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
Appellee.

ANSWERING BRIEF OF DEFENDANT AND APPELLEE, MICHAEL GARCIA

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ISSUE TO BE BRIEFED PURSUANT TO RULE 8.520(b)(2)

The United States Court of Appeals for the Ninth Circuit requested 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?

L.A. Unified Sch. Dist. v. Garcia, 669 F.3d 956, 958 (9th Cir. 2011).

INTRODUCTION

This case involves the straight-forward application of the plain language of a statute regarding the provision of special education and related services to a young adult student. Although Los Angeles Unified School District ("LAUSD") asserts that California law is unclear because somehow the California legislature failed to implement a specific statute governing 18 to 22 year old students detained in jail facilities, LAUSD turns statutory construction on its head in an attempt to argue that Section 56041 does not apply her. It is unquestionable that the Individuals with Disabilities Education Act ("IDEA") provides that all young adult special education students between the ages of eighteen and twenty-two, including those students detained in county jails, are entitled to receive special education and related services. It is unquestionable that the IDEA defers to states to allocate and divide responsibility for the provision of services to

eligible students. It is likewise unquestionable that in implementing the IDEA through the California Education Code, the California legislature intended to provide for services to all eligible students as mandated by IDEA. The only question, then, is which section of the California Education Code governs the provision of services to students in jail. Through section 56041 of the California Education Code,[1] California has placed responsibility for the provision of special education and related services to certain young adult students on the district where the student's parent(s) reside(s). Section 56041 does not exclude detained students from this coverage.

Despite the plain language of the statute, LAUSD argues that section 56041 does not apply and suggests that eligible detained students should not receive the special education and related services to which they are statutorily entitled until the Legislature more explicitly identifies a responsible agency. This cannot be the state of California law. But LAUSD presents no reasonable and compelling argument as to why section 56041 is unclear on its face. LAUSD instead points to statutes in Arizona and statements by the California Department of Education in an attempt to argue the inapplicability of section 56041, but such arguments have absolutely no bearing on the question at hand. Because section 56041 is

[1] Unless otherwise indicated, all references to code sections are to the California Education Code.

unambiguous on its face, this Court should find that it does apply to eligible students detained in county jails.

STATEMENT OF THE CASE

On June 5, 2009, Mr. Garcia filed a request for due process hearing against LAUSD before the Office of Administrative Hearings ("OAH"), Special Education Division seeking an order requiring LAUSD to provide him with special education and related services during his detention in the Los Angeles County Jail ("LACJ").[2] 9th Cir. R. of Appeal ("ER") at 0166, 0353. After a three-day hearing, which included opening statements, testimony and closing briefs, the OAH issued its decision on November 16, 2009. ER at 0166, 0183. Pursuant to section 56041, the OAH found LAUSD responsible for the provision of special education and related services to Mr. Garcia while he was in the LACJ, and ordered LAUSD to provide such services to Mr. Garcia no later than January 2010. ER at 0181-82 (Order Nos. 2, 3).

Following the OAH's November 16, 2009 decision and order, LAUSD filed an action in the United States District Court appealing the

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[2] The IDEA and California Education Code provide that a party has the right to an impartial due process hearing "with respect to any matter relating to the identification, evaluation, or educational placement of the child [or student], or the provision of a free appropriate public education to such child [or student]." 20 U.S.C. § 1415(b)(6); Cal. Educ. Code § 56501. A party typically completes the administrative hearing process before maintaining an action regarding the provision of special education and related services in state or federal court, absent certain exceptions. 20 U.S.C. § 1415(l).

OAH Order. ER at 0001. That action was assigned to the Honorable Valerie Baker Fairbank as a related case to Mr. Garcia's class action seeking a system for special education in the LACJ for all eligible students, *Garcia v. LASD*, which was then pending before Judge Baker Fairbank and is currently pending before the Honorable Margaret M. Morrow. *Garcia v. LASD.*, No. 09-8943 VBF-CI) (C.D. Cal. Nov. 16, 2009), ECF No. 10; ER at 0439.

On May 4, 2010, having considered the testimony and evidence before the OAH, the OAH's decision, and the parties' full briefing on the matter, the District Court affirmed the OAH Order, holding that section 56041 of the California Education Code required LAUSD to provide Mr. Garcia with special education and related services while he was in the LACJ. ER at 0001-02. The District Court specifically held that: "[u]nder the plain language of Cal. Educ. Code § 56041, LAUSD is responsible for the provision of special education services to Garcia. No party contests that Garcia is between the ages of eighteen and twenty-two years and that Garcia's mother has at all relevant times resided within the Los Angeles Unified School District." ER at 0003. The District Court also affirmed the OAH's holding that "Garcia's right to special education services did not end upon his eighteenth birthday," and upheld the remedy ordered by the OAH. ER at 0001-02.

