Hearing Date: March 28, 2014
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ITEM 3

TEST CLAIM
FINAL STAFF ANALYSIS

AND

PROPOSED STATEMENT OF DECISION

January 2010 Compliance Report from the California Department of Education

Special Education Services for Adult Students in County Jail

10-TC-04

Los Angeles Unified School District, Claimant

TABLE OF CONTENTS

Exhibit A

Test Claim Filing, November 3, 2010..2

Exhibit B

Draft Staff Analysis and Proposed Statement of Decision, November 27, 2013.......................115

Exhibit C

Claimant Comments on the Draft Staff Analysis and Proposed Statement of Decision,
January 17, 2014..144

For CSM Use Only	
Filing Date:	RECEIVED NOV 03 2010 COMMISSION ON STATE MANDATES
Test Claim #:	10-TC-04

1. TEST CLAIM TITLE

Special Education Services for Adult Students In County Jail

2. CLAIMANT INFORMATION

Los Angeles Unified School District
Name of Local Agency or School District

Diane H. Pappas
Claimant Contact

Associate General Counsel
Title

333 South Beaudry Avenue, 20th Floor
Street Address

Los Angeles, CA 90017
City, State, Zip

(213) 241-1807
Telephone Number

(213) 241-3311
Fax Number

diane.pappas@lausd.net
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Barrett K. Green
Claimant Representative Name

Attorney
Title

Littler Mendelson, PC
Organization

2049 Century Park East, Suite 500
Street Address

Los Angeles, CA 90067
City, State, Zip

(310) 553-0308
Telephone Number

(310) 553-5583
Fax Number

bgreen@littler.com
E-Mail Address

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

January 2010 Compliance Report from the California Department of Education.

☐ *Copies of all statutes and executive orders cited are attached.*

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages 1 to 7.
6. Declarations: pages 1 to 5.
7. Documentation: pages 1 to 2.

(Revised 1/2005)

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

5. WRITTEN NARRATIVE

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars ($1,000), and include all of the following elements for each statute or executive order alleged:

(A) A detailed description of the new activities and costs that arise from the mandate.

(B) A detailed description of existing activities and costs that are modified by the mandate.

(C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

(D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(F) Identification of all of the following funding sources available for this program:
- (i) Dedicated state funds
- (ii) Dedicated federal funds
- (iii) Other nonlocal agency funds
- (iv) The local agency's general purpose funds
- (v) Fee authority to offset costs

(G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

(A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;

(B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;

(C) describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program); and

(D) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under the heading "7. Documention, " support the written narrative with copies of all of the following:

(A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or

(B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and

(C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and

(D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Diane H. Pappas
Print or Type Name of Authorized Local Agency or School District Official

Associate General Counsel
Print or Type Title

Signature of Authorized Local Agency or School District Official

11-2-10
Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

Section 5 – Written Narrative

Claimant Los Angeles Unified School District ("LAUSD" or the "District") represents that the actual costs resulting from the mandate to pay for special education services for adult inmates in county jail exceed $1,000. In addition, LAUSD responds to each of the separate inquiries on the Test Claim Form as follows:

(A) The Disability Rights Legal Center ("DRLC") filed a special education due process hearing complaint on behalf of adult Michael Garcia, alleging that Mr. Garcia is entitled to special education services while he is an inmate in Los Angeles County Jail, and that the LAUSD is required to provide such services.

The California Department of Education ("CDE") contracts with the California Office of Administrative Hearings ("OAH") for OAH to adjudicate special education due process hearing complaints.

On November 16, 2009, OAH issued its decision regarding the Garcia due process hearing complaint, finding that LAUSD is responsible for providing such services.

In addition, the California Department of Education ("CDE") issued a compliance report, which was suspended pending the due process hearing proceedings. Following the issuance of the November 16, 2009 OAH decision, the CDE issued a compliance report in January 2010, which included directives requiring LAUSD to implement a policy under which LAUSD would provide special education services to adult students in Los Angeles County jail.

Both OAH and the CDE rely on Education Code section 56041 as the basis for their conclusions that the school district in which a student's parents reside at the time the

student reaches the age of 18 is the agency responsible for providing special education services to adult students in county jail.

The CDE directive, the OAH decision, and Education Code section 56041 result in state mandated costs. As a result of this mandate, LAUSD has been required to pay for special education services for Michael Garcia and, at least pending the outcome of various litigation, other adult inmates in county jail.

(B) As indicated above, the mandate results in new activities and costs by virtue of LAUSD paying for special education services for adult inmates in county jail. The funding for such services will come from dedicated state and federal funds that currently support other programs and services. Some of the financing for these programs and services will be redirected toward special education services for adult inmates. Thus, the funding of special education services for adult inmates results in a reduction in other programs and services.

(C) LAUSD's current fiscal year, known as Fiscal Year 2011, runs from July 1, 2010 through June 30, 2011. In Fiscal Year 2010, which ran from July 1, 2009 through June 30, 2010, LAUSD incurred approximately $33,750.17 in direct and indirect costs for special education services for Mr. Garcia. The total cost of the special education services provided to Mr. Garcia in Fiscal Year 2011 will be lower since Mr. Garcia was transferred in September 2010 out of jail and to a prison facility.

It is difficult to specify the cost of special education services for other adult inmates in Fiscal Year 2011. Such cost is subject to a number of unknown variables, including (1) the number of inmates in Los Angeles County Jail eligible for special education services, (2) the number of eligible inmates who choose to utilize special

education services, (3) the scope of special education services to be provided, and (4) the cost of service providers. Nonetheless, LAUSD will provide a reasonable estimate of this cost for purposes of this test claim.

In a class action lawsuit filed by Mr. Garcia, entitled *Michael Garcia, on behalf of himself and others similarly situated v. Los Angeles County Sheriff's Department, et al.*, Case No. CV 09-8943 VBF (SHx), Mr. Garcia alleges that he and a class of similarly situated individuals are entitled to special education services while they are incarcerated in Los Angeles County Jail. In the litigation, Mr. Garcia has alleged that there are many hundreds of inmates that must be served each year in Los Angeles County Jail. While LAUSD believes these estimates are exaggerated, the mandate will likely require that services be provided to more than 5 inmates per year, and that costs would be in excess of $100,000.00.

(D) LAUSD's Fiscal Year 2012 runs from July 1, 2011 through June 30, 2012. The cost of providing special education services to adult inmates in Fiscal Year 2012 will be subject to the same unknown variables as discussed above with respect to the cost of such services in Fiscal Year 2011. It is expected that the cost of providing special education services in Fiscal Year 2012 will be greater than in Fiscal Year 2011. LAUSD estimates that the mandate will likely require that services be provided to more than 5 inmates per year, and that costs would be in excess of $100,000.00.

(E) The number of inmates statewide who would seek and obtain special education services is difficult to calculate. However, it appears likely that the costs of the mandate would exceed $1,000,000 per year statewide.

(F) In response to the inquiry regarding funding sources available for special education services for adult inmates, LAUSD states as follows:

(i) General ADA Revenue Limit Funds – The District receives general revenue limit funding for each student based on the District's average daily attendance ("ADA"). For the 2010-11 school year, the District expects to receive approximately $4,949.75 per ADA. The District may be eligible for such funding for providing special education services in county jail. ADA funds the District receives is not sufficient in the aggregate to cover the costs of all special education services, and the encroachment into general funds runs into the range of several hundred million dollars per year.

(ii) AB 602 Funds – The Individuals with Disabilities Education Act, 20 U.S.C. section 1400 *et seq.*, authorizes federal funds to states, including California, which comply with the provisions of that statute. The State of California in turn distributes those federal funds to local education agencies, including LAUSD. This funding is commonly known as AB 602 funding, and the District receives approximately $573.10 per ADA. The District may be eligible for such funding for providing special education services in county jail. The AB 602 funding the District receives is not sufficient in the aggregate to cover the costs of all special education services, and the encroachment into general funds runs into the range of several hundred million dollars per year.

(iii) Other nonlocal agency funds – LAUSD is unaware of any other nonlocal agency funds that are available for special education services for adult inmates in county jail.

(iv) The local agency's general purpose funds – Because the cost of providing special education services for adult inmates in county jail is greater than the amount of

dedicated funds LAUSD receives for such services, LAUSD must use some of its general purpose funds to make up the difference.

(v) Fee authority to offset costs – LAUSD is unaware of any authority to assess a fee for providing special education services for adult inmates to offset the cost of such services.

(G) After a diligent inquiry, LAUSD has concluded that no prior test claims have been submitted to the Board of Control/ Commission on State Mandates on the issue of whether the provision of special education services to adult inmates in county jails constitutes a reimbursable state mandate. However, LAUSD notes that there were a series of related test claims, spanning from 1980 to 2001, on the issue of whether the provision of special education services to any students ages 18 to 21—not just those who are incarcerated—constitutes a reimbursable state mandate. The Commission appears not to have reached a final decision on these claims.

The first of these test claims, No. SB 90-3453, was filed on October 31, 1980 by the Santa Barbara County Superintendent of Schools. On October 30, 1981, the Riverside County Superintendent of Schools filed a substantially similar test claim, No. CSM-3986, also alleging that the provision of special education services for students ages 18 to 21 constitutes a reimbursable state mandate.

The Board of Control reached a decision that all local special education costs were state mandated and subject to state reimbursement. That decision was challenged in the Sacramento County Superior Court, which issued a decision instructing the Commission on State Mandates (which by then had succeeded the Board of Control) to

reconsider its decision in light of the California Supreme Court's decision in *City of Sacramento v. State of California*, 50 Cal. 3d 51 (1990). That decision was appealed.

On appeal, the court of appeal issued a decision in *Hayes v. Commission on State Mandates*, 11 Cal. App. 4th 1564 (1992). In that decision, the court of appeal remanded the matter back to the Commission with explicit instructions. As stated by the court of appeal, "To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention." *Id.* at 1594.

On September 26, 1996, the Long Beach Unified School District filed a test claim to join the claim filed by the Riverside County Superintendent of Schools. The Commission granted that request. Then, on December 8, 1999, the Commission consolidated the Long Beach/Riverside test claim with the original Santa Barbara test claim. The newly consolidated claim was No. CSM-3986A.

