature, on the one hand, enacted separate statutes for regular education services in county jails yet, on the other hand, allowed a general statute (i.e., Education Code § 56041) that nowhere references education in jails, to apply with respect to education for jailed disabled students.

5. The Legislature has plenary authority to resolve the issue by enacting legislation, assigning responsibility for the provision of special education students in county jails. The legislative process will allow all stakeholders – including parents, disability rights groups, school districts, jails, county offices of education, and the

California Department of Education – to forge a solution in an open and transparent manner.

IV. STATEMENT OF FACTS

A. Glossary Of Persons, Organizations, And Terminology Relevant To Appeal

1. Persons

Fuentes, Yamileth – Yamileth Fuentes is the mother of Michael Garcia. ER at 48. [AR[2] OAH00146:13-17.]

Garcia, Michael – Michael Garcia was born on June 1, 1990. He was incarcerated in a Los Angeles County Jail where he was being held pending trial on charges against him. ER at 237, 244. [AR OAH 01262; OAH01352.]

2. Organizations

California Department of Education ("CDE") – The California Department of Education ("CDE") is a California agency charged with the oversight of California's public education services. (Education Code[3] §§ 33300 *et seq.* and 56024.)

---

[2] References to "AR" are to the "Administrative Record" of the due process hearing proceedings held before the California Office of Administrative Hearings. The relevant AR pages are included in the excerpts of record ("ER").

[3] References in this brief to "Education Code" are to the California Education Code.

County Offices of Education – Each California county has an office of education, overseen by a county superintendent of schools and a county board of education, and charged with certain school functions within that county. (*See, e.g.*, Education Code §§ 1000 *et seq.*, 1200 *et seq.*, and 56140.)

Office of Administrative Hearings ("OAH")- The CDE has contracted with the California Office of Administrative Hearings ("OAH") to preside over due process hearings held under the Individuals with Disabilities Education Act ("IDEA"). ER at 290-304.

CDE pays OAH $33,517,620 to provide such services. ER at 307.

Soledad Enrichment Action School ("Soledad Charter School")[4] – Soledad Enrichment Action ("Soledad Charter School") is a charter school chartered by the Los Angeles County Office of Education ("LACOE"). Soledad Charter School was the last school in which Garcia was enrolled prior to being incarcerated in Juvenile Hall

[4] The Soledad Charter is also known as SEA Southgate. ER at 168.

in 2006. ER at 168. [OAH Decision,[5] Factual Findings ¶¶ 4-5, AR OAH01066.]

State Board of Education – The California State Board of Education consists of 10 members who are appointed by the California Governor with advice and consent of two-thirds of the California Senate. (Education Code § 33000.) The State Board serves as the governing and policy body of the CDE. (Education Code § 33301(a).)

3. Other Terminology

Barry J. Nidorf Juvenile Hall - The Barry J. Nidorf Juvenile Hall (also known as "Sylmar Juvenile Hall") is a juvenile hall in Los Angeles County. ER at 35, 168 [AR OAH 00040:16-21, and OAH01066].

Charter school – In California, a charter school is a school granted a "charter" by a California public agency to provide educational services to public school students in lieu of a regular public school. (*See* Education Code § 47600 *et seq.*)

---

[5] Unless otherwise noted, all references in this brief to "Decision" are to the decision of the OAH in the underlying administrative decision in OAH Case No. 2009060442, dated November 16, 2009, which precipitated the instant action.

Compliance complaints – Students and parents may file compliance complaints with the state educational agency (SEA), alleging violations of the IDEA (IDEA is defined below). (34 C.F.R. §§ 300.151-300.153; Education Code §§ 56500.2(a)(1) and 56043(p); California Code of Regulations, Title 5, § 3080(a) (please note that the reference in 3080(a) to 34 C.F.R. § 76.780-783 does not reflect the renumbering of § 76.780-783 as 300.151-153.)

Due Process Hearing Complaint – A due process hearing complaint is a complaint filed pursuant to the IDEA, alleging a disagreement between a parent and a public agency regarding the proposal, or refusal to initiate or change the identification, assessment, or educational placement of a pupil. (*See* 20 U.S.C. § 1415(f); Education Code § 56501; California Code of Regulations, Title 5, § 3080(b).)

Individualized education program ("IEP") – An individualized education program ("IEP") is a plan prepared under the IDEA, reflecting special education and related services that are to be provided to a student. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Education Code §§ 56032 and 56345; California Code of Regulations, Title 17, § 52000(b)(27) and Title 2, § 60010(i).)

IEP team meeting – An IEP team meeting is a meeting held on an annual basis or more frequently, in which a team consisting of school officials, student, and parents evaluates the special education eligibility and needs of a student and makes proposals with respect to services. (20 U.S.C. §1414(c)(1); Education Code § 56341.1(d).)

Individuals with Disabilities Education Act ("IDEA") – Set forth at 20 U.S.C. §§ 1400 *et seq.*, the IDEA is the principal federal legislation under the terms of which states receive federal funding in exchange for providing special education and related services to disabled students.