LAUSD appealed the District Court's decision to the Ninth Circuit Court of Appeals. The Ninth Circuit certified the parties' dispute to the California Supreme Court, stating the question as follows:

> 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.

L.A. Unified Sch. Dist. v. Garcia, 669 F.3d 956, 958 (9th Cir. 2011).

SUMMARY OF ARGUMENT

Section 56041 applies to all eligible eighteen to twenty-two year old students in the state of California including those detained in county jails.

1. The IDEA defers to states to determine which school districts and/or other entities may be responsible for providing students' special education and related services. Multiple public agencies may be

responsible for a student's special education and related services pursuant to the IDEA.

2. Section 56041 provides that for students eligible to receive special education and related services between the ages of eighteen and twenty-two, the school district where the student's parent(s) reside(s) is responsible for the provision of the student's special education and related services. Accordingly, the Court need only examine the plain language of the statute to conclude that section 56041 applies to children incarcerated in county jails.

3. Such plain reading of section 56041 will not lead to absurd results, nor is it impracticable to implement. Rather, a plain reading of section 56041 is consistent with the California Education Code, legislative intent, and past administrative practice and decisions.

4. The Court need not wait for the Legislature to resolve this issue but may interpret section 56041 according to its plain meaning.

STATEMENT OF FACTS

As a student with a diagnosed learning disability, Michael Garcia has been eligible for special education for most of his life. ER at 0167-68 (OAH Factual Findings 1, 3); 9th Cir. Supp. R. of Appeal ("SER") at 000015-17 (Testimony of Yamileth Fuentes, Aug. 13, 2009 OAH Hearing ("Fuentes Testimony") at 153:22-155:7). Mr. Garcia first began receiving special education and related services in approximately the second grade.

ER at 0167 (Factual Finding 3); SER 000015-16 (Fuentes Testimony at 153:25-154:7). Mr. Garcia received special education and related services until his transfer to the LACJ on June 19, 2008, shortly after his eighteenth birthday. ER at 0168-69 (Factual Findings 5, 10).

Mr. Garcia grew up living with his mother and siblings in Bell, California, within the boundaries of the LAUSD. ER at 0167 (Factual Finding 2); SER at 000010-11 (Fuentes Testimony at 148:22-149:24). Mr. Garcia's mother, Yamileth Fuentes, has resided in the LAUSD since 1985, five years prior to Mr. Garcia's birth, and continues to reside there. ER at 0167 (Factual Finding 2); SER at 000011-13 (Fuentes Testimony at 149:8-151:2).

Mr. Garcia has a long history of eligibility for special education as a student with a specific learning disability caused by his impaired auditory processing abilities and significant deficits in his expressive and receptive language skills. ER at 0167 (Factual Findings 1, 3); SER at 000016-17 (Fuentes Testimony at 154:14-155:7). A teacher first identified Mr. Garcia's learning difficulties in elementary school and suggested that he be tested for special education.[3] SER at 000015-16 (Fuentes Testimony at 153:22-154:7). Mr. Garcia began receiving special education in 1998,

[3] Appellee uses the terms special education, special education and related services, and special education services interchangeably. All terms refer to special education and related services as defined by the IDEA. 20 U.S.C. § 1401(26), (29).

when he was in the second grade. ER at 0167 (Factual Finding 3); SER 000015-16 (Fuentes Testimony at 153:25-154:7).

Following his initial assessment, LAUSD provided Mr. Garcia with uninterrupted special education services during his time in the District. ER at 0036-37 (Testimony of Michael Garcia, Aug. 13, 2009 OAH Hearing ("Garcia Testimony") at 40:5-42:21), 0167-0168. LAUSD developed annual and triennial Individualized Education Programs ("IEPs")[4] for Mr. Garcia when he attended school in the District. ER at 0167-68 (Factual Finding 3). After completing eighth grade in LAUSD, Mr. Garcia enrolled in the Soledad Enrichment Action Charter School.[5] ER at 0168 (Factual Findings 3, 4). While at this school, Mr. Garcia continued to receive special education to help him meet his educational goals. ER at 0168 (Factual Finding 4).

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[4] An Individualized Education Program or "IEP" is "a written statement for each child with a disability...that includes...a statement of the child's present levels of academic achievement and functional performance[;] . . . a statement of measurable annual goals, including academic and functional goals[;]" a statement of how the child will meet these annual goals; a statement detailing the accommodations and modifications the child will receive; a statement setting forth the transition services, as defined in 20 U.S.C. § 1401(34), the child will receive; and a statement detailing the special education and related services the child will receive. 20 U.S.C. § 1414(d)(1)(A); 20 U.S.C. § 1401(14).

[5] This school is a Los Angeles County Office of Education administered charter school and is referred to as SEA Southgate. ER at 0168 (Factual Finding 4).