Before the Commission issued a decision on consolidated claim No. CSM-3986A on remand from the court of appeal, the parties reached a settlement agreement. Pursuant to this agreement, the governor approved Senate Bill 982 in exchange for the Long Beach Unified School District (the representative party for the consolidated test claim) withdrawing the claim. Senate Bill 982 added California Education Code section 56836.156(f)(10), which provides for a pool of money ($100 million) to be used for different services, including "special education for pupils ages 3 to 5, inclusive, and 18 to 21, inclusive, established pursuant to Section 56026, as this section read on July 1, 2000."

These special education services "shall be deemed to be fully funded within the meaning of subdivision (e) of Section 17556 of the Government Code."

Government Code section 17556(e), in turn, provides that the Commission on State Mandates shall not find costs to be mandated by the state if the Commission finds that the statute, executive order or budget appropriation results in no net costs to the local district or includes additional revenue that funds the mandate.

Accordingly, although there are no prior mandate determinations that are directly on point, the procedural history of the aforementioned claim provides some guidance on how this claim should be decided. In accordance with the court of appeal's decision in *Hayes v. Commission on State Mandates*, if the Commission in the instant action determines that the State of California has chosen to pass the costs of special education services for adult inmates to local educational agencies like LAUSD, then the Commission should issue a finding that such action constitutes a reimbursable state mandate.

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Section 6 – Declaration of Sharon Jarrett

I, Sharon Jarrett, declare and state as follows:

1. I am the Director, Fiscal and Program Accountability, Division of Special Education, for Los Angeles Unified School District ("LAUSD"), claimant in the above-mentioned test claim. Except where otherwise indicated, I have personal knowledge of the facts stated in this declaration and, if called and sworn as a witness, I could and would testify competently thereto.

2. Among other things, as Director, Fiscal and Program Accountability, I have knowledge and oversight of various special education programs and services provided by the LAUSD, as well as the costs and funding of such services.

3. In connection with the subject matter of this test claim, I am one of the LAUSD administrators who is overseeing LAUSD's provision of special education services to adult students aged 18 up until age 22 who are detained as inmates in county jail.

4. One adult who received services from LAUSD during the 2009-10 school year and part of the 2010-11 school year is Michael Garcia, who is incarcerated. I am aware of the type, amount, and cost of the services that were provided to Mr. Garcia during his detention in jail.

5. The Disability Rights Legal Center ("DRLC") filed a special education due process hearing complaint on behalf of Mr. Garcia, alleging that Mr. Garcia is entitled to special education services while he is an inmate in Los Angeles County Jail, and that the LAUSD is required to provide such services.

6. The California Department of Education ("CDE") contracts with the California Office of Administrative Hearings ("OAH") for OAH to adjudicate special education due process hearing complaints.

7. On November 16, 2009, OAH issued its decision regarding the Garcia due process hearing complaint, finding that LAUSD is responsible for providing such services.

8. In addition, the California Department of Education ("CDE") issued a compliance report, which was suspended pending the due process hearing proceedings. Following the issuance of the November 16, 2009 OAH decision, the CDE issued a compliance report in January 2010, which included directives requiring LAUSD to implement a policy under which LAUSD would provide special education services to adult students in Los Angeles County jail.

9. Both OAH and the CDE rely on Education Code section 56041 as the basis for their conclusions that the school district in which a student's parents reside at the time the student reaches the age of 18 is the agency responsible for providing special education services to adult students in county jail.

10. The CDE directive, the OAH decision, and Education Code section 56041 result in state mandated costs. As a result of this mandate, LAUSD has been required to pay for special education services for Michael Garcia and, at least pending the outcome of various litigation, other adult inmates in county jail.

11. LAUSD's current fiscal year, known as Fiscal Year 2011, runs from July 1, 2010 through June 30, 2011. In Fiscal Year 2010, which ran from July 1, 2009

through June 30, 2010, LAUSD incurred approximately $33,750.17 in direct and indirect costs for special education services for Mr. Garcia. The total cost of the special education services provided to Mr. Garcia in Fiscal Year 2011 will be lower since Mr. Garcia was transferred in September 2010 out of jail and to a prison facility.

12. It is difficult to specify the cost of special education services for other adult inmates in Fiscal Year 2011. Such cost is subject to a number of unknown variables, including (1) the number of inmates in Los Angeles County Jail eligible for special education services, (2) the number of eligible inmates who choose to utilize special education services, (3) the scope of special education services to be provided, and (4) the cost of service providers. I estimate that the mandate will likely require that services be provided to more than 5 inmates per year, and that costs would be in excess of $100,000.00.

13. LAUSD's Fiscal Year 2012 runs from July 1, 2011 through June 30, 2012. The cost of providing special education services to adult inmates in Fiscal Year 2012 will be subject to the same unknown variables as discussed above with respect to the cost of such services in Fiscal Year 2011. It is expected that the cost of providing special education services in Fiscal Year 2012 will be greater than in Fiscal Year 2011. I estimate that the mandate will likely require that services be provided to more than 5 inmates per year, and that costs would be in excess of $100,000.00.

14. The number of inmates statewide who would seek and obtain special education services is difficult to calculate. However, it appears likely that the costs of the

mandate would exceed $1,000,000 per year statewide based on the number of total students statewide in contrast to the number of LAUSD students.

15. LAUSD receives general revenue limit funding for each student based on the District's average daily attendance ("ADA"). For the 2010-11 school year, the District expects to receive approximately $4,949.75 per ADA. The District may be eligible for such funding for providing special education services in county jail. ADA funds the District receives is not sufficient in the aggregate to cover the costs of all special education services, and the encroachment into general funds runs into the range of several hundred million dollars per year.

16. The Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq., authorizes federal funds to states, including California, which comply with the provisions of that statute. The State of California in turn distributes those federal funds to local education agencies, including LAUSD. This funding is commonly known as AB 602 funding, and the District receives approximately $573.10 per ADA. The District may be eligible for such funding for providing special education services in county jail. The AB 602 funding the District receives is not sufficient in the aggregate to cover the costs of all special education services, and the encroachment into general funds runs into the range of several hundred million dollars per year.

17. LAUSD is unaware of any other nonlocal agency funds that are available for special education services for adult inmates in county jail.

18. Because the cost of providing special education services for adult inmates in county jail is greater than the amount of dedicated funds LAUSD receives for such services, LAUSD must use some of its general purpose funds to make up the difference.

19. LAUSD is unaware of any authority to assess a fee for providing special education services for adult inmates to offset the cost of such services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 29th day of October 2010, at Los Angeles, California.

SHARON JARRETT

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Section 7 – Documentation

Attached are copies of the following documents that are pertinent to the test claim:

1. June 10, 2009 Compliance Report issued by the California Department of Education.

2. July 15, 2009 Letter from the California Department of Education setting aside the June 10, 2009 Compliance Report because the matter was subject to a due process hearing.

3. January 15, 2010 Amended Compliance Report issued by the California Department of Education.

4. November 16, 2009 Office of Administrative Hearings ("OAH") decision in OAH Case No. 2009060442. Also attached is the District Court's May 4, 2010 ruling on appeal of the OAH decision to the District Court in USDC Case No. CV 099289 VBF (RCx). The District Court ruling has been appealed to the Ninth Circuit Court of Appeals, where the matter is pending. Appellate briefs have not yet been filed.

5. Assembly Bill 2773, which added the Education Code section 56041 language relied upon by the OAH and the CDE in issuing their directives.

6. As referenced in the Written Narrative section of this test claim, no prior test claims have been submitted to the Board of Control/ Commission on State Mandates on the issue of whether the provision of special education services to adult students in

county jail constitutes a reimbursable state mandate. However, there were a series of related test claims on the issue of whether the provision of special education services to adult students ages 18 to 21 constitutes a reimbursable state mandate. The mandate determinations in those related cases were appealed, resulting in the court of appeal's decision in *Hayes v. Commission on State Mandates*, 11 Cal. App. 4th 1564 (1992). On remand from the court appeal's decision in *Hayes*, the parties settled the test claims before the Commission issued any further decisions. LAUSD is unaware of any other administrative or court decisions that must be submitted with this claim.

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EXHIBIT 1

CALIFORNIA
DEPARTMENT OF
EDUCATION

JACK O'CONNELL
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

SCANNED

E-MAILED

Date June 10, 2009

Compliance Complaint Report

Dear Complainant, Sheriff, County Superintendent, District Superintendents, SELPA Directors, and County Supervisors:

Subject: **Case # S- 0482-08/09**
STUDENT NAME: Various

The California Department of Education, Special Education Division, completed the investigation of the above complaint received on January 14, 2009, the Los Angeles Unified School District violated federal and state laws and regulations pertaining to the education of students with disabilities.

The investigation process included interviews and reviews of all materials submitted by all parties. Attached is the Evidentiary Summary with the relevant citations and findings.

☐ The investigation findings indicated that the Complainant and District reached a mutually agreed to local resolution to the complaint allegation(s).

☐ The investigation findings support compliance.

☒ The investigation findings support the allegations of noncompliance.

☒ Violations of federal or state laws and regulations require corrective actions that are included in the Evidentiary Summary.

☒ Evidence of required corrective actions, or questions regarding corrective actions, shall be sent directly to:

Ralph Scott, Administrator
Focused Monitoring and Technical Assistance Unit One
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
916-324-8898 Phone
916-445-6803 Fax

Case S-0482-08/09
Page 2

If you have questions regarding the corrective actions, please contact the administrator listed above. If compliance is determined in this investigation and no corrective actions are required, consider this case closed.

Pursuant to Title 5, *California Code of Regulations* Section 4665, either party may request a reconsideration:

(a) Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The request for reconsideration shall designate the finding(s), conclusion(s), or corrective action(s) in the Department's report to be reconsidered and state the specific basis for reconsidering the designated finding(s), conclusion(s) or corrective action(s). The request for reconsideration shall also state whether the findings of fact are incorrect and/or the law is misapplied.

(b) Within 35 days of the receipt of the request for reconsideration, the Superintendent or his or her designee may respond in writing to the parties modifying the specific finding(s), conclusion(s), or corrective action(s) for which reconsideration is requested, or denying the request for reconsideration. Pending the Superintendent's reconsideration, the Department report remains in effect and enforceable.

A request for reconsideration must be postmarked 35 days from the receipt of the investigatory report.

If you have any questions regarding this report, please contact Focused Monitoring and Technical Assistance Unit One at 916-324-8898.