Juvenile court schools – Juvenile court schools are schools operated for students who are incarcerated in juvenile hall. (Education Code § 48645.1.) County boards of education are charged with administration and operation of juvenile court schools. (Education Code § 48645.2.)

Juvenile hall – Juvenile hall is a detention center for minors who have been charged with or who committed criminal offenses under California law. (California Code of Regulations, Title 15, § 1302.)

Local educational agency ("LEA") – A local educational agency or "LEA" is the public board of education of a particular school district that provides administrative control or direction for educational services. (20 U.S.C. § 1401(19); Education Code § 56026.3; California Code of Regulations, Title 5, § 3001(u).)

State educational agency ("SEA") – A state educational agency under the IDEA means the state board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools. (20 U.S.C. § 1401(32).)

B. Course Of Dealings Leading Up To Garcia's Filing Of Due Process Complaint

Garcia was a student enrolled in the LAUSD from elementary school until June 29, 2005, when he was 15 years of age. ER at 167-168, 191 [Decision, Factual Findings ¶¶ 3-4, AR OAH01065-01066; OAH01122].

In second grade, Garcia was found eligible for special education services based on his learning deficiencies. Pursuant to the IDEA and state law, Garcia received special education services from LAUSD while enrolled in LAUSD. ER at 37, 167-168 [AR OAH00042:1-21; Decision, Factual Findings, ¶¶ 3-5, AR OAH01065-01066].

Sometime in 2005, Garcia left LAUSD and enrolled in the Soledad Charter School. ER at 44-45, 168 [AR OAH 00104:23-00105:20; Decision, Factual Findings ¶ 4, AR OAH01066].

While attending Soledad Charter School (chartered by LACOE), Garcia received special education services from the Soledad Charter School. ER at 36, 168 [AR OAH00041:10-25; Decision, Factual Findings ¶ 4, AR OAH01066].

In February 2006, Garcia was arrested and then incarcerated at Barry J. Nidorf Juvenile Hall. ER at 46-47, 168 [AR OAH 00130:23-00131:3; Decision, Factual Findings ¶ 5, AR OAH 01066].

Under California law, county boards of education are responsible for providing special education services for students who are incarcerated in juvenile hall. (*See* Education Code §§ 48645.2 and 56150.)

Upon Garcia's incarceration at Barry J. Nidorf Juvenile Hall in 2006, LACOE began providing special education services to Garcia. ER at 35-36, 168 [AR OAH00040:11-00041:9; Decision, Factual Findings ¶¶ 5-6, AR OAH01066].

LACOE continued to provide such services to Garcia until June 2008, when Garcia reached age 18. ER at 37-41 [AR OAH00042:22-00046:18].

LACOE records reflect that, when Garcia was in class, he would frequently get out of his seat to make verbal and physical threats towards students and staff, as follows:

> "Specific concerns are frequently getting up out of seat to walk around class, and verbal/physical threats directed toward students and staff as reported by his teacher."

ER at 230 [AR OAH01251].

Upon reaching the age of 18 in June 2008, Garcia was transferred to the Los Angeles County Jail ("LACJ"). ER at 169 [Decision, Factual Findings ¶ 10, AR OAH01067].

There is no evidence that any IEP team meeting was held at or near the time of Garcia's departure from juvenile hall. The evidence reflects that the last IEP held for Garcia was held by LACOE on August 24, 2007. ER at 168, 214-229 [Decision, Factual Findings ¶ 6, AR OAH01066; AR OAH01228-01243].

There is no evidence that any IEP team made any finding or recommendation that Garcia receive special education services upon reaching age 18 or while in jail.

The Los Angeles County Sheriff's Department ("LASD") contracts with the Hacienda La Puente Unified School District to provide education services to adult students in county jail. ER at 54-55, 192-213 [AR OAH00513:8-00514:4; OAH01100-01121].

According to Garcia, he did not receive special education services upon his transfer to County Jail commencing in June 2008, nor did he receive any general education services. ER at 42-43, 35 [AR OAH00075:19-00076:18, OAH00040:5-10].

On December 23, 2008, approximately 6 months after being transferred to County Jail, attorneys for Garcia filed a due process hearing complaint against, among others, the California Department of Education (CDE), alleging that the named entities and individuals were responsible for providing special education services to him. ER at 74.

Garcia did not name LAUSD as a respondent in the December 2008 due process hearing complaint. ER at 99-119.

On January 7, 2009, the CDE filed a motion to dismiss the due process hearing complaint, alleging that the CDE is not responsible for providing special education services to adult students in county jails. ER at 73.

Under 34 C.F.R. § 300.151-153 and California Code of Regulations, Title 5, § 4600 *et seq.*, a parent may file a compliance complaint alleging that a school district is violating provisions of the IDEA. The compliance complaint is then investigated by the state educational agency (SEA), and the SEA issues a decision.

Nothing in 34 C.F.R. § 300.151-153 or Title 5, California Code of Regulations, Title 5, § 4600 *et seq.*, authorizes the state educational agency itself (the decider of fact) to file its own compliance complaint and thereafter investigate and adjudicate the complaint.