On February 8, 2006, at the age of fifteen, Mr. Garcia was arrested. ER at 0168 (Factual Finding 5). As a juvenile, he was detained at the Sylmar Juvenile Hall in Sylmar, California. ER at 0168 (Factual Finding 5). At the school operated on the grounds of Sylmar Juvenile Hall, Mr. Garcia once again received special education and related services.[6] ER at 0035-36 (Garcia Testimony at 41:4-6, 42:22-45:7). On August 24, 2007, Mr. Garcia's IEP team conducted his annual IEP meeting at Sylmar Juvenile Hall School. ER at 0168 (Factual Finding 6), ER at 0214-29. Both Mr. Garcia and his mother attended this IEP meeting. ER at 0229. At that meeting, the IEP team determined that Mr. Garcia was still entitled to special education and related services, finding him "eligible for special education and related services under the eligibility categories of specific learning disability and speech and language impairment." ER at 0168 (Factual Finding 6).

However, on June 19, 2008, shortly after his eighteenth birthday, Mr. Garcia was transferred from the Sylmar Juvenile Hall to the LACJ, an adult

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[6] The Sylmar Juvenile Hall school is called the Barry J. Nidorf School. ER at 0035 (Garcia Testimony at 40:16-21). Students who are in what are referred to as juvenile court schools, *i.e.*, those schools operated by juvenile halls and camps, are served by County Offices of Education. Cal. Educ. Code § 48645.2. In this case, Mr. Garcia was provided special education services by the Los Angeles County Office of Education during his time in the Juvenile Hall. ER at 0168 (Factual Finding 6); ER 0214-29 (Mr. Garcia's IEP developed by the Los Angeles County Office of Education while he was attending school at Sylmar Juvenile Hall).

correctional facility. ER at 0169 (Factual Finding 10). Upon his detention at the LACJ, when LAUSD's obligation to provide services resumed, Mr. Garcia received no special education or related services. ER at 0169 (Factual Finding 10); *see also* ER at 0043 (Garcia Testimony at 76:1-18).

Mr. Garcia requested educational services by submitting an LACJ inmate complaint form. ER at 0043 (Garcia Testimony at 76:1-18); SER at 000005 (Garcia Testimony at 79:8-15). Further, counsel for Mr. Garcia requested special education and related services from LAUSD on his behalf on February 12, 2009. ER at 0170 (Factual Finding 15). Nevertheless, Mr. Garcia did not receive the special education and related services to which he was (and is) undoubtedly entitled. ER at 0169 (Factual Finding 10), 0170 (Factual Finding 16), 0172-73 (Legal Conclusion 6). Indeed, the OAH found that Mr. Garcia received no special education services between the time he turned eighteen and the time of its November 16, 2009 decision. ER at 0167 (Factual Finding 1), 0169 (Factual Finding 10), 0177 (Legal Conclusion 26).

Due to this lack of services, Mr. Garcia regressed academically and his academic skill levels declined. ER at 0169 (Factual Finding 13), 0257-58. During Mr. Garcia's due process hearing before the OAH, Dr. Carlos A. Flores, a clinical neuropsychologist, testified that Mr. Garcia has a learning disability and that in order to benefit from and access his education

he requires special education, speech and language therapy, and counseling. ER at 0171 (Factual Findings 23-26).

On November 16, 2009, the OAH found Mr. Garcia was eligible for special education services while detained at the LACJ. ER at 0172-73 (Legal Conclusion 6). The OAH also found that LAUSD had denied Mr. Garcia a free appropriate public education ("FAPE"), in violation of California and federal law, by failing to provide him with *any* special education or related services upon his transfer to the LACJ. ER at 0177-79 (Legal Conclusions 26-28, 35-36). Finally, the OAH held that LAUSD had a legal obligation to provide Mr. Garcia with a FAPE during his incarceration in the LACJ and ordered it to provide special education and related services to Mr. Garcia without delay. ER at 0181 (Order No. 2).

Only in January 2010, pursuant to the OAH Order, did Mr. Garcia begin receiving some special education services from LAUSD during his detention at the LACJ. ER at 0181-82 (Order Nos. 2, 3).

ARGUMENT

I. Section 56041 of the California Education Code Dictates the Provision of Special Education and Related Services to Individuals Detained in County Jails

A. Under the Plain Language of Section 56041, the District Where a Detained Student's Parent Resides Is Responsible for Providing Special Education and Related Services During the Student's Detention in a County Jail

The IDEA conditions the provision of federal funds on a state's agreement to comply with numerous specific procedures and requirements. 20 U.S.C. § 1412. Foremost among these is the requirement that a state develop policies and procedures to ensure that eligible students between the ages of three and twenty-one receive a FAPE.[7] 20 U.S.C. § 1412(A)(1); 34 C.F.R. § 300.149. A FAPE is "special education and related services that: (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program." 20 U.S.C. § 1401(9). The IDEA expressly provides that students in adult correctional facilities, such as jails, have a right to receive a FAPE if the students were found eligible for special education and related services prior

[7] A student is entitled to continue receiving special education services until he or she receives a diploma or reaches his or her twenty-second birthday. 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.101, 300.102; Cal. Educ. Code §§ 56000(a), 56026.

to their incarceration. 20 U.S.C. § 1412 (a)(1)(B)(ii); 34 C.F.R. § 300.102(a)(2)(ii); *see also* 34 C.F.R. § 300.2 (the IDEA applies to adult correctional facilities).

