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.

REPLY BRIEF OF PETITIONER LOS ANGELES UNIFIED SCHOOL DISTRICT

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I. SUMMARY OF REPLY

1. Garcia's claim that Education Code section 56041 applies and is clear on its face should be rejected. Section 56041 nowhere references services in jail. Further, Garcia himself argued that it would be "unworkable" "nonsensical," and "absurd" to read Section 56041 to apply to county jail inmates, before now switching positions and arguing that it is obvious that Section 56041 applies.

2. In the absence of legislation assigning responsibility to local educational agencies, the California Department of Education is responsible for providing special education services to adult students in county jails. Garcia has already received services so he would not be impacted by a Supreme Court ruling on this issue.

3. The OAH cases cited by Garcia are inapposite.

4. The reference in the OAH *Student v. Berkeley Unified School District and Albany Unified School District*, SEHO Case No. 2003-1989 case to Education Code section 56028 is of no consequence.

5. The California Legislature can at any time clearly assign to any local educational agency the responsibility for providing special education services in county jail.

II. ARGUMENT

A. Section 56041 Does Not Clearly Assign Responsibility For County Jail Services.

In his Answering Brief, Garcia argues that Education Code section 56041 applies and is clear on its face. (Garcia's Answering Brief at pp. 12-15.)

Garcia is not being candid with the Court.

When Garcia first initiated litigation, not only did Garcia argue that Section 56041 was inapposite, but he did not even name LAUSD as a respondent or defendant in the initial due process hearing complaint or follow-on class action. ER 73-89, 99-119.

Further, when the State and other respondents pointed to the empty chair in the due process hearing proceedings and argued that the missing LAUSD party was the responsible entity because of Section 56041, Garcia himself argued that it would be "unworkable" "nonsensical," and "absurd" to read section 56041 to apply. ER 0078. [February 9, 2009 Order Granting and Denying Motions to Dismiss or Restore Parties and Order Dismissing Complaint in Case No. 2009060442.[1]].

[1] For the convenience of the Court, where practical the District has included the source of the document in brackets next to the "ER" citation.

Garcia's argument was highlighted in the OAH decision issued in February 2009, as follows:

> Student [Garcia] argues further, without authority, that the Legislature could not have intended to apply section 56041 to a county jail inmate because it would produce the "unworkable" "nonsensical," and "absurd" result that many different districts would be responsible for various inmates' programs.
>
> [OAH Decision, addressing argument made by Garcia.]

ER 0078.

Now, Garcia has switched positions, feigning that Section 56041 clearly applies, even though there is not a single reference to county jail anywhere in Section 56041, nor anywhere in the legislative history of Section 56041.

Garcia now also critiques the District's argument about the absurdity of a Northern California district serving a Southern California student in jail were Section 56041 to apply. (Garcia's Answering Brief at pp. 29 et seq.)

Yet, Garcia himself made that precise argument when, in the initial litigation, he explained why it would be absurd to read Section 56041 as applying:

> Student [Garcia] asserts that the Legislature could not have intended that a school district in San Francisco or Sacramento, for example, would have to "enter" a jail hundreds of miles away to deliver special education and related services.
>
> [OAH Decision, addressing argument made by Garcia.]

ER 0078. [February 9, 2009 Order Granting and Denying Motions to Dismiss or

At p. 20 of his brief, Garcia also asks the Court to ignore the concession made by a California Department of Education Deputy Attorney General who, in open court, candidly explained that there is a gap in the Education Code and that the omission was a legislative oversight. ["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 . . .¶ 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." ER at 24, 25, 26, 27. [Transcript of April 21, 2010 hearing on motion for class certification at 29:20-25, 48:23-49:2, and 10:5-15.]

The Supreme Court should not overlook this important statement. The honest conclusion is that Section 56041 was never intended, expected, or designed to address services for inmates in County jail.