Nevertheless, within 10 days after CDE filed its motion to dismiss Garcia's due process hearing complaint, the CDE on its own opened a compliance investigation, utilizing the underlying Garcia due process complaint as the basis for its own compliance complaint, and seeking to allocate responsibility for providing Garcia with special education services. ER at 267.

While CDE was conducting its review of its own compliance complaint in the matter, on February 9, 2009 CDE's subcontractor (OAH) issued its decision on CDE's motion to dismiss. ER at 73-85.

First, OAH found no California statute addressing which agency is responsible for providing special education services to adult students in county jail, as follows:

> [N]o party cites, and research does not reveal, any statute or regulation specifically allocating responsibility for the special education of eligible students 18 to 22 years of age who are incarcerated in an adult correctional institution, such as a county jail.

ER at 75-76.

OAH then issued a decision finding that Education Code § 56041 governs such situations and that, therefore, the district of residence of Garcia's parents at the time of his incarceration in county jail would be responsible for providing special education services to him. ER at 76-78.

Because LAUSD was not a party to the due process proceedings, the CDE was able to advance the argument that LAUSD was responsible without the benefit of any rebuttal from LAUSD.

Concurrently, on February 12, 2009, Garcia's counsel transmitted a letter to LAUSD, requesting that LAUSD commence providing special education services to Garcia. ER at 236-242.

Upon receiving the February 2009 OAH Decision, Garcia filed a class action complaint against the CDE and other parties, being *Michael Garcia et al. v. Los Angeles County Sheriff's Department, et al.*, U.S.D.C. Case No. CV 09-1513 VBF (CTx) (the "First Class Action"), alleging systemic failure to provide special education services to adult students in county jails.

Thereafter, the defendants in the First Class Action filed motions to dismiss.

On May 29, 2009, the district court determined that the arguments being made by some of the parties with respect to responsibility for special education services involved a third party (LAUSD) that was neither a party to the First Class Action, nor a party against whom Garcia had exhausted due process hearing administrative remedies under the IDEA. ER at 99-119

The district court granted the motions to dismiss and dismissed the action.

On June 5, 2009, Garcia filed a due process hearing complaint against LAUSD ("Second Due Process Complaint"), alleging that LAUSD is responsible for providing special education services to Garcia in jail. ER at 173, 342-354.

Upon receiving the due process hearing complaint, LAUSD sought to join CDE as a respondent in the due process hearing decision on grounds that CDE itself may be responsible for providing the services in question and CDE was not a party to the case. ER at 67-72.

Garcia acceded to LAUSD's request for CDE to be joined as a party. However, CDE opposed the request, arguing that OAH had already decided the issue in its February 2009 Decision, and that the OAH's conclusion applied based on the doctrine of collateral estoppel. ER at 127, 159-160 [AR OAH00793:1-10, OAH00837-00838].

LAUSD explained that it was not a party to the prior due process proceedings and it did not have the opportunity to present the correct legal arguments regarding the issues in the case. ER at 154-158.

OAH denied the request to join CDE as a party. ER at 163-165.

Thereafter, just before the due process hearing commenced, CDE issued a "Compliance Report" concluding (as it had in CDE's prior motion to dismiss) that LAUSD was responsible for providing special education services to Garcia because of § 56041. ER at 130-150.

LAUSD requested that CDE set aside its compliance report, pursuant to 34 C.F.R. § 300.152(c)(1), because the subject matter of the compliance report was being adjudicated in the due process hearing proceedings. ER at 243, 152.

34 C.F.R. § 300.152(c)(1) provides as follows:

> (c) Complaints filed under this section and due process hearings under § 300.507 and §§ 300.530 through 300.532.
>
> (1) If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

On July 15, 2009, CDE set aside the compliance report, pending the conclusion of the due process hearing. ER at 243, 152.

In August and September 2009, a hearing was held on the Second Due Process Complaint. ER at 166. [AR OAH01064.]

On November 16, 2009, OAH issued its decision in the matter (the "November 2009 OAH Decision"). ER at 183.

In its decision, OAH reaffirmed its prior view from the First Due Process Complaint that § 56041 controls, and that LAUSD is responsible for providing special education services to Garcia. ER at 166-183.

Thereafter, in December 2009, Garcia filed a second class action, this time including LAUSD as well as CDE and others as defendants, and alleging systemic failure to provide special education services to adult students in county jails, being *Michael Garcia et al. v. Los Angeles County Sheriff's Department, et al.*, U.S.D.C. Case No. CV09-8943 VBF (SHx) (the "Second Class Action"). ER at 433.

Concurrently, LAUSD appealed the November 2009 OAH decision to the district court pursuant to 20 U.S.C. § 1415(i)(3). ER at 1.

On May 4, 2010, the district court issued an order affirming the OAH decision. ER at 1.