The IDEA defers to states to establish a statutory scheme allocating and dividing responsibility for the provision of special education and related services. 20 U.S.C. § 1412(a). Questions as to the education agencies responsible for the provision of services to any particular student are determined under state law. *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1191 (W.D. Wash. 2002) (citing *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1525-27 (9th Cir. 1994)). California statutes address this issue by dividing students into two separate groups: those between the ages of six and eighteen, and those over the age of eighteen.

For students between the ages of six and eighteen, sections 48200 and 48204 of the California Education Code allocate and divide responsibility for the provision of education services (including special education and related services). Pursuant to these provisions, as well as certain provisions of the IDEA, school districts are generally responsible for providing a FAPE to those students with disabilities whose parent or parents reside within the district's jurisdictional boundaries. 20 U.S.C. § 1414(d)(2)(A); Cal. Educ. Code §§ 48200, 48204; *see also Katz v. Los Gatos-Saratoga Joint Union High Sch. Dist.*, 117 Cal. App. 4th 47, 57-58 (2004).

Section 56041 of the California Education Code provides a parallel scheme for students between the ages of eighteen and twenty-two. Specifically, section 56041 provides:

> 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. (emphasis added)

In sum, and as a general rule, the district in which the parent(s) of an 18 to 22 year old student reside(s) is the district responsible for providing special education and related services to that student. Cal. Educ. Code § 56041. In the present case, the OAH and the District Court properly applied the plain language of section 56041 to the facts of the instant matter and held that LAUSD—as the district of residence of Mr. Garcia's mother—was responsible for providing special education and related services to Mr.

Garcia during his incarceration in the Los Angeles County Jails. Despite LAUSD's tortured arguments to the contrary, such an interpretation is eminently reasonable.

B. Because Section 56041 Is Clear on Its Face, the Court Need Not Look Beyond the Plain Language to Determine Its Applicability Here

The Supreme Court has "'stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.' When the statutory 'language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.'" *Arlington Cent. Sch. Dist. v. Murphy*, 548 U.S. 291, 296 (2006) (citation omitted); *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) *Moyer v. Workmen's Comp. Appeals Bd.*, 10 Cal. 3d 222, 229-230 (Cal. 1973). The District Court agreed in the instant action, stating "the statute [section 56041] is clear enough on its face that the Court [need] not reach the legislative history." ER at 0003.

LAUSD notably does not contend that the language of section 56041 is somehow ambiguous such that the Court should consider the legislative history. Rather, all of LAUSD's arguments center on the false assertion that because section 56041 does not expressly reference county jails, it is somehow "highly unlikely" that the legislature intended for section 56041 to apply to eligible students in county jails. But such an argument ignores

the fact that section 56041 allocates and divides default responsibility for the provision of special education and related services to students between the ages of eighteen and twenty-two who are eligible for such services, with explicit, limited exceptions that LAUSD does not even contend apply here. Although section 56041 does not expressly reference county jails, it need not specifically enumerate the extent of its application. Rather, it specifically references section 48204(a) of the California Education Code for its exceptions, and students detained in county jails are not listed in those exceptions. Thus, this Court can rely solely on the plain language of the section 56041 to find that section 56041 applies to eligible students detained in county jails. Indeed, as the District Court correctly held, "[t]he plain language of Cal. Educ. § 56041 encapsulates incarcerated students." ER at 0012-13.

Furthermore, the LAUSD's narrow construction of section 56041 is improper. Indeed, pursuant to section 2, all of the California Education Code's "provisions and all proceedings under [the Code] are to be liberally construed, with a view to effect its objects and to promote justice." Cal. Educ. Code § 2. LAUSD's narrow reading of section 56041 is therefore in direct contravention of section 2. The California legislature has specifically expressed that the California Education Code, including section 56041, should be given a broad effect, and LAUSD's narrow reading of the statute should be rejected.

C. The Legislature's Choice to Enact Specific Statutes Allocating Responsibility in Other Situations Is of No Consequence to the Issues Before this Court

The California Legislature's decision not to include a specific statute related to the provision of special education and related services in county jails does not support a finding that section 56041 does not apply to eligible detained students. First, the IDEA does not require states to enact statutes that expressly reference and dictate how special education and related services will be provided to eligible students in county jails. Rather, as LAUSD admits, the IDEA only requires states to enact policies and procedures to ensure that students in jails are provided with a FAPE; the policies and procedures a state may ultimately enact are discretionary so long as students are provided with a FAPE. 34 C.F.R. § 300.102; 20 U.S.C. § 1412; *see also Analysis of Comments and Changes to 2006 IDEA Part B Regulation*, 71 Fed. Reg. 46540, 46686 (Aug. 14, 2006) ("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."); Pet. Br. at 29-30. Thus, the fact that other states, such as Arizona, have statutes that expressly reference jails means nothing more than that the Arizona Legislature made a different allocation of IDEA responsibilities than the California Legislature.