Finally, even if Section 56041 "plainly" assigned responsibility in this case (it does not), Garcia overlooks key principles of statutory construction mandated by this Court.

The "plain meaning" rule does not prevent a court from determining whether the literal meaning of the statute comports with its purpose. *MacIsaac v. Waste Mgmt. Collection & Recycling, Inc.*, 134 Cal. App. 4th 1076 at 1083 (2005), *citing*

California School Employees Assn. v. Governing Board, 8 Cal. 4th 333, 340 (1994), *Katz v. Los Gatos-Saratoga Joint Union High Sch. Dist.*, 117 Cal. App. 4th 47, 54 (2004). The literal meaning of unambiguous statutory language "may be disregarded to avoid absurd results or to give effect to manifest purposes that, in the light of the statute's legislative history, appear from its provisions considered as a whole." *Dept. of Cal. Highway Patrol v. Superior Ct.*, 158 Cal. App. 4th 726, 736 (2008), *citing Silver v. Brown*, 63 Cal.2d 841, 845 (1966), *People v. Anzalone*, 19 Cal.4th 1074, *1079* (1999)

Further, in *San Leandro Teachers Assn. Et Al. v. Governing Bd. of the San Leandro Unified Sch. Dist. Et Al.*, 46 Cal. 4th 822, 831 (2009), the California Supreme Court held as follows:

> When construing a statute, we must ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. **At the same time, we do not consider statutory language in isolation. Instead, we examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts. Moreover, we read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.**

[Citations and internal punctuation omitted; emphasis added.]

As explained at pp. 32-48 of the District's Opening Brief, given California's approach to dividing and expressly assigning responsibility for special education services, and services in county jails, and the Legislative history leading up to the enactment of Section 56041, it would not be a reasonable conclusion that Section 56041 applies in the county jail context.

If ambiguity remains after the Court has examined the statute's legislative history, then the Court must cautiously take the third and final step in the interpretive process and apply "reason, practicality, and common sense to the language at hand." *MacIsaac*, 134 Cal. App. 4th, at 1084, *citing Katz*, 117 Cal.App. 4th, at 55, *citing Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal.App. 4th 1233, 1239 (1992). Where an uncertainty remains, the court must consider the consequences that will flow from a particular interpretation. *MacIsaac*, 134 Cal. App. 4th, at 1084, *citing Dyna-Med, Inc. v. Fair Emp't & Hous.Com.*, 43 Cal. 3d 1379, 1387 (1987).

Applying common sense to the language at hand demonstrates that adopting Garcia's interpretation of Section 56041 would lead to absurd result. Under Garcia's interpretation of Section 56041, each school district in the state would be responsible for employing a team of itinerant teachers who would travel across the state providing educational services to inmates in various parts of the state.

Moreover, the county jail systems would be required to administer the access protocol for a revolving stream of ever changing special education teachers in order to provide the teachers' access to the inmates. Garcia's contention that school districts could lessen the burden by contracting with another agency to provide those services does not take into account the fact that not all agencies will be amenable to providing services to jail inmates. (Garcia's Answering Brief at p. 25.) Garcia recognized the absurdity of these propositions in the first round of litigation. *See supra* pp. 2 - 3.

B. Absent The Legislature's Assignment Of Responsibility, The California Department Of Education Is Responsible For Providing Services.

In *Orange Cnty. Dep't of Educ. v. Cal. Dep't of Educ.*, 668 F.3d 1052, 1063 - 64 (9th Cir. 2011), the Ninth Circuit Court of Appeals held that where the California Legislature does not assign responsibility for the provision of special education services, the California Department of Education is responsible for providing these services:

> For this period, therefore, California law failed to make any school district responsible for A.S.'s education. Under these specific circumstances, we hold that CDE is the agency responsible for A.S.'s education at Cinnamon Hills for this time period. See *Gadsby v. Grasmick*, 109 F.3d 940, 953 (4th Cir. 1997) "[T]he [State Education Agency] is ultimately responsible for the provision of a free appropriate public education to all of its students and may be held liable for the state's failure to assure compliance with IDEA."); see also *St. Tammany Parish*