On appeal to the Ninth Circuit Court of Appeals, the Court of Appeals certified the dispute to the California Supreme Court, as follows:

> **I. Question Certified**
>
> Pursuant to Rule 8.548 of the California Rules of Court, we request that the California Supreme Court answer the following question:
>
> Does California Education Code § 56041 — which provides generally that for qualifying children ages eighteen to twenty-two, the school district where the child's parent resides is responsible for providing special education services — apply to children who are incarcerated in county jails?
>
> The California Supreme Court's decision on this question of California law would determine the outcome of this appeal and no controlling precedent exists. See Cal. R. Ct. 8.548(a). We agree to accept and follow the Court's decision. See Cal. R. Ct. 8.548(b)(2). We certify this question because deciding it would require us to answer a novel question of California law that could impose substantial financial obligations on school districts throughout the state. Moreover, because suits concerning special services required by the IDEA are subject to federal jurisdiction, the California courts are unlikely to have the opportunity to address this question of

> substantial importance to local school districts unless the California Supreme Court grants a request for certification.

Los Angeles Unified School District v. Michael Garcia, 669 F.3d 956, 958 (9th Cir. 2011).

By letter dated February 9, 2012, the Los Angeles Unified School District supported the Court of Appeals' request.

By letter dated February 15, 2012, California State Superintendent of Public Instruction Tom Torlakson supported the Court of Appeals' request.

In his letter, the State Superintendent candidly acknowledged that the question of whether § 56041 imposes on school districts the responsibility for providing special education services to students in jail is a novel issue that and the answer to the certified question could have a significant fiscal impact on local educational agencies throughout the state of California, as follows:

> Pursuant to California Rules of Court, rule 8.548(e)(1), Tom Torlakson, California Superintendent of Public Education, respectfully submits this letter in support of the Ninth Circuit's January 20, 2012, request that the Court answer the question presented in its Order Certifying Question to the California Supreme Court.

> The Ninth Circuit's order, and its description of the issue offered for review, presents a novel question of California law. Specifically, the Ninth Circuit observes that no controlling precedent exists under state law interpreting Education Code section 56041 and its application, if any, to eligible special education students who are temporarily placed in county jail facilities.
>
> * * *
>
> In light of this, the Superintendent respectfully supports the Ninth Circuit's request because resolution of the question requires interpretation of California law that may substantially affect the relationship between the State, Counties, and local school districts.

No letter appears to have been filed by any party or other person with the California Supreme Court reflecting any opposition to the Court of Appeals' request.

The California Supreme Court granted the Court of Appeals' request by Order filed March 28, 2012. *Los Angeles Unified School District v. Michael Garcia*, 2012 Cal. LEXIS 2948.

V. ARGUMENT

A. The IDEA Allows States To Decide Whether To Provide Special Education Services Directly To Adult Students In County Jails, Or Whether To Assign This Responsibility To Local Educational Agencies.

Under the IDEA, the federal government provides funding to states and, in exchange, states agree to comply with the requirements contained in the IDEA. (*Arlington Cent. Sch. Dist. Bd. Of Educ. v. Murphy*; 548 U.S. 291, 295 (2006).)

Under 20 U.S.C. § 1412(a)(1)(B)(ii)(II) and 34 C.F.R. § 300.102(a)(2)(i), adult students whose IEPs call for ongoing special education and related services and who commenced such services prior to age 18 appear to be entitled to receive special education services in jail.

20 U.S.C. § 1412(a)(1)(B)(ii)(II) is written in the negative; it states that services need not be provided to a student aged 18 to 21 who is incarcerated in an adult correctional facility if the student, in the last educational placement prior to incarceration, was not identified as being disabled and did not have an IEP.

20 U.S.C. § 1412(a)(1)(B)(ii)(II) provides as follows:

> (B) Limitation
>
> The obligation to make a free appropriate public education available to all children

> with disabilities does not apply with respect to children—
>
> * * *
>
> (ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this subchapter be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—
>
> > (I) were not actually identified as being a child with a disability under section 1401 of this title; or
> >
> > (II) did not have an individualized education program under this subchapter.

By negative implication, adult students in county jail must be served if they had an existing IEP at the time they were incarcerated in county jail.

The IDEA does not set forth any special method by which states must provide such services to students incarcerated in an adult correctional facility.

Rather, the rulemaking process recorded in the Federal Register explains that the federal government leaves to the states to decide whether to provide these services directly, or whether to assign this obligation to local educational agencies, as follows:

> ***Comment:*** A few commenters stated that guidance is needed regarding what requirements apply when serving incarcerated children with disabilities. One commenter recommended requiring that children with disabilities incarcerated in local jails continue with their established school schedules and IEP services, which States may provide directly or through an LEA.
>
> ***Discussion:*** No change to the regulations is needed. Section 300.324(d)(1), consistent with section 614(d)(7) of the Act, specifies the requirements of the Act that do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons. If a child with a disability is incarcerated, but is not convicted as an adult under State law and is not incarcerated in an adult prison, the requirements of the Act apply. Whether the special education and related services are provided directly by the State or through an LEA is a decision that is best left to States and LEAs to determine.

(*Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46686 (2006).)

B. California Has Not Expressly Assigned To School Districts The Responsibility For Providing Special Education Services To Eligible Adult Students In County Jails.

As noted above, in other states such as Arizona, the states have expressly assigned responsibility for the provision of services for jailed adult students.