Further, the California Legislature's decision to frame the clear language of section 56041 in general terms does not suggest a conscious

choice to exclude jails from the scope of the statute. Rather, it indicates only that the Legislature was acting "to address a specific problem but ultimately settl[ed] on a broader remedy. . . . [T]hat a statute can be applied in situations not expressly anticipated by [the Legislature] does not demonstrate ambiguity. It demonstrates breadth." *In re Estate of Earley*, 173 Cal. App. 4th 369, 376 (2009) (quoting *N.H.Motor Transp. Ass'n v. Rowe*, 448 F.3d 66 (1st Cir. 2006)) (quotation omitted); *Khajavi v. Feather River Anesthesia Med. Grp.*, 84 Cal. App. 4th 32, 51 (2000) ("[T]he specific impetus for a bill does not limit its scope when its text speaks to its subjects more broadly . . . . Indeed, when the Legislature has made a deliberate choice by selecting broad and unambiguous statutory language, 'it is unimportant that the particular application may not have been contemplated.'" (citation omitted)).

The Supreme Court of the United States has echoed this sentiment. *See Barr v. United States*, 324 U.S. 83, 91 (1945) ("[I]f Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators."). An interpretation of the Education Code that eliminates the LAUSD's responsibility for funding renders the underlying principles of section 56041 superfluous and ineffective. In the words of the Tenth Circuit: "We will not hobble our interpretation of statutes with the requirement that every circumstance meant to be covered

must be specifically mentioned." *United States v. Bates*, 617 F.2d 585, 587 n.7 (10th Cir. 1980).

Moreover, as LAUSD suggests, and as this Court has confirmed, statutory provisions related to the same subject matter should be "harmonized, both internally and with each other, to the extent possible." Pet. Br. at 47; *Dyna-Med, Inc. v. Fair Emp't & Hous. Comm'n.*, 43 Cal. 3d 1379, 1387 (1987). However, only where there is an irreconcilable conflict between such provisions does the more specific provision dictate the scope of the more general provision. *Elsenheimer v. Elsenheimer*, 124 Cal. App. 4th 1532, 1540 (2004); *Am. Nat. Ins. Co. v. Low*, 84 Cal. App. 4th 914, 925 (2000).

There is no such conflict here. In fact, the OAH's reading of section 56041 fully comports with the more specific statutes dealing with education services in jails cited by LAUSD. The fact that the California legislature has designated County Offices of Education as responsible for providing general education services to incarcerated individuals is not inconsistent with the OAH's interpretation of section 56041. Just as sections 1900 through 1909.5, 41840 through 41841.8, and 46191 establish education and other services to incarcerated students, section 56041 identifies the entity responsible for providing such special education services. Because this interpretation of section 56041 is fully compatible with the more specific provisions of the Education Code, and because

Garcia's situation falls squarely within the Legislature's intended scope of the statute, LAUSD's specificity argument fails.

Finally, LAUSD's reliance on the California Department of Education's counsel's self-serving statements about liability for the provision of special education and related services in the LACJ is misplaced. *See* Pet. Br. at 2-3. One attorney's belief that the legislature omitted students in jail from the coverage of its statutes is neither persuasive nor indicative of legislative intent. Further, those statements were made in a case in which the California Department of Education is a defendant and has a stake in the outcome. Whether section 56041 applied to make LAUSD a responsible entity for Mr. Garcia's special education and related services during his detention in the LACJ is a legal question for the Court to decide, regardless of the California Department of Education's position taken in litigation.

D. LAUSD's Narrow Application of Section 56041 Does Not Comport with the Statutory Scheme or Prior Administrative Decisions

To the extent the Court considers the legislative history of section 56041, application of section 56041 in the instant case would actually further the legislative goal underlying the statute. As the District Court correctly held:

> [E]ven if the Court does review the legislative history of Cal. Educ. [§] 56041, it does not alter the analysis. The concern expressed in the portion of the legislative history of Cal. Educ.

> § 56041 relied on by LAUSD, broadly speaking, is a concern regarding overwhelming local educational agencies ("LEA") with responsibility because of the fortuity of having a certain type of school within their borders. *See* Declaration of Lisa Hampton, p. 432. The application of Cal. Educ. § 56041 according to its plain terms may serve this purpose in the instant case because it provides that the LEA in which a jail resides is not automatically responsible for the special education of all students located therein. ER at 0004.