> *Sch. Bd. v. Louisiana*, 142 F.3d 776, 784 (5th Cir. 1998) (holding that the IDEA places primary responsibility on the state educational agency to ensure that the requirements of the IDEA are carried out); *Orange Cnty. Dep't of Educ. v. A.S.*, 567 F. Supp. 2d at 1170 ("[T]here is ample authority to support [Orange County's] claim that, in the absence of a statute delegating responsibility for a student's education to a local entity, the State is, by default, the party most appropriately charged with the task."); 20 U.S.C. § 1412(a)(11)(A) ("The State educational agency is responsible for ensuring that . . . the requirements of this subchapter are met."). Accordingly, Orange County is entitled to reimbursement from CDE for this period of time. [All citations and punctuation in original.]

Here, it is undisputed that the District provided Garcia special education services while these appeals have been pending.

Accordingly, a Supreme Court ruling on this issue would not impact Garcia's services in any way.

C. The OAH Cases Cited By Garcia Are Inapposite.

In his Answering Brief, Garcia cites several OAH decisions that he contends support his construction of Section 56041.

The cases cited by Garcia are inapposite.

Specifically, Garcia cites to consolidated matters of *Student v. Orange Cnty. Dep't. of Educ., Irvine Unified Sch. Dist., and Calif. Dep't of Educ. And Orange Cnty. Dep't of Educ. v. Student* (OAH Case Nos. 2009090943 and 2009100565, respectively). In these consolidated cases, OAH explained that, under section

56041, school districts with a heavy concentration of non-public school (NPS) students within their boundaries were not responsible for providing IDEA services to all eligible adults residing in those NPSs. The issue revolved around the definition of "parent" under Education Code section 56028. In that case the ALJ determined that the LEA in which the pupil's parent resides at the time of the pupil's eighteenth birthday was responsible for funding his educational placement at an out-of-state residential treatment center in Texas.

Similarly, in the consolidated matters of *Orange County Department of Education v. Student, and Student v. Orange County Department of Education & California Department of Education* (OAH Case Nos. 2008120021 and 2009020130, respectively), OAH sought to determine which public agency was responsible for funding an out of state residential treatment center for an 18 year old. In that case, OAH found neither of the respondents was the agency responsible for providing petitioner with an education and that, instead, based on Education Code sections 48200, 48204, and 56028, the agency responsible was the school district in which the "responsible adult" resides. Not only did the OAH not find that the Respondents were responsible for Petitioner's education, OAH also made no finding as to which agency was responsible for the Student's education.[2]

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[2] The case was subsequently reviewed in District Court proceedings, and partially reversed (with no impact on the District's position here). *B.P., etc., et al. v. Orange County Department of Education, JVS (MLGx)*, 09-00971 (C.D. Cal. 2009).

In a third OAH decision cited by Garcia - *Student v. Los Angeles Unified School District* (OAH Case No. 2007010772) - OAH did not apply Section 56041 to assign LAUSD responsibility for providing a special education eligible adult with special education services. The only issue was whether LAUSD had timely convened an IEP for student. OAH found that the LAUSD had not denied the respondent with a free appropriate public education (FAPE).

Moreover, the remaining cases cited by Garcia did not construe Section 56041. *In Parents on behalf of Student v. Calif. Dept. of Mental Health* (OAH Case No. 2009050920) concerned an adult who had transferred her educational rights to a relative and who was asking that the California Department of Mental Health be held responsible for providing her with FAPE. While the opinion referenced Section 56041, it never applied the statute to the facts and instead found that the California Department of Mental Health was not a public agency responsible for providing the Petitioner with FAPE.