Specifically, in *Doe v. Arizona Department of Education*, 111 F.3d 678, 683 (9th Cir. 1997), the Ninth Circuit Court of Appeals explained as follows:

> Arizona's education statutes cover county jails. Ariz. Rev. Stat. § 15-765 (students in county correctional facilities "are the responsibility" of the facility); *id.* § 15-913.01 (every county jail "shall offer an education program" consistent with the IDEA); see Ariz. Admin. Code § R7-2-401 (defining "public agency" under IDEA as a "political subdivision of the state which is responsible for providing education to handicapped children").

In contrast, there is no California statute assigning responsibility for providing special education services to adult students in county jails.

As noted at pages 3-4, above, the California Department of Education has conceded that there is a gap in the state legislation with respect to the provision of special education services for jailed adults. ER at 24, 25, 26-27. ("We [have] laws for inmates of prisons and the prisons have to provide that. We have them for under 18. This niche, the Legislature didn't see, and we're fixing it.")

California has not expressly assigned to school districts the responsibility for providing special education services to eligible adult students in county jails.

C. It Is Highly Unlikely That The Legislature Intended For Education Code Section 56041 To Govern The Provision Of Special Education Services To County Jail Inmates.

In the First Due Process Hearing, OAH confirmed that there is no California statute expressly allocating responsibility for the provision of special education services to students in county jails, as follows:

> [N]o party cites, and research does not reveal, any statute or regulation specifically allocating responsibility for the special education of eligible students 18 to 22 years of age who are incarcerated in an adult correctional institution, such as a county jail.
>
> ER at 75-76. [AR OAH00652-00653.]

Nevertheless, OAH ultimately determined that a general California Education Code provision enacted in 1997 – Education Code § 56041 – should be read to impose the requirement for providing special education services on the school district in which a jailed inmate's parents resided at the time the jailed inmate turned 18 years of age.

This construction seems very unlikely for the reasons that follow.

1. Whenever In The Education Code The Legislature Has Assigned Responsibility For Services Outside Of A School District Setting, It Has Done So In An Express And Thoughtful Manner.

Education Code § 56041 makes no mention whatsoever of educational services in county jails.

Had the Legislature intended to assign to school districts the responsibility of sending teachers and other service providers into the jail setting, it is highly likely that the Legislature would have said so expressly.

In analogous situations with respect to incarcerated youths or hospitalized students, the California legislature has enacted legislation expressly assigning responsibility for special education services.

For example, with respect to minor students in juvenile hall (correctional facilities for minors), California has assigned responsibility for special education services to the applicable county boards of education. (*See* Education Code §§ 48645.2 and 56150.)

With respect to students placed in a public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital,

or a health facility for medical purposes, California has allocated responsibility for special education services to the local educational agency ("LEA") in which the hospital or facility is located, as follows:

> Individuals with exceptional needs who are placed in a public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital, or a health facility for medical purposes are the educational responsibility of the local educational agency in which the hospital or facility is located, as determined in local written agreements pursuant to subdivision (e) of Section 56195.7.

(*See* Education Code § 56167(a).)

And finally, for students placed in a licensed children's institution or foster family home, the California legislature has likewise established a special framework allocating responsibility for special education services. (*See* Education Code § 56155 *et seq.*)

When combined with the CDE's concurrence that the Legislature overlooked the issue of special education services in county jails, it is highly unlikely that the Legislature intended for Education Code § 56041 to apply to services for county jail inmates.

2. The Legislative History Does Not Support A Finding That Education Code Section 56041 Applies.

The legislative history does not support a finding that § 56041 applies. Rather, the legislative history reflects that the limited purpose of § 56041 was to maintain interagency funding obligations when a student, placed by one school district, turns 18 and would otherwise be the funding responsibility of a new district that was not involved in the initial educational placement decision.

Education Code § 56041 was added by the California legislature in 1993, as part of Assembly Bill (AB) 2773. ER at 425.

On its face, nothing in Education Code § 56041 references county jail inmates, or evinces any intent to assign responsibility for such services to local educational agencies.

Further, prior to this action, in the 17 years since Education Code § 56041 was added in 1993, there was no court case, administrative decision, or other order in any way applying § 56041 to jailed adult students. ER at 418-425. (See 1992 Cal ALS 1360.)

To the contrary, the legislative history confirms that the purpose for Education Code § 56041 had nothing to do with the provision of services to incarcerated students.

In 2003, the California Special Education Hearing Office (OAH's predecessor[6]) was called upon to review the history and purpose of Education Code § 56041.

Specifically, the SEHO held that § 56041 has a limited application: it applies so as to maintain funding responsibilities when a student, placed by one school district, turns 18 and would otherwise be the funding responsibility of a new district that was not involved in the placement decision.

In *Student v. Berkeley Unified School District and Albany Unified School District*, SEHO Case No. 2003-1989 (the "*Berkeley* case[7]"), the SEHO was called upon to resolve a dispute regarding which local agency – the Berkeley Unified School District or the Albany Unified School District – was responsible for providing special education services to a twenty-year-old nonconserved adult student who had moved from his parent's home in Albany, California, to Berkeley, California.