LAUSD seeks to have the Court hold that section 56041 only applies when a school district places a student under the age of eighteen in another school district to receive services and the student turns eighteen while living or attending school in the new school district. Pet. Br. at 35. Such a narrow application, however, is not supported by the plain language of the statute or administrative decisions interpreting and applying the statute.

First, the plain language of the statute does *not* provide that it only governs situations in which a student has been placed by one district in a program in another district prior to reaching age eighteen. Rather, as the OAH and the District Court correctly concluded, the statute applies to the division and allocation of responsibility among school districts and agencies for the provision of special education and related services to *all* students between the ages of eighteen and twenty-two. While LAUSD may wish to escape liability by asserting that the statute governs only certain situations, "a court is not authorized to insert qualifying provisions not included and may not rewrite the statute to conform to an assumed intention which does not appear from its language." *In re Hoddinott*, 12 Cal. 4th 992,

1002 (Cal. 1996) (internal citations omitted); *People v. One 1940 Ford V-8 Couple*, 36 Cal. 2d 471, 475 (Cal. 1950).

Second, LAUSD's claim that administrative decisions support its narrow interpretation of section 56041 is false. LAUSD relies on a single administrative decision issued by the Special Education Hearing Office ("SEHO")[8] in 2003—*Student v. Berkeley Unified Sch. Dist.*, SEHO Case No. 2003-1989 ("*Berkeley*")—to support its narrow interpretation. Pet. Br. at 36-41. Not only is *Berkeley* readily distinguishable from the instant matter, as both the OAH and the District Court correctly concluded, but LAUSD also fails to inform the Court of the four administrative decisions issued after *Berkeley* (in addition to the OAH Order in Mr. Garcia's case), all of which have reached contrary conclusions. In each of those decisions, the OAH applied section 56041 to students between the ages of eighteen and twenty-two, even though those students had not been placed by one school district into another school district prior to reaching age eighteen. *See In re Student v. Orange County Dept. of Educ.*,) (decision issued November 30, 2009) (holding in part that before Student turned eighteen years of age, the basic residency rule in section 48200 was applicable in determining the district responsible for Student's FAPE, and that following his eighteenth birthday, the residency rule in section 56041(a) became

[8] The SEHO was the OAH's predecessor and conducted due process hearings brought under the IDEA and/or California Education Code.

applicable for making this determination); *Parent ex rel. Student v. Cal. Dep't. of Mental Health* (OAH Case No. 2009050920) (decision issued October 26, 2009) (holding, in part, that section 56041 places responsibility for students between 18-22 on the district of residence consistent with sections 48200 and 48204, distinguishing only between conserved and non-conserved adult students); *Orange Cnty. Dep't. of Educ. v. Student* (OAH Case No. 2008120021) and *Student v. Orange County Dep't. of Educ.* (OAH Case No. 2009020130) (May 22, 2009) (consolidated ruling finds, in part, that section 56041 provides a broad, catch-all provision for determining which district is responsible for providing services to students between ages eighteen and twenty-two); *Student v. L.A. Unified Scho. Dist.*, OAH Case No. 2007010772 (April 17, 2007) (holding in part that, pursuant to section 56041, LAUSD was the district responsible for providing services to an adult student with an IEP who moved with his parents from Alhambra to LAUSD at age twenty-one).[9]

These administrative decisions support the finding that section 56041 applies to eligible students detained in county jails. Accordingly, section 56041 must be read to allocate the responsibility for the provision of special education and related services to *all* eligible students between the ages of eighteen and twenty-two.

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[9] Copies of these decisions are included in Appellee's Addendum to Answering Br. ("Appellee's Addendum") at 1-64.

E. *Berkeley* Is Inapplicable to the Present Case

1. *Berkeley* Is Factually Inapposite

Contrary to LAUSD's assertions, *Berkeley* is distinguishable from the instant matter. In *Berkeley*, a 20 year old adult student with autism voluntarily moved *of his own accord* from his parents' home in Albany, California, to Berkeley, California, and then tried to enroll in the Berkeley Unified School District. At hearing, the Berkeley Unified School District raised section 56041 as a defense and argued that the Albany Unified School District remained responsible for his education because his parents continued to live in Albany. In that narrow situation, the SEHO held that the student, by leaving his family home voluntarily, had become his own "parent" for purposes of determining his district of residency. *See* ER at 0427-31.

Even if this case were binding precedent, which it is not,[10] the OAH and the District Court correctly held that this case is inapplicable and unpersuasive because of stark factual differences. Here, "[u]nlike the pupil in the *Berkeley* case, [Mr. Garcia] has not chosen to move into the Los Angeles County Jail. His residence of choice at all times in this matter has been his mother's residence in Bell, California, within the jurisdiction of

[10] Section 3085 of Title 5 of the California Code of Regulations provides that "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."

the District. . . . [Mr. Garcia] lived in Bell, California, at all times before his incarceration and would move back there if released from jail." ER at 0175.