In contrast, in a 2003 decision issued by the Kern County Superior Court, the court explained the legislative history of Section 56041 in precisely the same manner as OAH did in the *Berkeley* case (*Student v. Berkeley Unified School District and Albany Unified School District*, SEHO Case No. 2003-1989).

Specifically, the superior court held that Section 56041 was enacted to solve a limited issue:

> The legislative history of Section 56041 establishes it was enacted to solve financial problems encountered by local California school districts with private special education schools located within their boundaries. Before Section 56041, these local school districts were responsible for young adult pupils who moved within their boundaries to attend private schools. Section 56041 solved the financial problems by requiring the local school districts where the pupils' parents reside (and presumably placed the pupils in other district) to remain responsible for the pupils' special education. Nothing in the legislative history suggests that Section 56041 was contemplated or intended either to make out-of-state school districts responsible for eligible young adults who move to California from other states, to deprive them of a free and appropriate public education because they moved into California, or to deprive special education to any eligible California resident. Section 56041 was enacted to force California school districts to retain financial responsibility for students they placed in private schools in other school districts in California.

(*See* Minute Order and subsequent Judgment in *Sierra Sands Unified Sch. Dist. V. Cal. St. Board of Ed., et al.*; Kern County Superior Court Case No. 248848 (2003)[3].)

The OAH cases cited by Garcia are inapposite.

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[3] A copy of the Minute Order and Judgment were included in the Addendum attached to the February 21, 2011 reply brief filed by the District in the Court of Appeals proceedings.

D. The Reference In The OAH *Berkeley* Case To Section 56028 Is Of No Consequence.

In seeking to distinguish the *Berkeley* OAH decision, Garcia argues that Education Code section 56028, referenced therein, was revised after the Berkeley decision was issued. (Garcia Answering Brief at pp. 26-27.)

Garcia's argument is without merit. The revision to Section 56028 is of no consequence.

Rather, the key to the *Berkeley* decision is that it memorialized the legislative history and intent of section 56041:

> 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 another school district. STUDENT is an adult, nonconserved student for whom no guardian has been appointed.

Berkeley, page 2.

In *Berkeley*, section 56028(a)(2) was only referenced in conjunction with other laws and regulations once the determination was made that Section 56041 was inapplicable, and the parties needed to look elsewhere to determine the agency

responsible for providing IDEA services to the adult student:

> In 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. (34 C.F.R. § 300.220; Cal. Educ. Code § 56028(a)(2).) Berkeley is therefore responsible for STUDENT's FAPE.

Berkeley, page 2.

To the extent that Section 56028 no longer includes the term "Adult Pupil" as an individual eligible to be considered a parent, this further support the District's position that the provision of IDEA services to county jail inmates is a niche issue that the Legislature has not addressed.

E. The California Legislature Can At Any Time Assign To Any Local Educational Agency The Responsibility For Providing Special Education Services In County Jail.

In his Answering Brief, Garcia concedes that, "[t]he IDEA defers to states to establish a statutory scheme allocating and dividing responsibility for the provision of special education and related services." (Garcia Answering Brief at p. 13).

The Legislature can at any time assign to any local educational agency the responsibility for the provision of special education services in county jail.

III. CONCLUSION

It is respectfully submitted that Section 56041 does not assign to local school districts the responsibility for county jail special education services.

Dated: July 31, 2012

Respectfully submitted,

LITTLER MENDELSON PC

By: _____
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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 Reply Brief is proportionately spaced, has a typeface of 14 points or more and contains 3,082 words, as by Microsoft Word, the computer program used to prepare the brief.

Dated: July 31, 2012

Respectfully submitted,

LITTLER MENDELSON PC

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 2049 Century Park East, Fifth Floor, Los Angeles, California 90067.

On July 31, 2012, I served the foregoing document as described below on the interested parties in this action as follows:

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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

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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 July 31, 2012, at Los Angeles, California.

Cecily Thomas-McKoy

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