Sincerely,

Mary Hudler, Director
Special Education Division

MJH:rs
Attachment

cc: Sue Spears, Director, Educational Equity Compliance Office, Los Angeles Unified School District
Donnalyn Jaque-Anton, Associate Superintendent, Special Education Division, Federal and State Programs, Los Angeles Unified School District

5

CALIFORNIA DEPARTMENT OF EDUCATION
COMPLIANCE INVESTIGATION CASE S-0482-08/09
EVIDENTIARY SUMMARY

Deborah Dorfman
(Complainant)

Various
(Student)

Nan Jackson
Matt Hill
(Investigators)

Lee Baca, Sheriff of Los Angeles County Sheriff's Department
(County Agency)

4700 Ramona Boulevard
Monterey Park, CA 91754
(Address)

Darline P. Robles
(Superintendent)

Los Angeles County Office of Education
(Public Agency)

9300 Imperial Highway
Downey, CA 90242
(Address)

Ramon Cortines
(Superintendent)

Los Angeles Unified School District
(Public Education Agency)

333 South Beaudry Avenue 24th Flr.
Los Angeles, CA 90017

Barbara Nakaoka
(Superintendent)

Hacienda La Puente Unified School District
(Public Education Agency)

15959 East Gale Avenue
City of Industry, CA 91746
(Address)

6

Sandra Bridges
(Director)

Puente Hills Special Education
Local Plan Area
(Public Agency)

1830 Nogales Street
Rowland Heights, CA 91748

Robert Farran
(Director)

Southwest Special Education
Local Plan Area
(Public Agency)

1401 Inglewood Ave
Redondo Beach, CA 90278
(Address)

Board of Supervisors
Los Angeles County
(Public Agency)

Kenneth Hahn Hall of
Administration
500 West Temple Street
Los Angles, CA 90012
(Address)

Los Angeles
(County)

7

ALLEGATIONS:	CITATIONS:
1. Failure to provide notice of procedural safeguards when an individual with exceptional needs reaches the age of 18	*California Education Code* (EC) Section 56041.5
2. Failure to ensure that the IEP team reviews the child's IEP periodically, but not less than annually	34 *Code of Federal Regulations (CFR)* Section 300.324(b) (1)(i)
3. Failure to adhere to interim placement requirements	*EC* Section 56325(a)
4. Failure to provide prior written notice when initiating, changing or refusing identification, evaluation, educational placement or provision of FAPE (free appropriate public education)	34 *CFR* Section 300.503(a) (1)
5. Failure to systematically seek out all individuals with exceptional needs from ages birth through 21 years of age **(Closed Allegation)**	*EC* Section 56300 **(Closed Citation)**

METHOD OF INVESTIGATION

During the course of the investigation telephone interviews were conducted with the following individuals:

- Disability Rights Legal Center (DRLC) attorneys, Anna Riveria and Carly Munson, March 13, 2009.
- Outside counsel lead attorney Paul Beach, representing the Los Angeles County Sheriff's Department (LACSD) on March 19, 2009.
- Kevin Kuykendall, Supervising Intake Lieutenant at the Los Angeles County Jail (LACJ) on March 23, 2009.
- Zandra Black of the California Department of Education (CDE) Financial and Fiscal services on March 26, 2009.
- Sue Spears, Director of Educational Equity and Compliance Office (EECO) of Los Angeles Unified School District (LAUSD) on April 1, and May 5, 2009.
- Sergeant Christine Baker at the LACJ on May 5, 2009.

8

On April 8, 2009, the CDE investigators conducted an onsite visitation to the LACJ. The onsite visitation included staff interviews and observations of the LACJ Intake system, and the basic educational classes conducted by Hacienda La Puente Unified School District (HLPUSD). Interviews were held with the following LACJ staff: Justin Clark, outside counsel representing the LACSD; Lt. Robby Ibelle, Lt. Kevin Kuykendall, and Sergeant Christine Baker.

Requests for Information regarding the complaint were forwarded on February 5, 2009, to applicable parties identified by the Complainant. The Los Angeles Unified School District (LAUSD) was identified as an applicable party by the California Department of Education (CDE). The following applicable parties were notified by mail by CDE:

- Lee Baca, Sheriff of LACJ
- Ramon Cortines, Superintendent of LAUSD
- Barbara Nakaoka, Superintendent of HLPUSD
- Sandra Bridges, Director of Puente Hills Special Education Local Plan Area (SELPA)
- Darlene Robles, Superintendent of Los Angeles County Office of Education (LACOE)
- Bob Farran, Director of Southwest SELPA; and the Board of Supervisors of Los Angeles County.

The February 5, 2009, Request for Information to all applicable parties included the following issues germane to the complaint:

> How information about 18-22 year olds with current IEPs is transmitted to the jail;
> How the intake system works at the County Jail;
> How incarcerated detainees eligible for special education get served, once identified;
> What entity would provide and monitor the special education services;
> What District or County entities would be identified as respondents in the provision of FAPE to the incarcerated detainees eligible for special education services.

Responses to the complaint were submitted by HLPUSD, Puente Hills SELPA, LAUSD, Office of the County Counsel representing the LACSD, LACOE, and Southwest SELPA. Additional documents include copies of the two student IEPs of this complaint provided by DRLC, a copy of the December 23, 2008, Due Process hearing filed by the Complainant on behalf of the two students; and a copy of the subsequent motion to dismiss the Due Process hearing granted on February 9, 2009.

Allegation Five was deleted from the investigation as it is not relevant to the circumstances of the complaint. The obligation to make a FAPE available does not apply to those individuals who were not identified as having a disability, and did not have an IEP prior to their incarceration in an adult correctional facility. It does apply to

9

an individual who was identified as having a disability, and had received services in accordance with an IEP, but who left school prior to their incarceration. The referenced citation is 34 *CFR* Section 300.102.

All allegations, One through Four, were aggregated as they were derived from the same source on which the complaint is based. The complaint focuses on how detainees in the LACJ, eligible for special education, are identified and subsequent special education services provided. Therefore, it would follow that if the complaint is premised on the lack of a system to identify and provide services, all allegations would be subject to the same application.

Background Information

The Disability Rights Legal Center originally filed due process complaints with the Office of Administrative Hearings (OAH) on behalf of the two named students in December of 2008. The due process complaints alleged the systemic failure of various public agencies to identify and serve eligible adults in the LACJ; however, OAH dismissed those systemic allegations for lack of jurisdiction. OAH also dismissed various named agencies on the grounds that each dismissed agency was not responsible for providing a free appropriate public education to the named individual students. CDE thereafter opened a state compliance complaint on January 14, 2009, regarding two individuals, ages 18 and 19 detained in the LACJ who allegedly had received special education services and had an IEP prior to their arrest. For purposes of the investigation, CDE utilized the assertions in the due process complaint filed by DRLC that neither student received special education services nor had the opportunity to access such services during their incarceration period in the LACJ. The Complainant further alleges that currently there is no intake system or method of identifying individuals, ages 18-22, who are eligible for special education services at the LACJ site. Although DRLC never formally filed a compliance complaint with CDE, for purposes of this report, DRLC will be referred to as the Complainant.

ALLEGATIONS ONE, TWO, THREE, and FOUR

Position of the Parties

1. In a due process hearing request received January 8, 2009, by CDE, the Complainant representing DRLC alleges:

> Youth, eligible for special education and detained in the Los Angeles County Jail (LACJ) . . . are not afforded special education and related services to which they are entitled to by law. Nor are these youth made aware of their right to receive special education services while incarcerated or provided notice of their procedural rights . . .

10

2. In a February 11, 2009, written response from the Puente Hills SELPA, the SELPA Director asserts, "The districts within the Puente Hills SELPA as well as the Puente Hills SELPA itself do not have the obligation to provide special education services to eligible adults, ages 18-22, and who are currently in the Los Angeles County Jail."

3. In a February 23, 2009, written response, the Director of Special Education of HLPUSD states, "In regard to each of the allegations in your letter, Hacienda La Puente School District Unified asserts that it is in compliance."

4. In a February 23, 2009, response letter from the LA County counsel representing Sheriff Lee Baca of the LACJ, the County counsel states:

 > It should be noted that Sheriff Baca is an enthusiastic proponent of educational opportunities for inmates and detainees in the County jails, and he wishes to cooperate to any extent possible in the provision of special education services to qualified individuals housed in County Jail facilities.

5. In a March 4, 2009, written response from the EECO of LAUSD, a coordinator states. "The Los Angeles County Sheriff's Department is responsible for maintaining the county jails and its inmates. As part of that responsibility, it must also make available an inmate education program."

6. An April 15, 2009, facsimile from a law firm representing LACOE, states their position as, "LACOE is in compliance regarding the . . . allegations. LACOE was not the local education agency responsible for making decisions regarding the provision of a FAPE."

7. In an April 15, 2009, facsimile from a law firm representing Southwest SELPA, their response asserts, "The Southwest SELPA is in compliance regarding the . . . allegations. The Southwest SELPA is not the public educational agency responsible for making decisions regarding . . . the named Complainants or any other unnamed individual currently being detained in a Los Angeles Jail facility."

8. On May 8, 2009, LAUSD provided an additional written response from Sue Spears, Director of EECO. The response included additional background, analysis and a conclusion as to why HLPUSD should be the responsible LEA for the LACJ facility and all other County Jails that HLPUSD serves. The relevant content of the response states:

 > The CDE should require that the Hacienda La Puente Unified School District (HLPUSD) fulfill its contract with the Los Angeles County Sheriff's Department/Los Angeles County by providing educational services to meet the needs of all [LACJ] inmates, including those eligible for special education and related services

11

Evidentiary Findings of Fact

9. A November 11, 2008, correspondence from the Complainant is addressed to the following parties: the Sheriff of the LACJ, the Superintendent of Public Instruction of CDE, the LACOE Board of Supervisors, the Superintendent of LACOE, the Superintendent of HLPUSD, the Puente Hills SELPA Director, and the Southwest SELPA Director. The Complainant asserts:

    > We write on behalf of our clients, [Named] all of whom are currently detained in LACJ facilities and who are eligible for special education services under relevant state and federal laws, and on behalf of those who are similarly situated. These youth are detained in the Men's Central Jail facility operated by the Los Angeles, County Sheriff's Department and the County of Los Angeles. Although, [Named detainees] are entitled to receive special education services at the LACJ, they have not been provided with any such services, in addition, those individuals similarly situated to [Named detainees] have been denied special education because the LACJ system, as a whole, does not provide special education to detainees.