Indeed, the rationale under *Berkeley* should apply here to establish that LAUSD should be held responsible for Mr. Garcia's special education and related services. In *Berkeley*, the SEHO held that "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." ER at 0429. Though not obligated to do so, the District Court acknowledged the holding of *Berkeley* and the legislative history of section 56041 in its order and correctly held that the "application of Cal. Educ. § 56041 according to its plain terms may serve [the legislative] purpose in the instant case because it provides that the [local education agency] in which a jail resides is not automatically responsible for the special education of all students located therein." ER at 0004. Here, the general rule of section 56041 has been and should be applied to allocate the responsibility for the provision of special education and related services to eligible students detained in county jails to the school district where the student's parent(s) reside(s). This allocation of responsibility would not prevent that district from funding and contracting with another education agency to directly provide these services.

2. Moreover, Because *Berkeley* Relied on Section 56028 of the California Education Code, It Is Distinguishable from the Instant Case

The 2003 decision in *Berkeley* was premised on the application of section 56028 of the California Education Code which defines the term "parent." In 2003, section 56028 provided that:

> (a) "Parent," includes any of the following:
>
> (1) A person having legal custody of a child.
>
> (2) *Any adult pupil for whom no guardian or conservator has been appointed.*
>
> (3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives). "Parent" also includes a parent surrogate.
>
> (b) "Parent" does not include the state or any political subdivision of government.
>
> (4) A foster parent if the natural parents' authority to make educational decisions on the child's behalf has been specifically limited by court order in accordance with subsection (b) of Section 300.20 of Title 34 of the Code of Federal Regulations. Cal. Educ. Code § 56028 (emphasis added).

In *Berkeley*, the SEHO expressly held that: "[i]n short, STUDENT is an adult pupil for whom no guardian or conservator has been appointed. He therefore meets the definition of 'parent' under section 56028(a). Because STUDENT is a 'parent,' responsibility for STUDENT's FAPE moved when he moved." ER at 0430. This holding directly refers to the language in the 2003 version of section 56028(a)(2) of the California Education Code.

As the District Court correctly held, the *Berkeley* decision is of no moment because this language in the 2003 version of section 56028 of the California Education Code, on which SEHO relied, is not currently in effect nor was it in effect during Mr. Garcia's detention in the LACJ. ER at 0003. Specifically, in *Berkeley*, the SEHO relied on the 2003 language of section 56028 that a parent may include an "adult pupil for whom no guardian or conservator has been appointed." Appellee's Addendum at 235-236 (2003 version of section 56028). That language is not included in the amended versions of sections 56028 in effect either now or during Mr. Garcia's detention in the LACJ. Appellee's Addendum at 225-230 (2008-2010 versions of section 56028).

Moreover, the District Court correctly noted that the 2003 version of section 56028 was only in effect from January 1, 2003 to September 28, 2004. ER at 0003. Because the current version of section 56028 does not contain the language relied on by the SEHO in *Berkeley*, it is properly distinguished.

F. The OAH's Application of Section 56041 Is Consistent with the Remainder of the California Education Code

Other California statutes regarding *general education* in correctional facilities are irrelevant to how California implements the IDEA and allocates responsibility for the provision of special education and related services. 34 C.F.R. §§ 300.2, 300.102. The statutes that LAUSD

references regarding the establishment of *general education* programs in county jails and California prisons provide no guidance on the provision of *special education* in those facilities. *See* Pet. Br. at 47-48; Cal. Educ. Code § 1900 ("The county superintendent of schools, with the approval of the county board of education and the board of supervisors, shall have power to establish and maintain classes or schools for prisoners in any county jail . . . for the purpose of providing instruction in civic, vocational, literacy, health, homemaking, technical, and general education"). Neither section 1900 nor any of the other sections of the California Education Code referenced by LAUSD regarding general education in jails and prisons specifically addresses the responsibility for special education and related services. Accordingly, the Court must look to the portions of the California Education Code that implement the IDEA and specifically delineate responsibility for special education and related services (*i.e.*, Cal. Educ. Code §§ 48200, 48204, 56041) to determine the entities responsible for providing special education to students in jail. *See Nken v. Holder*, 556 U.S. 418, 430 (2009) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citations omitted). Moreover, there is no inherent contradiction in the application of these two sections of the code, in that the general education programs offered by a jail and the

special education programs offered by local education agencies can, and indeed should, work in concert with each other. As noted above, a local education agency may even contract with other agencies, such as the general education provider in a jail, to facilitate the provision of special education services.

As discussed in Section I.A. *supra*, section 56041 allocates responsibility for the provision of special education and related services to *all* eligible students between the ages of eighteen and twenty-two (including those in county jails) and is the appropriate statute to apply in the instant matter.

II. Application of Section 56041 of the California Education Code Would Not Lead to Absurd Results, Nor Would It Be Impractical to Implement

In claiming that application of section 56041 would be impractical to implement, LAUSD ignores the federal and state framework already in place to address any of the perceived difficulties about which LAUSD complains.