The SEHO carefully reviewed the history of Education Code § 56041 and determined that the purpose of § 56041 was to require

---

[6] Prior to July 1, 2005, the CDE contracted with the SEHO to conduct the state educational agency ("SEA") due process hearings. In July 1, 2005, the CDE awarded the new contract to OAH. ER at 290-304.

[7] A copy of the *Berkeley* case is included at ER at. 426-431.

school districts which place students in out-of-district, non-public schools to remain liable for the costs of such placements after the students become adults.

Prior to Education Code § 56041, a school district could place a minor student in a residential, non-public school located within the geographic boundaries of another school district. Once the student reached the age of 18, the student's residence would change to the school district in which the non-public school was located.

This result was unfair and punitive to school districts and SELPAs that have a large number of residential schools attended by adult special education students from other districts because it meant that those school districts would bear a disproportionate cost of residential placements when students reached age 18.

As explained below, in response the Santa Barbara County Special Education Local Plan area proposed adding Education Code § 56041. Under the terms of Education Code § 56041, the school district placing the student in the residential, non-public school would remain responsible for funding, even once the student reached age 18.

In ruling that Education Code § 56041 did not require that the Albany Unified School District pay for the student's educational

services, SEHO considered and rejected the very same arguments Student advances in this case, as follows:

> STUDENT is a twenty-year-old nonconserved adult. He has autism and remains eligible for special education and related services. STUDENT lives at STUDENT'S ADDRESS in Berkeley, California. His parents, FATHER and MOTHER, live in Albany. They have lived there continuously since 1986.
>
> * * *
>
> The sole issue in this hearing is whether Berkeley is currently responsible for STUDENT's education, i.e., whether Berkeley is the responsible local educational agency (LEA). The essential facts were not disputed: (1) STUDENT moved to Berkeley in September 2003; (2) at the time STUDENT moved, he was 20 years old; (3) STUDENT is a nonconserved adult and for whom no guardian has been appointed; and, (4) STUDENT has autism and remains eligible for special education and related services.
>
> * * *
>
> Berkeley argues, however, that it is not responsible for STUDENT's education even though he resides within its boundaries. In support of its position, Berkeley cites an extremely narrow exception, one that applies only in limited circumstances. That narrow exception to the general rule, located at California Education Code section 56041, states as follows:
>
> For nonconserved pupils, the last district of residence in effect prior to the pupil's attaining the age of majority shall become and remain as the responsible local educational agency, as long as and until the parent or parents relocate to a new district of residence. At that time, the new district of residence

shall become the responsible local educational agency.

Berkeley's argument is not persuasive. The limited exception contained in section 56041 was never meant to apply to the current situation where a nonconserved adult student, for whom no guardian has been appointed, moves to the boundaries of a new district after he reaches age eighteen. Rather, the sole purpose of this limited exception was to address a problem unique to a handful of local educational agencies which were impacted by nonpublic, nonsectarian schools. According to the official legislative history of Assembly Bill 2773, added at the request of the Santa Barbara County Special Education Local Plan Area (SELPA), the legislature was contemplating situations regarding minor students residing in California at nonpublic or nonsectarian schools located outside of the jurisdictional boundaries of the students' LEAs. Rather than automatically transferring the responsibility for the student's education to the district where the student is residing when he or she is or becomes an adult at age eighteen, Section 56041 requires the educational agency that placed the student in the nonpublic or nonsectarian school to continue to be responsible for the student's education.

In sum, Section 56041 is a provision to maintain funding responsibilities for the adult student's education with the California school district within which the parents reside. The purpose of the provision is to protect certain school districts and SELPAs that have a large number of residential schools attended by adult special education students from other districts from becoming overwhelmed by the financial responsibility for the education of those adult students. This purpose is not implicated in the current situation; STUDENT is not in a residential

> placement in Berkeley. He was not placed in Berkeley by a another school district. STUDENT is an adult, nonconserved student for whom no guardian has been appointed. He voluntarily moved to Berkeley at age 20.
>
> The legislature could not have intended this statute to apply to adult, nonconserved special education students who move after they reach the age of majority. . . .

ER at. 426-431. (*See Student v. Berkeley Unified School District and Albany Unified School District*, SEHO Case No. 2003-1989, pp. 2-3, RJN, ¶ 5, Exhibit E thereto.)[8]

Ms. Nancy Stephens, Director of Santa Barbara County Special Education Local Plan Area ("SELPA"), testified as a technical witness in support of the addition of § 56041. ER at 424.

The Legislative History of § 56041 includes the following excerpt, confirming the interpretation of § 56041 as contained in the Berkeley decision:

> Education Code Section 56041
>
> This proposed amendment adds a new code section clarifying the district of residence

[8] SEHO decisions are considered persuasive authority in due process hearings. California Code of Regulations, Title 5, § 3085 ("Notwithstanding Government Code section 11425.10(a)(7) of the Administrative Procedure Act, orders and decisions rendered in special education due process hearing proceedings may be cited as persuasive but not binding authority by parties and hearing officers in subsequent proceedings.")