10. In a November 20, 2008, response to the DRLC, the Los Angeles County Counsel representing Sheriff Lee Baca of the LACJ, and the Los Angeles Board of Supervisors states:

    > As you recognize in your letter, the provision of special education services in the jail requires a coordinated effort by several participants. The Los Angeles County Sheriff's Department stands ready and willing to facilitate the provision of special education services to qualified individuals housed in the County Jail facilities. The Sheriff's Department, however, is not responsible for the evaluation of pupils, the development of individualized education plans, or the implementation or monitoring of said plans.
    >
    > It is our intention at this time to meet with representatives of the State and local agencies responsible for the provision of special education services to determine how best to facilitate those services in the jails. Until we have had an opportunity to have those discussions, we are not in a position to respond to the specific demands set forth in your letter.

11. In a February 11, 2009, response letter from the Puente Hills SELPA, the SELPA Directors affirms:

    > The districts within the Puente Hills SELPA as well as the Puente Hills SELPA itself do not have the obligation to provide special education services to eligible adults, ages 18-22, and who are currently in the [LACJ]. This determination is based upon these

12

particular students not having established residency by the student and/or their parent(s) within the districts' and SELPA geographic boundaries. At this time, neither district within the geographic boundaries of the Puente Hills SELPA have knowledge of any eligible adults, ages 18-22 nor currently in the [LACJ], who have an established residency within either district or who have requested continuance of special education and related services. For the two students in question ...a review of records indicates that residency prior to their incarceration was established in another district and SELPA and that there is no connection or history of residency between these two individual students and the Puente Hills SELPA, the Hacienda La Puente USD, or the Rowland USD.

12. The February 23, 2009, response letter from HLPUSD continues:

> . . . in the recent due process cases, Hacienda La Puente Unified School District was appropriately dismissed as a party and is not currently identified as a respondent in any due process case regarding the provision of FAPE to incarcerated adults who are eligible for special education . . . the judge noted that the only connection between Hacienda and the LACJ system is the contract that the district has to provide adult education within the jail system . . . At this point in time, the District has no knowledge of any IDEA eligible adult, age 18-22, incarcerated within the [LACJ] system, who has established residency within the HLPUSD. **Also, please be aware that <u>none</u> of the [LACJ]s are located within the boundaries of the Hacienda La Puente USD** [Respondent's emphasis].
>
> The Los Angeles County Sheriff's Department has had, and continues to have complete control and responsibility with regard to processing, classifying and placing incarcerated adults.
>
> There is currently no inmate attending contracted educational classes that has requested HLPUSD to access their IEPs for their program in jail, since HLPUSD is not the special education service provider for the jails . . . HLPUSD does not take part in the intake process and does not have firsthand knowledge of the process LASD uses to have IEPs transmitted to the jail.

13. A February 23, 2009, response letter to CDE from the LA County counsel representing Sheriff Lee Baca of the [LACJ], the County counsel states:

> It should be noted that Sheriff Baca is an enthusiastic proponent of educational opportunities for inmates and detainees in the County jails, and he wishes to cooperate to any extend possible in the provision of

13

special education services to qualified individuals housed in County Jail facilities...the Los Angeles County Sheriff's Department ("LASD") is not a public education agency. The LASD is a law enforcement agency which operates County jails. The institutional, and individual, expertise needed to develop, implement and monitor Individualized Education Programs ("IEPs"), and other special education services, is appropriately placed elsewhere.

The LASD did not fail in any duty to provide notice of procedural safeguards . . . because that duty is specifically assigned to "the local education agency [LEA]."

The LASD did not fail in any duty to ensure that the IEP team review the child's IEP periodically, because the LASD is not a member of any "IEP team," nor does it have any administrative oversight of any IEP team.

The LASD did not fail in any duty to adhere to interim placement Requirements . . . because that duty is again specifically assigned to the "local education agency."

The LASD did not fail in any duty to provide prior written notice regarding FAPE, because the LASD has neither proposed nor refused to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to a child.

14. A review of the contract agreement, established in 1973, with HLPUSD and the LACSD reveals that Los Angeles County entered into an agreement with HLPUSD to establish, supervise and maintain classes for Adult Education and to provide testing, guidance and educational-vocational counseling services to inmates in the LACSD. The content of the agreement makes no provision for the authorization of special education services. The agreement authorizes the Sheriff to execute the educational services contract with HLPUSD. The agreement is signed by the Los Angeles County Board of Supervisors.

15. A website for HLPUSD shows that the District operates the largest inmate education program in the United States, serving 123,000 students annually in nine [LACJ]s. The Correctional Education Division is fully accredited by the Western Association of Schools and Colleges and each instructor holds a California Adult School teaching credential. HLPUSD claims the attendance of incarcerated adult students and receives apportionments of state funds for providing those services pursuant to the laws related to adult education.

16. A March 4, 2009, letter from the LAUSD coordinator of the EECO provides the following response:

The Los Angeles County Sheriff's Department is responsible for maintaining

14

the county jails and its inmates (Ca. Govt. Code 26600 and 26605). As part of that responsibility, it must also make available an inmate education program (15 CCR Section1061). The LA County Sheriff's Department has elected to contract with the Hacienda La Puente Unified School District (HLPUSD) to provide education services to the inmates of the County Jails.

The Puente Hills SELPA . . . is the government entity tasked with ensuring HLPSUD's compliance with Federal and State regulations regarding special education services (*EC* Sections 56195, 56195.1and 56205). Both HLPUSD and Puente Hills SELPA are governmental agencies receiving federal funding to provide those services. School districts, in their role as public entities who receive federal financial funds, must comply with Section 504's nondiscrimination requirements and are required to provide students with disabilities "a free appropriate public education" FAPE.

Therefore, the Los Angeles Unified School District is not the responsible party for providing the special education and related services to inmates of the County Jail who are between the ages of 18-22 years old and have a current IEP, as listed in CDE's request for information.

17. In a telephone interview with the Complainant attorneys representing DRLC on March 13, 2009, the attorneys expressed their views relating to their clients and other students similarly situated in the LACJ that were not provided special education, although eligible. The attorneys indicated that they had notified the LEA regarding their clients who resided in the LAUSD boundaries, and that they had notified all applicable parties prior to the Due Process filing in their November 11, 2008, correspondence. The attorneys stated that they were aware that the LACJ had some form of Intake, but were not sure of the content. The Complainant attorneys stated that they had knowledge that their clients had filed a grievance with the LACJ complaining about their rights to receive services, and they also had sent letters to LAUSD requesting services at that point in time for their clients. The Complainants refused to provide CDE with proof regarding the inmates' complaints filed at LACJ, and evidence of the letters sent to LAUSD requesting special education services.

18. In a March 19, 2009, telephone interview with outside counsel representing LACJ, the attorney indicated that Sheriff Lee Baca wanted to cooperate with CDE to extend the provision of special education services to eligible individuals housed at the LACJ.

19. In a March 23, 2009, telephone interview held with the LACJ Intake coordinator, the coordinator indicated that the Intake system currently used is a computerized program called *Northpoint* and includes a questionnaire asking 16 questions to determine the security level of the detainee. The Levels range from 1 to 9, with 1 being the lowest security level and 9 being the highest security level risk. The Intake

15

coordinator states that it is possible that a pen and paper method could be used to ascertain if the detainee between18-22 is eligible for special education services.

20. In an April 1, 2009, telephone exchange with CDE, Sue Spears, the Director of the EECO of LAUSD, the Director asserts that HLPUSD should be responsible for providing special education services since they are already contracted to provide a basic education program at the LACJ and receive the funding to support the educational program. The Director indicated that she had no knowledge of DRLC requesting special education for the two named clients, but that information would more than likely be in the District legal office of the general counsel.

21. A review of the last IEP for student 1 reveals:

    A triennial IEP was held for student 1 on November 26, 2007. The triennial IEP indicates the student resides within the boundaries of LAUSD and attended Locke High School. The IEP team requested an Opportunity Transfer for the student to be placed at Gardenia High School within LAUSD, for behavioral and safety reasons. The IEP states that the student is an 18 year old male and in grade 12. The IEP indicates that the parent participated, but the IEP does not document that the student was in attendance. The IEP content includes a transition plan for postsecondary purposes, and a behavior support plan for attendance and safety issues. The student was identified as eligible for special education services under specific learning disability.

22. A review of the last IEPs for student 2 reveals:

    An annual IEP was held on August 24, 2007, and an IEP addendum was held on May 5, 2008. Both IEPs were developed by LACOE while the student was incarcerated in the Barry J. Nidorf Juvenile Hall. Each IEP indicates that the student's District of residence is LAUSD. At the time of the August 24, 2007, IEP, the student was 17. The IEP indicates that the age of majority was discussed and acknowledged by the parent/guardian, who attended the IEP. The student attended the annual IEP and provided his signature.

    The May 5, 2008, IEP addendum was held to address behaviors that were impeding the student's ability to access instruction in special education. At the time of the addendum IEP, the student was 17.11 months. The parent attended the IEP. The student did not attend the May 5, 2008, IEP as he was in lockdown. The student continued to be identified as eligible for special education services under specific learning disability.

23. During the onsite April 8, 2009, interview with Lt. Kuykendall at the LACJ, he explained how the current Intake system works. CDE staff observed three detainees being processed. The detainees were on the outside of a clear glass partition, with the LACJ staff on the other side. Sixteen questions were asked of each detainee.

16

The answers to the sixteen questions are used to determine the level of security needed for the detainee. Lt. Kuykendall stated that in February of 2009, the Intake system at the LACJ added a four part questionnaire that asks the detainee about participation in special education, and where they last attended school. After the questions regarding special education are answered, that information is forwarded by LACJ staff to the detainee's last school of attendance to verify the detainee's eligibility for special education services.

24. In the April 8, 2009, onsite interview, Sergeant Christine Baker, of the LACJ stated that there was no grievance or complaint filed by either detainee identified as a client as part of the state complaint. Every grievance or complaint filed by any inmate becomes part of the detainee's data sheet. Sergeant Baker further stated that no such grievance or complaint showed on either detainee's data sheet found on the computer.