First, contrary to LAUSD's claim, application of section 56041 does not require LAUSD or any other school district to provide *direct* special education instruction to students in remote county jails. Nothing in the IDEA or California law would prohibit LAUSD or any other school district of residence from contracting with another district or agency to directly provide special education and related services and a FAPE to eligible

students in a jail. In fact, the California Education Code expressly encourages and authorizes such contracting. *See* Cal. Educ. Code § 56369 ("A local education agency may contract with another public agency to provide special education or related services to an individual with exceptional needs."). LAUSD's own example of a student detained in a San Diego jail, whose parents reside in Sacramento, precisely demonstrates the point. *See* Pet. Br. at 42. Such a student could receive special education and related services from a school district or agency in San Diego that would be reimbursed for the cost of providing such services by the responsible Sacramento school district.[11]

Moreover, the IDEA and California law expressly require that students be provided a FAPE without delay, and courts have confirmed that multiple agencies may be responsible for ensuring that students receive a FAPE while in jail. 20 U.S.C. § 1412(12)(A); 34 C.F.R. §§ 300.103, 300.323; Cal. Educ. Code §§ 56043(m), 56344(b)(c); *Handberry v. Thompson,* 446 F.3d 335, 347-348 (2d Cir. 2006) (multiple agencies responsible for provision of special education to students in jail); *Green v.*

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[11] Similarly, the LAUSD's statements about staffing and security concerns for the jail and the Los Angeles Sheriff's Department are misplaced. Nothing in California law or the IDEA requires that any school district directly provide these services. Indeed, school districts or county offices of education can contract with one another to ensure the provision of services to eligible students.

Johnson, 513 F. Supp. 965, 967, 977-78 (D. Mass. 1981) (same). LAUSD's claim that the provision of services to students in county jails is unworkable is thus entirely unsupported by the law.

Finally, LAUSD's complaints about the "impracticability" of tracking students are without merit. The IDEA and California law already require all school districts and other public agencies to track students. Indeed, the IDEA and California law require that all eligible students be located and identified (even where they change placements or school districts)[12] so that the school districts provide these students with the FAPE to which they are entitled. 20 U.S.C. § 1412(a)(3); Cal. Educ. Code §§ 56300, 56301; 34 C.F.R. §§ 300.2, 300.102 (IDEA applies to adult correctional facilities and students in jail may be eligible for special education and related services).

III. This Court Need Not Wait for the Legislature to Resolve This Issue, But Should Provide Certainty for Eligible Detained Students

LAUSD asserts that the "Legislature has plenary authority to resolve the issue by enacting legislation, assigning responsibility for the provision of special education students in county jails." Pet. Br. at 48. While it is true that the Legislature may resolve the issue at hand, the authority cited by LAUSD does not support LAUSD's argument that the Legislature is the

[12] *See* 20 U.S.C. § 1414(D)(2)(c)(i)(l); Cal. Educ. Code § 56325(a).

only entity that may do so. Indeed, the Court may resolve the issue in the absence of movement by the Legislature. *Arlington Cent. Sch. Dist. v. Murphy*, 548 U.S. at 296 (stating that the courts shall "'presume that a legislature says in a statute what it means and means in a statute what it says there.' When the statutory 'language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.'"). Such a resolution by the Court would in no way deprive the Legislature of its plenary authority over education.

Further, even though it can resolve this issue, there is no certainty that the Legislature will ever do so. In light of this uncertainty, it would be unwise to wait for the Legislature to act—especially given the need for clarity for currently incarcerated students who suffer irreparable harm for each day they go without special education services. *See Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.*, 353 F. Supp. 2d 1083, 1087 (C.D. Cal. 2005). Therefore, the Court should not hesitate to resolve the issue presented.

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CONCLUSION

For these reasons, this Court should hold that section 56041 properly assigns responsibility for the provision of special education services to 18 to 22 year old students detained in county jails to the school district where the student's parent resides.

Dated: July 6, 2012

Respectfully submitted,

By _____

MILBANK TWEED HADLEY & MCCLOY, LLP

--and--

DISABILITY RIGHTS LEGAL CENTER

Attorneys for Appellee Michael Garcia

CERTIFICATE OF WORD COUNT
(California Rules of Court, Rule 8.520(c)(1))

I certify that pursuant to California Rule of Court, Rule 8.520(c)(1), the attached answering brief is proportionately spaced, has a typeface of 13 points or more and contains 7,123, as counted by Microsoft Word, the computer program used to prepare this brief.

Dated: July 6, 2012

Respectfully submitted,

By: _____

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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 601 South Figueroa Street, 30th Floor, Los Angeles, California 90017.

On July 6, 2012, I served the foregoing document described as **APPELLEE'S ANSWERING BRIEF** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

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X 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 July 6, 2012, at Los Angeles, California.

VIRGINIA FLEMING