> responsible for providing special education and related services to pupils between the ages of 18 to 22 years, inclusive, for nonconserved pupils and conserved pupils. This addresses a problem for local educational agencies which are impacted by nonpublic, nonsectarian schools. This amendment was recommended by the Santa Barbara County SELPA. [Emphasis added.]

ER at 425.

Education Code § 56041 does not impose on local educational agencies responsibility for special education services for adult students in county jails.

Rather, the limited purpose of § 56041 is to maintain funding responsibilities when a student, placed by one school district, turns 18 and would otherwise be the funding responsibility of a new district that was not involved in the placement decision.

OAH's proposed construction is contrary to SEHO's decision issued many years earlier, and contrary to the legislative purpose of § 56041.

3. OAH's Proposed Construction Would Lead To Absurd Results And Would Be Impractical To Implement.

The California Supreme Court has explained that statutes are to be construed to avoid absurd consequences, as follows:

> It is a well-settled maxim of statutory construction that a statute is to be construed in such a way as to render it reasonable, fair and harmonious with (its) manifest (legislative) purposes . . ., and the literal meaning of its words must give way to avoid harsh results and mischievous or absurd consequences. [Internal punctuation and citations omitted.]

(Kinney v. Vaccari, 27 Cal.3d 348, 357 (1980).)

Here, OAH's proposed construction would be unreasonable and lead to absurd results for the reasons that follow.

At hearing, Lieutenant Robby Ibelle (of the Los Angeles County Sheriff's Department) testified that if a person residing in one county commits a crime in another county, that person would be arrested, jailed, and tried in the county in which the crime occurred. ER at 56-57 [AR OAH00550:4-00551:1].

No contrary evidence was proffered.

If OAH's construction of § 56041 were accepted, a school district in Sacramento could be responsible for providing special education services 500 miles away in San Diego to a student residing in Sacramento but who committed a crime in San Diego.

This construction would lead to unreasonable and absurd results for all involved, creating a criss-crossing chain of liability under

which various school districts throughout the state would need to provide educational services in remote, far-away locations.

This construction would also impose unpredictable staffing and service obligations on local education agencies and lead to enormous inefficiencies, as well as create delays in services and barriers to resolving disputes.

In the *Berkeley* case, the Special Education Hearing office considered this precise consequence in concluding that §56041 did not apply to adult students who relocate to other parts of the state. Specifically, OAH held as follows:

> If this statute were applied to adult students who relocate, it would in many instances, deny adults who are eligible for special education the right to a FAPE and it would often lead to absurd results. For instance, an adult, nonconserved child residing in one of Northern California's remote districts (California has 1360 separate school districts) may choose to move to a larger, more populated Southern California District. His or her purpose in moving may be the availability of services, independent living opportunities, or facilitated employment opportunities. (Footnote 1) In many instances, this adult student would be discouraged or even prohibited from relocating because of the logistical problems associated with communicating regularly with district personnel situated hundreds of miles away. Likewise, the remote district would be burdened if it remained responsible for the provision of a FAPE for an adult student who voluntarily relocated to the other end of the State.

> (Footnote 2) The increased cost of assessments, IEP team meetings and goal and objective monitoring would be overly burdensome. The remote district would likely be required to coordinate services with several agencies, from hundreds of miles away, to provide assistance in areas such as accessing transportation, developing social skills and living skills, and acquiring career counseling and training to provide the adult student with a FAPE. (Cal. Educ. Code § 56460 et seq.) It is unclear how the remote district, as the ultimately responsible LEA, would be able to ensure cooperation with agencies located hundreds of miles away. Moreover, the remote district would often be unfamiliar with the availability of appropriate local services. Finally, it would be difficult for the remote district and the adult student to quickly resolve any problems that may arise.

ER at 429. [See *Student v. Berkeley Unified School District and Albany Unified School District*, SEHO Case No. 2003-1989, RJN, ¶ 5, Exhibit E thereto, p. 3.]

The construction proposed by OAH would also likely result in many different school districts being required to provide special education services in the same facility. In the case of the Los Angeles County Jail, dozens of different school districts could be required to provide services to small numbers of students on the same day, creating complex staffing and security issues for the jail and the Los Angeles County Sheriff's department.

In addition to leading to absurd results, OAH's construction would also lead to a bureaucratic nightmare in the tracking of students.

In this case, for example, Garcia left the LAUSD in 2005 at age 15 and entered a charter school, the Soledad Charter School. Thereafter, in 2006 Garcia was arrested, and educated by LACOE in Juvenile Hall from 2006 to 2008. ER at 167-168 [Decision, Factual Findings ¶¶ 3-5, AR OAH01065-01066].

At an August 24, 2007 LACOE IEP team meeting, Garcia was provided with his age of majority rights and Garcia's mother signed the portion of the IEP that acknowledged that Garcia's rights and responsibilities upon reaching the age of majority had been discussed with him. ER at 49-51, 229 [AR OAH00195:7-00197:9; OAH01243].