25. A review of the inmate data sheets of both detainees by the state investigators on April 8, 2009, verified that no grievance or complaint had been filed by either detainee.

26. An April 15, 2009, facsimile from the law firm representing LACOE, states:

    LACOE is in compliance regarding the . . . allegations. LACOE was not the [LEA] responsible for making decisions regarding the provision of a [FAPE] to either of the named Complainants or any other unnamed individual currently being detained in a Los Angels County Jail facility.

    . . . LACOE has an affirmative duty to ensure that individuals housed in a juvenile hall facility and attending juvenile court school within the geographic boundaries of the County of Los Angeles have access to appropriate special education and related services.

    . . . However, LACOE does not have a statutory duty to ensure the provision of special education and related services to individuals detained in a Los Angeles County Jail facility . . . The duties imposed upon LACOE by California Education Code § (Section) 56140 (a) are clearly directed towards youth who are attending juvenile court schools. This is a major distinction which the attorneys for the Complainants in this matter have attempted to blur by misrepresenting LACOE's obligations as being towards all individual who are in detention. None of the Complainants in this matter are currently being detained in a juvenile hall facility which has a juvenile court school component. They are all housed in adult facilities operated by the [LACJ] system which is not comparable to the juvenile hall system. As such LACOE is not an LEA responsible for making decisions regarding the provision of FAPE to any individuals detained in a [LACJ] facility.

17

27. In an April 15, 2009, facsimile from the law firm representing Southwest SELPA, the response states:

> The Southwest SELPA is in compliance regarding . . . allegations. The Southwest SELPA is not the public educational agency responsible for making decisions regarding the provision of a [FAPE] to either of the named Complainants or any other unnamed individual currently being detained in a [LACJ] facility.
>
> At no time relevant to the complaints filed in this matter did the Southwest SELPA offer or assume responsibility for providing the educational services alleged to be denied to either the named or unnamed individuals being detained in a [LACJ] facility . . . The responsibilities of the Southwest SELPA are solely administrative in nature and do not include the direct provision of services to individuals or the development of individual education programs for individuals. The Southwest SELPA is an administrative agency which helps to coordinate regional special education services between its members.
>
> . . . Also, since the Southwest SELPA is not the responsible lead education agency for the adult individuals incarcerated in [LACJ], it has no input as to any change or refusal regarding identification, evaluation, educational placement or provision of FAPE; therefore, it is not required to provide prior written notice to these individuals. Finally as the Southwest SELPA is not responsible for the educational program of the adult individuals incarcerated in the [LACJ]s, and it is not present at the [LACJ] facilities, it is beyond any reasonable expectation to hold the Southwest SELPA accountable for a systematic approach to seek out all individuals with exceptional needs that are currently incarcerated in a Los Angles County Jail.

28. In a subsequent telephone conversation with Sergeant Christine Baker held on May 5, 2009, she indicated that Student 1 was no longer at the LACJ, but was in custody release to another law enforcement agency. The date of custody release for Student1 was February 13, 2009. Sergeant Baker further stated that Student 2 was transferred from LACOE on June 20, 2008, directly to LACJ, where he is still incarcerated.

29. In conjunction with a May 5, 2009, conversation with Sue Spears, Director of EECO of LAUSD, the CDE received a facsimile dated May 6, 2009, that contained letters of Demand from DRLC dated February 12, 2009, requesting that LAUSD provide services to the two named individuals in this complaint. Additionally, the facsimile contained response letters dated February 20, 2009, from LAUSD to DRLC. The February 20, 2009, response letters indicate that the

18

District is "currently reviewing your request regarding this matter and will respond to you shortly."

30. In a May 8, 2009, facsimile from LAUSD, signed by Bonnie Baswell, Coordinator for EECO provides evidence that information regarding the student's reaching the age of majority was provided of the age of majority to Student 1 on his IEP dated November 17, 2004. Student 1 and his parents were in attendance and signed that they received the "ITP and You pocket guide". The student was 15.4 years old at the time of the IEP.

State Requirements

EC 56041.5 When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law; the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local education agency shall notify the individual and the parent of the transfer of rights.

EC 56041 (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.

Findings of Fact

1. Student 1 had an IEP prior to his incarceration. The date of his last IEP was November 26, 2007. The IEP was developed by LAUSD. The student was 18 at the time of the November 26, 2007, IEP. The parent attended the IEP. There was no evidence that the student attended the November 26, 2007, IEP. A "Demand" letter was sent to LAUSD on February 12, 2009, from DRLC on behalf of Student 1 indicating the location of the student and his desire to receive services. LAUSD responded on February 20, 2009, informing DRLC that they "would be getting back to them shortly." Upon his custodial release to another law enforcement agency on February 13, 2009, DRLC has not notified LAUSD as to the current location of the student.

2. Student 2 had an IEP prior to his incarceration. The dates of his IEPs were August 24, 2007, and an addendum IEP on May 5, 2008. Both IEPs were developed by LACOE while the student was incarcerated in the Barry Nirdorf Juvenile Hall. The student did not attend the May 5, 2008, addendum IEP as he was in lockdown as verified by the IEP team comments. This student was transferred directly from LACOE to LACJ without being released to the community. A "Demand" letter was

19

sent to LAUSD on February 12, 2009, from DRLC on behalf of Student 2 indicating the location of the student and his desire to receive services. LAUSD responded on February 20, 2009, informing DRLC that they "would be getting back to them shortly." Currently the student is incarcerated at the Men's Central Jail.

3. HLPUSD has a current contract with the LACJ to provide elementary and secondary educational services to inmates in basic, required, and elective subjects, but that contract does not expressly include special education services. LACJ currently questions incoming inmates regarding special education received in the past and contacts the last LEA that served the inmate. However, LACJ does not directly provide or contract for special education services to inmates.

4. Both students are over the age of 18, and have not exited special education, or graduated with a diploma. Student 1 and his parents were notified by LAUSD regarding his transfer of age of majority rights on November 17, 2004 IEP. Student 2 and his parents were notified of his transfer of age of majority rights on August 24, 2007 IEP.

5. The Director of EECO of LAUSD was contacted on April 1, 2009, by the state investigators regarding the two individuals named in this complaint. The Director indicated that she had no knowledge of DRLC requesting services for their clients, the two individuals named in the complaint.

6. Sue Spears, the Director of EECO of LAUSD, was again contacted on May 5, 2009, and she indicated that she was aware of DRLC's demand letters, and would make the letters available to the state investigators.

7. Subsequently, Sue Spears sent the state investigators a facsimile on May 6, 2009, with copies of the DRLC demand letters, and LAUSD's response to the demand letters.

8. LAUSD's response letter of February 20, 2009, indicates that they are currently reviewing DRLC's February 12, 2009, request regarding this matter and "would respond to them shortly."

9. As of May 6, 2009, to the state investigators' knowledge, the DRLC has not made any subsequent demands to LAUSD or any other LEAs, since the February 12, 2009, demand letters.

Conclusion:

Eligibility: State and federal laws state that individuals with disabilities who are identified as needing special education instruction and related services continue to be eligible for those services from age 3 until they reach the age of 22. (*EC* Section 56026)(c); 34 *CFR* Section 300.101(a).) There is a specific exception for individuals

20

incarcerated in adult correctional facilities who were not identified for special education before the age of 18. However, that exception does not apply in this case. There is no other express exception that would make incarcerated adults ineligible for special education if they were identified before age 18. Therefore, Students 1 and 2 in this case are still eligible to receive the services required by their current IEPs.

Residence: As a general rule, the local education agency (LEA) of a student's parents' residence is required to provide the procedural safeguards and special education services necessary for FAPE as described in the student's IEP. (*EC* Section 48200) Education Code Section 56041 states that, if the IEP team determines that a student needs special education after turning 18, responsibility for providing special education and related services between the ages of 18 and 22 shall be assigned to the "last district of residence in effect prior to the pupil's attaining the age of majority." When a student turns 18, the last LEA of the parents' residence is required to notify the student and the parents that all of the parents' procedural rights have transferred to the student (*EC* Section 56041.5). Although the parents' rights regarding participation in the IEP process transfer to the student at age 18, it appears that an adult student's responsible LEA continues to be the district of the residence of the parents under Section 56041. In the instant case, since the parents of Students 1 and 2 are residents of LAUSD, that district is responsible for providing FAPE.

No statute indicates how an LEA is supposed to locate and serve a student over 18 who has left public school. It seems reasonable to imply that such individuals have the duty to inform the appropriate LEA of their location and their continued desire to receive instruction and services after age 18. Once on notice, the responsible LEA has the duty to provide the required instruction and related services or to pay for the provision of services. (*EC* Section 56041(a)

All individuals with IEPs are required to have transition plans developed by their 16th birthday. Such plans must be developed by the IEP team to determine what services a student will need to transition to post-school activities, including adult education. (*EC* Section 56345.1(a)(1); 34 *CFR* Section 300.43(a)(1).) LEAs that offer adult education are authorized to also provide special education and related services through adult education programs. (*EC* Section 52570) In the instant case, Students 1 and 2 should have transition plans that include adult education if they have not graduated or been exited from special education. Those transition plans should be consistent with any educational program offered to adults in the county jail.

Adult Education: County sheriffs operating county jails are authorized to offer adult education services to prisoners or to contract with local education agencies for such services. (*Penal Code* Section 4018.5.) Pursuant to regulations promulgated by the State Department of Corrections and Rehabilitation, county jail administrators are required to implement an inmate education program either directly or through appropriate public officials. Administrators may establish reasonable criteria for eligibility in order to maintain security. (15 *California Code of Regulations* (*CCR*) Section 1061;

21

Penal Code Section 6030.) LACJ offers an adult education program to inmates and contracts with HLPUSD to provide those services. LACJ has also changed its intake process to identify inmates with current IEPs and now informs the last LEA of the inmate's desire to receive special education services while in the jail. LACJ identified Students 1 and 2 in the instant case and notified LAUSD of their incarceration.

Responsibility for providing FAPE: The county jails must provide general education services to inmates and all incarcerated individuals. The county jails also have a legal obligation to assure that special education services are provided to adult inmates who continue to be eligible after age 18. However, no law specifically assigns to county jails the obligation to directly provide or pay for special education. Absent such a specific assignment, the law assigning responsibility to the LEA of the inmate's parents' residence governs in this situation. Since the county jails have immediate control over the inmates, they are able to identify the eligible inmates and notify the LEA of residence of the need to provide services in the jail. LACJ appears to have fulfilled that obligation in this case and has instituted an intake process for the future. It is incumbent upon LACJ and any responsible LEA to jointly determine how to provide services in a centralized and coordinated manner to the many individuals who pass through the system. LACJ and any responsible LEA could provide appropriate services by contracting with a single LEA or SELPA.

Student 1 is eligible for special education based on an existing IEP developed through LAUSD on November 26, 2007. His parents reside within the boundaries of LAUSD. Student 1 was entitled to receive the instruction and services required by his IEP while incarcerated in the LACJ. DRLC notified LAUSD of his incarceration and his desire to receive continued services on February 12, 2009. By the time LAUSD was notified, Student 1 was in the process of being released from the LACJ, and was released on February 13, 2009, and has not, since his custodial release, made his location known to LAUSD or been available to receive services. Student 1 has an obligation to make his location known to LAUSD and to be available for services. If Student 1 becomes available, LAUSD will be required to implement the last IEP or to reconvene an IEP team to determine if services continue to be necessary and what placement is appropriate. LAUSD has not to date denied Student 1 services.

Student 2 was a resident of LACOE while he was incarcerated in Juvenile Hall and his IEP developed by LACOE remains his current IEP. Upon his release from Juvenile Hall, Student 2 went directly to the LACJ, where he still resides. Since Student 2 is now over 18 years of age and his parents reside within LAUSD, LAUSD is responsible for providing Student 2 with FAPE. DRLC notified LAUSD of his incarceration and his desire to receive continued services on February 12, 2009. LAUSD responded to DRLC on February 20, 2009, indicating that they were aware of Student 2. LAUSD has not provided any services to Student 2 in the county jail.

Transfer of rights to student: Education Code §56041.5 states that, when a student "reaches the age of 18," the responsible LEA must give both the parents and the

22

student notice of transfer of rights. In the instant case, Students 1 and 2 and their parents were informed of the transfer of rights at IEP meetings prior to their 18th birthdays. While that does not comply with the literal wording of the statute, it appears that Students and their parents had adequate actual notice of the transfer of rights to allow them to make requests for further services after age 18. Therefore, LAUSD and LACOE complied with the requirement of *EC* Section 56041.5. In the future, any notices required must be sent to Students 1 and 2 at their current addresses, if known, but not the parents.

LAUSD is the responsible LEA. LAUSD has failed to offer FAPE to Student 2 and has failed to adopt written policies and procedures for providing services to inmates of LACJ after notification of their eligibility and incarceration. LACJ has an obligation to identify the responsible LEA for an eligible inmate and to assure that appropriate services are provided while the inmate is incarcerated. In the instant case, LACJ complied with that obligation and has a procedure in place to assure future compliance.

REQUIRED CORRECTIVE ACTIONS

1. By December 30, 2009, the LAUSD will adopt written policies and procedures to ensure that inmates (aged 18-22) of the LACJ who are eligible to receive special education through LAUSD and who request special education services will be provided services while incarcerated in the LACJ. Acceptable evidence would include a copy of the policies and procedures and evidence that such policies have been provided to appropriate LAUSD personnel.

2. By August 30, 2009, the LAUSD will request an agreement with the LACJ indicating the circumstances under which special education services will be provided to eligible individuals while incarcerated in the LACJ. If such agreement is reached, a copy shall be provided to CDE. LAUSD and LACJ may contract with another LEA or SELPA to provide those services. Acceptable evidence will include written evidence of any agreed upon contract.

3. By April 30, 2009, LAUSD will revise their SELPA policies and procedures to include language that provides for the procedural guarantees and services for incarcerated detainees, 18 to 22, eligible for special education services detained in the LACJ. Acceptable evidence would include a copy of the section of the SELPA that reflects this revision.

4. By June 30, 2009, LAUSD will conduct an IEP team meeting for Student 2, perform any necessary assessments, and determine if student still qualifies for and is available to receive special education services, and determine, if any, compensatory services are owed to student since LAUSD acknowledged the existence of the student on February 20, 2009.

23

5. Beginning June 30, 2009, the CDE will monitor the required corrective actions in this compliance complaint for a period not to exceed one year. The period for monitoring will include quarterly reports beginning September 30, 2009, and subsequently each quarter following. Acceptable evidence would include a list of incarcerated inmates who are eligible to receive special education services and are receiving services on a monthly basis in the LACJ. The quarterly report will reflect the number of inmates being served.

24

EXHIBIT 2

CALIFORNIA
DEPARTMENT OF
EDUCATION

1430 N STREET
SACRAMENTO, CA
95814-5901

JACK O'CONNELL
State Superintendent of
Public Instruction
PHONE: (916) 319-0800

July 15, 2009

Ramon Cortines, Superintendent
Los Angeles Unified School District
333 South Beaudry Avenue 24th Floor
Los Angeles, CA 90017

Dear Superintendent Cortines:

SUBJECT: Request to set aside case S-0482-08/09
STUDENT NAME: Various

This is to inform you that your request to set aside the above referenced case has been approved based on the facts that all the issues in this case will be subject to a due process hearing.

In accordance with 34 C.F.R. 300.152(c)(1) this case has been set aside.

If you have any questions, please contact our office at (916) 324-8898..

Sincerely,

Ralph Scott, Administrator
Focused Monitoring and Technical Assistance Unit One
Special Education Division

cc: Deborah Dorfman, Advocate, Disability Rights Legal Center
Ramon C. Cortines, Superintendent, Los Angeles Unified School District
Sue Spears, Director, Educational Equity Compliance Office
Sharyn Howell, Executive Director, Division of Special Education, Los Angeles Unified School District
Julie Hall, Director, Litigation and Research, Office of General Counsel, Los Angeles Unified School District

61

EXHIBIT 3

CALIFORNIA
DEPARTMENT OF
EDUCATION

JACK O'CONNELL
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

2387
(CBD)

Date January 15, 2010

Compliance Complaint
Amended Report

Deborah Dorfman
919 Albany Street
Los Angeles, CA 90015

Ramon C. Cortines, Superintendent
Los Angeles Unified School District
333 South Beaudry Avenue, 24th Floor
Los Angeles, CA 90017

Dear Ms. Dorfman and Superintendent Cortines:

Subject: **Case # S-0482-08/09** (Students in LA County Jail)
STUDENT NAME: Various

The California Department of Education, Special Education Division, completed the investigation of the above complaint received on January 14, 2009, alleging the Los Angeles Unified School District (LAUSD) violated federal and state laws and regulations pertaining to the education of students with disabilities.

***NOTE: New information is bolded. Deleted or changed information is identified with strike through marks.**

If you have any questions regarding this report, please contact Focused Monitoring and Technical Assistance Unit One, at 916-324-8898.

Sincerely,

Mary Hudler, Director
Special Education Division

MJH:rs
Attachment

cc: Sue Spears, Director, Educational Equity Compliance Office, Los Angeles Unified School District
Sharyn Howell, Executive Director, Division of Special Education, Los Angles Unified School District
Gloria Lopez, SELPA Director, Los Angles Unified School District

2010 JAN 22 AM 8:27
LAUSD
EDUCATIONAL EQUITY
COMPLIANCE OFFICE

1430 N STREET, SACRAMENTO, CA 95814-5901 • 916-319-0800 • WWW.CDE.CA.GOV

student notice of transfer of rights. In the instant case, Students 1 and 2 and their parents were informed of the transfer of rights at IEP meetings prior to their 18th birthdays. While that does not comply with the literal wording of the statute, it appears that Students and their parents had adequate actual notice of the transfer of rights to allow them to make requests for further services after age 18. Therefore, LAUSD and LACOE complied with the requirement of *EC* Section 56041.5. In the future, any notices required must be sent to Students 1 and 2 at their current addresses, if known, but not the parents.

LAUSD is the responsible LEA. LAUSD has failed to offer FAPE to Student 2 and has failed to adopt written policies and procedures for providing services to inmates of LACJ after notification of their eligibility and incarceration. LACJ has an obligation to identify the responsible LEA for an eligible inmate and to assure that appropriate services are provided while the inmate is incarcerated. In the instant case, LACJ complied with that obligation and has a procedure in place to assure future compliance.

REQUIRED CORRECTIVE ACTIONS

1. By **June 30, 2010** ~~December 30, 2009~~, the LAUSD will adopt written policies and procedures to ensure that inmates (aged 18-22) of the LACJ who are eligible to receive special education through LAUSD and who request special education services will be provided services while incarcerated in the LACJ. Acceptable evidence would include a copy of the policies and procedures and evidence that such policies have been provided to appropriate LAUSD personnel.

2. By **March 30, 2010** ~~August 30, 2009~~, the LAUSD will request an agreement with the LACJ indicating the circumstances under which special education services will be provided to eligible individuals while incarcerated in the LACJ. If such agreement is reached, a copy shall be provided to CDE. LAUSD and LACJ may contract with another LEA or SELPA to provide those services. Acceptable evidence will include written evidence of any agreed upon contract.

3. By **April 30, 2010** ~~October 30, 2009~~ ~~April 30, 2009~~, LAUSD will revise their SELPA policies and procedures to include language that provides for the procedural guarantees and services for incarcerated detainees, 18 to 22, eligible for special education services detained in the LACJ. Acceptable evidence would include a copy of the section of the SELPA that reflects this revision.

4. **On or before February 26, 2010** ~~July 31, 2009~~, ~~By June 30, 2009~~, LAUSD will conduct an IEP team meeting for Student 2, perform any necessary assessments, and determine if student still qualifies for and is available to receive special education services, and determine, if any, compensatory services are owed to

student since LAUSD acknowledged the existence of the student on February 20, 2009.

5. **On or before February 15, 2010** ~~July 31, 2009~~, ~~Beginning June 30, 2009~~, the CDE will monitor the required corrective actions in this compliance complaint for a period not to exceed one year. The period for monitoring will include quarterly reports beginning **May 15, 2010** ~~September 30, 2009~~, and subsequently each quarter following. Acceptable evidence would include a list of incarcerated inmates who are eligible to receive special education services and are receiving services on a monthly basis in the LACJ. The quarterly report will reflect the number of inmates being served.