Garcia turned 18 on June 1, 2008. ER at 34. [AR OAH00039:20-21.] Once Garcia reached age 18, he was transferred to Los Angeles County Jail. ER at 168 [Decision, Factual Findings ¶ 5, AR OAH01066].

There is simply no practical way for a prior school district to track the whereabouts of a former student – not enrolled in the district

for several years – to determine whether the student has committed a crime, been jailed, and remains eligible for special education services.

Further, applying OAH's construction in the context of a charter school student would yield even more unworkable results. Here, for example, Garcia was a charter school student (Soledad Charter) prior to being arrested. Accordingly, Garcia's mother was a resident of an area within the territory of both the Soledad Charter school and LAUSD. Under Education Code §§ 47640-47641, either Soledad or its chartering agency (LACOE) is responsible for providing special education services to Soledad Charter students.

Applying § 56041 as proposed by OAH would make it impossible to determine whether the Soledad Charter or LAUSD would be responsible for special education services for Garcia upon reaching age 18 because Garcia's mother is a resident of both LAUSD and LACOE.

OAH's proposed construction is unreasonable and unworkable, and should be rejected.

4. The Existence Of Other Education Code Provisions Pertaining To Classes For Jailed Adult Students Also Runs Contrary To The OAH's Proposed Construction.

The California Supreme Court has held that, when construing statutes, provisions relating to the same subject matter should be harmonized to the extent possible. (*Lungren v. Deukmejian*, 45 Cal.3d 727, 735 (1988).)

Here, the California Legislature has expressly authorized the establishment of education services in California jails in Education Code §§ 1900 through 1909.5, 41840 through 41841.8, and 46191. Under this program, county boards of education are authorized to provide regular (non-special education) services to students in jail.

Given these provisions, it seems highly unlikely that the California Legislature, on the one hand, enacted separate statutes for regular education services in county jails yet, on the other hand, allowed a general statute (i.e., Education Code § 56041) that nowhere references education in jails, to apply with respect to education for jailed disabled students.

In conclusion, for the reasons set forth above, it is highly unlikely that the Legislature intended for Education Code § 56041 to

govern the provision of special education services to county jail inmates.

D. The Legislature Has Plenary Authority To Resolve The Issue By Enacting Legislation, Assigning Responsibility For The Provision Of Special Education Students In County Jails.

The Legislature has plenary authority over the provision of public education services. (See, *e.g.*, *California Teachers Assn. v. Huff*, 5 Cal.App.4th 1513, 1524 (1992).)

The oversight in assigning responsibility for services to disabled students in county jails is easily remedied by the Legislature simply assigning responsibility for these services.

Further, the legislative process will allow all stakeholders – including parents, disability rights groups, school districts, jails, county offices of education, and the California Department of Education – to forge a solution in an open and transparent manner.

VI. CONCLUSION

For the reasons set forth above, it is respectfully submitted that California Education Code § 56041 does not apply to children who are incarcerated in county jails.

Dated: June 1, 2012

Respectfully submitted,

LITTLER MENDELSON PC

By: _____
BARRETT K. GREEN
Attorneys for Petitioner
LOS ANGELES UNIFIED SCHOOL DISTRICT

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.520(c)(1)

I certify that:

1. Pursuant to California Rules of Court, Rule 8.520(c)(1), the attached opening brief is proportionately spaced, has a typeface of 14 points or more and contains 9,011 words, as by Microsoft Word, the computer program used to prepare the brief.

Dated: June 1, 2012

Respectfully submitted,

LITTLER MENDELSON PC

By: _____

BARRETT K. GREEN
Attorneys for Petitioner
LOS ANGELES UNIFIED SCHOOL DISTRICT

Firmwide:112024863.16 040530.1055

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, Fifth Floor, Los Angeles, California 90067.

On June 1, 2012, I served the foregoing document as described below on the interested parties in this action as follows:

OPENING BRIEF OF PETITIONER LOS ANGELES UNIFIED SCHOOL DISTRICT

Clerk
United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94104

Clerk
United States District Court
312 N. Spring Street
Los Angeles, CA 90012

Paula D. Perlman, Esq.
Carly J. Munson, Esq.
Maria Michelle Uzeta, Esq.
Disability Rights Legal Center
800 South Figueroa Street
Suite 1120
Los Angeles, CA 90017

Delilah Vinzon, Esq.
Hannah Cannom, Esq.
Milbank Tweed Hadley &
McCloy, LLP
601 South Figueroa Street, 30th
Floor
Los Angeles, CA 90017

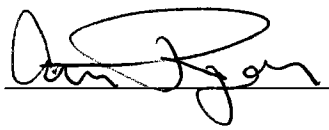
Ismael A. Castro
CAAG – Office of Attorney
General of California
1300 I Street, Suite 1101
P.O. Box 944255
Sacramento, CA 94244-2550

X **BY MAIL:** Following ordinary business practices at the Los Angeles, California office of Littler Mendelson, PC, I placed the sealed envelope for collection and mailing with the

United States Postal Service on that same day. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, such correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business.

X **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 1, 2012, at Los Angeles, California.



Annette Ryan

Firmwide:110517024.1 040530.1055