EXHIBIT 4

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2009060442

DECISION

Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH), State of California, heard this matter in Los Angeles, California, on August 13 and September 10, 2009, and by way of a telephone conference call in Laguna Hills, California, on October 14, 2009.

Carly Munson, Attorney at Law, of Disability Rights Legal Center, and Hannah Cannom, Attorney at Law, of Milbank, Tweed, Hadley, and McCloy, appeared on behalf of Student (Student). Student appeared telephonically during part of the hearing and testified on his own behalf.

Barrett Green, Attorney at Law, and Daniel Gonzalez, Attorney at Law, of Littler Mendelson, appeared on behalf of the Los Angeles Unified School District (District).[1]

Student filed his due process request on June 5, 2009. On July 29, 2009, the parties requested and received a continuance of the hearing. At the close of the hearing, the parties requested and received time to file written closing argument. The matter was deemed submitted upon receipt of the written closing argument on October 28, 2009.[2]

---

[1] District representatives, assistants to the attorneys, and other individuals were also present for both sides at times during the case, but only the two lead attorneys for each side are listed above.

[2] Student's written closing argument has been marked as Exhibit S-36, and the District's written closing argument has been marked as Exhibit D-13.

ISSUES

1. Did the District deny Student a free appropriate public education (FAPE), since June 19, 2008, by failing to offer or provide Student with special education services, including, but not limited to, instruction, transition services and all related services?

2. Did the District deny Student a FAPE since June 19, 2008, by failing to comply with the procedural requirements of the Individuals with Disabilities Education Act (IDEA), the California Education Code, and applicable state and federal regulations by:[3]

   a. Failing to notify Student of his procedural rights;

   b. Failing to adopt or develop an individualized education program (IEP) for Student within 30 days of his transfer from the Barry J. Nidorf Juvenile Hall School to the Los Angeles County Jail on June 19, 2008;

   c. Failing to hold an annual IEP team meeting to review Student's progress, evaluate his need for re-assessment, if any, and revise his educational program as needed; and

   d. After Student made a written request for special education, failing to provide prior written notice explaining the reasons for refusing such services.

FACTUAL FINDINGS

1. Student is a 19-year-old man who was previously found eligible for special education and related services under the eligibility categories of specific learning disability and speech and language impairment. Student has an auditory processing disorder and is significantly behind his grade level in reading and math. Student is currently incarcerated in the Los Angeles County Jail, awaiting trial. He has not received any special education since he turned 18 years old.

2. Student's mother has lived in Bell, California, within the jurisdiction of the District, since before Student was born. Prior to Student's juvenile detention and adult incarceration, he lived with his mother. The evidence is undisputed that, were Student to be released from incarceration, he would once again live with his mother in Bell, California. Student's father lives in Los Angeles, but Student did not live with him prior to Student's incarceration, and his father has not been involved with Student's education.

3. Student has received special education since approximately the second grade. In the past, Student has attended school in the District and had IEPs developed by the

[3] Some of these issues have been revised and restated for purposes of clarity.

District. For example, in February 2005, when Student was in the eighth grade, the District held an annual IEP for Student.

4. At some point in 2005, Student began attending the Soledad Enrichment Action Charter School (SEA Southgate). SEA Southgate is a Los Angeles County Office of Education Charter School. Student attended SEA Southgate and received special education services while he attended that school until he was arrested.

5. In February 2006, Student was arrested and detained in juvenile hall. In April 2006, Student was educationally placed at the Barry J. Nidorf Juvenile Hall School. He remained in juvenile detention until he was transferred to the adult jail on June 19, 2008. He received special education while he was in the juvenile facility.

6. Student's most recent annual IEP team meeting was conducted on August 24, 2007, while Student was attending at the Barry J. Nidorf Juvenile Hall School. At that time, the Los Angeles County Office of Education was the local educational agency (LEA) responsible for Student's education and conducted the meeting. The IEP team found Student eligible for special education and related services under the eligibility categories of specific learning disability and speech and language impairment. The IEP called for him to receive special education instruction in a special day class (SDC) for 240 minutes per day, speech and language therapy for 45 minutes weekly, counseling twice monthly for 15 minutes per session and behavior management twice weekly for 15 minutes per session. The IEP also called for him to receive extended school year services. The IEP provided that the special education and related services would continue for one year from the date of the IEP. The IEP noted that Student's triennial assessment would be due in June 2009.

7. In discussing Student's need for special education, the IEP stated:

> [Student] currently participates in the highly structured and small sized class where the regular education program is modified to meet the individualized needs for [Student] per academic assessment and ongoing classroom observation. [Student] needs special education support to assist with academic weaknesses in support of the regular education program and to pass Proficiency Tests needed for graduation from high school. This is the least restrictive environment for [Student] at this time. Upon return to district of residence a new IEP will need to be held to determine the most appropriate educational placement within that setting.

8. Student had motivational problems regarding his education when he was at the juvenile facility. His IEP noted that he frequently refused to attend school and turn in assignments. His IEP contained a behavior support plan related to this problem. In addition, Student missed school when the juvenile detention facility had a "lockdown" due to inmate disputes. These lockdowns might last a day or as long as a week depending on what the disturbance had been. For example, if there was a race riot, it could lead to a very long lockdown.

9. On May 5, 2008, an addendum to the August 24, 2007 IEP was agreed to and signed by the Los Angeles County Office of Education and Student's mother. The addendum IEP increased the amount of counseling Student received to 30 minutes per week and called for a functional analysis assessment (FAA) to be conducted with respect to Student's behavior. An FAA report was completed around May 25, 2008. The report noted two behaviors of concern – verbal/physical threats toward students and staff and that Student frequently got out of his seat to walk around the SDC classroom. According to the report, he was off-task in class and did not complete school work.

10. On June 1, 2008, Student turned 18 years old. On June 19, 2008, he was transferred from the juvenile facility to the Los Angeles County Jail. Since his transfer to the jail no IEP team meetings have been held for Student and he has received no special education or related services. The District did not provide him with a notice of his procedural safeguards and did not provide him with a 30-day interim IEP after he was transferred to the adult jail facility. The District has not conducted any assessments of him since that time. No action has been taken with respect to the FAA completed in May 2008.

11. Student has never received a high school diploma. Student wishes to receive a high school diploma to help him pursue vocational opportunities in the future. Student testified that he wishes to receive special education, and that he will participate in school lessons and complete school work if given the opportunity to do so at the jail. Student's mother believes that Student has matured since he went to the adult jail and now thinks more about his future.

12. Student has attempted to keep his educational skills current during his time in the adult jail by reading books borrowed from other inmates or sent by his mother. His mother also sent him a dictionary to help with his reading. Both Student and his mother believe that his academic skills have regressed during the time he has been in the jail without special education.

13. Student's expert Carlos Flores also believes that Student has regressed educationally. Flores is a neuropsychologist licensed in California. He has a private psychology practice and conducts assessments of children and adults. He has taught college level classes related to psychology in the past and currently supervises psychology doctoral students. He assessed Student and conducted tests in July 2009. Some of the test scores indicated that Student has lost ground educationally. Flores believes that Student's failure to receive any education for over a year contributed to that decline.

14. Flores' assessment of Student took place in the attorney visitation booth in the jail. It was a private booth, although there was often noise from other inmates around them. Student was handcuffed to the desk. The assessment started at 10:00 a.m. and ended around 3:00 p.m. They took small breaks during the testing, but did not take a long lunch break. Flores believes that all the small breaks added up to approximately an hour.

15. On February 12, 2009, Student's attorney sent a letter to the District requesting that Student be provided with special education and related services.

16. On February 20, 2009, the District responded with a letter stating that it was "currently reviewing your request regarding this matter and will respond to you shortly." There was no further response by the District.

17. The County of Los Angeles, Office of the Sheriff (Sheriff's Department), has contracted with Hacienda La Puente Unified School District to provide adult education to inmates in the county jails. The program includes basic elementary school subjects, required high school subjects and elective subjects leading to elementary school graduation and/or high school graduation. However, that contract does not include special education services for inmates.

18. Student is currently classified as a K-10 inmate in the jail, which is a high security classification that requires Student to be kept away from the rest of the inmate population. Student spends most of his day in his cell. He is permitted visitation by his attorney and family. He is permitted to have books in his cell, but there are security restrictions on things such as the types of book binding. Student is permitted to have pencil and paper and is permitted to write letters.

19. When Student's family visits, Student sees them in the visitor room. There is a glass window between them. His mother is permitted to stay and visit him from a half-hour to two hours, depending on whether the guards permit the longer stay. Student also has regular telephone conversations with his mother. These calls may last from ten minutes to two hours.

20. The Sheriff's Department encourages education of inmates in the jail and will work with a school district to make education available to Student. Any education provided must be within the parameters of the jail's security concerns. For example, the Sheriff's Department would not permit Student to leave the jail facility to attend education elsewhere.

21. During the hearing, neither party produced any evidence regarding the specific manner of providing special education that would be permitted by the Sheriff's Department for Student, given Student's K-10 classification. Lt. Ibelle, the only witness from the Sheriff's Department who testified at the hearing, did not know Student and was only familiar with Student's situation based on third party information. He did not state whether there would be restrictions on what would be permitted for Student, although he confirmed that his office would cooperate with the District's efforts to provide special education to Student as long as security was not compromised.

22. In 2009, Student's counsel filed a compliance complaint with the California Department of Education (CDE). In June 2009, CDE issued a compliance complaint report finding, in part, the District failed to comply with the federal and state education laws by

failing to provide Student with special education. However, on July 15, 2009, CDE set aside that compliance complaint decision in light of this pending due process case.

23. Student's expert Flores believes that Student needs special education in order to gain educational benefit. He recommended that Student receive three 1-hour sessions a week of one-to-one math instruction, and two to three 1-hour sessions per week of one-to-one instruction in reading.[4] The phrase "one-to-one" refers to one educator working directly with Student rather than teaching other pupils at the same time as Student. Flores believes that the education should be provided using a "multi-sensory approach" and that the one-to-one sessions should be provided by a trained special educator.

24. Flores believes that Student needs 90 minutes per week of speech and language therapy, provided in three 30-minute sessions per week. He admitted during his testimony that he is not an expert in speech and language pathology. He also recommended one hour per week of counseling for Student, given by a psychotherapist with experience working with pupils with auditory processing disorders or a cognitive behavior therapist.

25. For compensatory education to remedy the time that Student did not receive educational services after he turned 18, Flores recommended an additional one-hour session of one-to-one special education in reading per week and another one-hour session in math per week, as well as an additional 30-minute speech and language session per week.

26. Flores recommended additional accommodations for Student, including: 1) that Student be able to tape-record his educational sessions; 2) that Student receive and be required to complete homework; 3) that educational sessions for Student be held in a quiet environment; 4) that Student be given extra time for tests and time for breaks during his educational sessions; and 5) that the one-hour educational sessions not occur back-to-back. Student presented no evidence as to which, if any, of these accommodations could be provided in Student's current high-security environment. Flores did not testify regarding how these recommendations could be implemented in the jail.

27. The District's expert Jose Gonzalez took issue with Flores' opinion that Student needed psychotherapy. Gonzalez is a neuropsychologist working as a due process specialist for the District. He has taught as a college professor and has numerous publications relating to neuropsychology and children with disabilities. He referred to Student's test results on the Beck Anxiety Inventory and the Beck Depression Inventory conducted by Flores. The test results were in the mild-moderate range in anxiety and in the mild range in depression. In Gonzalez' opinion, these test findings were to be expected for an incarcerated individual, and were not severe enough to demonstrate a need for weekly psychotherapy. In formulating his opinion, Gonzalez did not meet with Student or conduct any testing of Student. Instead, he relied solely on Flores' test results.

[4] During his testimony, Flores explained that the one-hour educational block could consist of a 50-minute to one-hour time block. For the sake of simplicity, this decision will use the phrase "one hour" to describe the 50-minute to one-hour time block discussed by Flores.

28. The District also called Joe Salvemini as a witness to discuss the District's program to provide special education to pupils who are confined to their home or hospitals. However, he was unfamiliar with how services could be provided in a jail.

LEGAL CONCLUSIONS

1. Student, as the party requesting relief, has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)

2. Under the Individuals with Disabilities Education Act (IDEA) and corresponding state law, students with disabilities have the right to a FAPE. (20 U.S.C. § 1400 et seq.; Ed. Code, § 56000 et seq.) FAPE means special education and related services that are available to the student at no cost to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (p).)

3. In California, eligibility for special education continues after age 18 for a pupil who is receiving or is eligible to receive special education before his or her 19th birthday and who has not completed his or her prescribed course of study, met proficiency standards or graduated from high school with a regular high school diploma. (Ed. Code, § 56026, subd. (c)(3), (4).) A "regular high school diploma" is defined as "a diploma conferred on a pupil who has met all local and state high school graduation requirements." (Ed. Code, § 56026.1, subd. (b).)

4. When a pupil is a minor, his or her parents hold the educational rights for the pupil. Once the pupil reaches the age of majority at 18 years of age, the educational rights transfer to the pupil. (Ed. Code, § 56041.5.)

Student is Eligible to Receive Special Education During his Incarceration

5. Both federal and state education law provide that eligible pupils should continue to receive special education and related services while incarcerated in a juvenile or adult correctional facility. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. §§ 300.2(b)(1)(iv); 300.324(d) (2006); Ed. Code, § 56000, subd. (a).) The only exception is for a pupil aged 18 through 21 who, in his or her educational program prior to incarceration, was not actually identified as being a child with a disability or did not have an IEP. (20 USC § 1412(a)(1)(B)(ii); Ed. Code, 56040, subd. (b).)

6. The evidence supports a finding that Student is eligible to receive special education at the present time. As set forth in Factual Findings 1 – 10, Student has been eligible for special education for many years. He had an IEP finding him eligible for special education at the time he turned 18, and he has never received a high school diploma. He now holds his own educational rights and, as discussed in Factual Finding 11, he wishes to pursue

his education and to receive special education. The exception set forth in Title 20 United States Code section 1412(a)(1)(B)(ii) and California Education Code section 56040, subdivision (b), does not apply to him because he had an IEP and was receiving special education and related services before his incarceration in the adult facility. As discussed in Factual Findings 6, 7, and 23, Student's most recent annual IEP found that he needed special education, and the most recent expert to assess Student (Flores) opined that Student still needs special education.

The District is the LEA Responsible for Providing Student with Special Education

7. The main disputed legal issue in this case involves which LEA is responsible for providing a FAPE to Student while he is incarcerated in the Los Angeles County Jail. Student contends that the District is the responsible LEA and has denied Student a FAPE. The District denies that it is the responsible LEA.

8. This legal issue has been addressed by OAH and the federal court in the past. In *Student v. Los Angeles County Sheriff's Department, et al.* (2009) OAH case number 2009010064, the same Student who filed the instant due process case filed a previous case against various state and local agencies contending that those agencies were responsible for providing Student with a FAPE while he was in the Los Angeles County Jail.[5]

9. In that case, OAH first recognized the question of which agency is responsible for providing special education to an eligible adult who is incarcerated in an adult correctional facility is a matter of state law. (20 U.S.C. § 1412(A)(11)(c).) The decision then determined that, absent a specific statutory or regulatory section assigning responsibility to a particular agency for an incarcerated adult special education student, the general residency rules for determining the responsible agency would apply. The primary responsibility for providing special education in California rests on the LEA, and a pupil's school of residence is determined by the residency of the parent or guardian. (Ed. Code, § 48200; *Katz v. Los Gatos-Saratoga Joint Union High School District* (2004) 117 Cal.App.4th 47, 57.) California Education Code section 48200, California's compulsory education law, requires that a student between six and 18 years of age attend school in "the school district in which the residency of either the parent or legal guardian is located . . ." That district usually becomes the LEA responsible for providing a FAPE to an eligible student. (20 U.S.C. § 1401(19); 34 C.F.R. § 300.28(a) (2006); Ed. Code, § 56026.3.)

10. With respect to pupils between 18 and 22 years, Education Code section 56041 provides, in pertinent part:

[5] Los Angeles Unified School District was not one of the parties to that case. Arguably the doctrine of collateral estoppel might apply to the legal findings made in that case. However, because the District was not a party to that case and had no opportunity to address the legal issues in that case, the District has been provided an opportunity to raise those legal issues herein. The decision in OAH case number 2009010064 is being considered and cited herein for its persuasive value, not as precedent or to collaterally estop consideration of these legal issues. (Cal. Code Regs., tit. 5, § 3085.)

> 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.

11. The OAH decision rejected Student's argument that Education Code section 48204, subdivision (a)(3) provided an exception to that rule for Student. That provision provides an exception to Education Code section 56041 for a student whose parent or legal guardian is relieved of responsibility, control and authority through emancipation. The OAH decision differentiated a student who turns 18 years old from an "emancipated" child. As the decision recognized, any other construction of that provision would effectively repeal Education Code section 56041, subdivision (a), because any nonconserved adult would by definition come under the exception. (*Student v. Los Angeles County Sheriff's Department, et al., supra*, at pp. 4 – 6.)

12. The OAH decision determined that the residence of the Student's parent was the key factor in determining which LEA was responsible for Student's education. Because none of the parties to that action met that residency factor, OAH dismissed that case. The United States District Court, Central District of California, in case number CV 09-1513-VBF(CTx) brought by Student against various entities, also found that Education Code section 56041 was the controlling California authority.

13. As discussed in Factual Finding 2, Student's mother resided within the jurisdictional boundaries of the District at all times relevant to this matter and still resides within the jurisdiction of the District at the present time. Under Education Code section 56041, the District is the LEA responsible for Student's education while he is incarcerated in the Los Angeles County Jail.

14. The District disputes that Education Code section 56041 is applicable to the instant case. The District relies on a 2003 decision from the Special Education Hearing Office (SEHO), OAH's predecessor in hearing California special education cases. In *Student v. Berkeley Unified School District and Albany Unified School District* (2003) SN-03-1989 (*Berkeley*), an adult pupil who held his own educational rights voluntarily moved into the jurisdiction of the Berkeley Unified School District. The pupil was not conserved and no guardian had been appointed for him. Berkeley argued that the school district in which the

residence of the pupil's parents was located should be responsible for his education under Education Code section 56041.

15. The SEHO decision found that the adult pupil essentially became the "parent" for special education purposes once he turned 18 years old and received his educational rights. Therefore, when he chose to move into a new district, the district of his new residence was responsible for providing his education. The decision recognized that the purpose of Education Code section 56041 was to protect school districts with a large number of residential adult facilities from "becoming overwhelmed by the financial responsibility for the education of those adult students." Instead, the Legislature had intended to spread the responsibility for paying for the education of adult pupils in residential facilities upon the various districts where the parents of the pupils lived. The SEHO decision went on to hold that, because the pupil was not placed in a residential placement in Berkeley by a different school district, but instead chose to move to Berkeley on his own, the exception to the general residency rule contained in Education Code section 56041 did not apply. Berkeley was responsible for providing the pupil with special education.

16. The District's reliance on that case is not well taken. Unlike the pupil in the *Berkeley* case, Student 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 the District. As discussed in Factual Finding 2, Student lived in Bell, California, at all times before his incarceration and would move back there if released from jail. Even if Student became the "parent" in the instant case when he turned 18, as the pupil did in the *Berkeley* case, jurisdiction for his special education still lies with the District.

17. The rationale underlying the *Berkeley* case provides additional support for the finding that Education Code section 56041 is properly applied to the instant facts. Just as many school districts are responsible for assisting with the financial burden of a district with residential adult facilities to prevent the latter district from being overwhelmed by the expense, under Education Code section 56041, multiple school districts may be responsible for providing education to incarcerated adults to prevent the school district in which the prison resides from being overwhelmed by that responsibility. Absent a legislative statement to the contrary, both the explicit language of Education Code section 56041 and the legislative intent behind it support its application to the facts of this case.

18. The District next argues that Education Code section 56041 should not apply because no LEA determined that Student should continue to receive education beyond age 18. This argument fails based on both the law and the facts. The District cites to no law indicating that section 56041 creates a "condition precedent" of some new finding of eligibility that an IEP team must make before that section applies. Instead, unless and until one of the factors occurs that makes a pupil ineligible for special education, California law mandates that special education shall continue. (Ed. Code, § 56026, subd. (c).) Unless a pupil reaches the maximum age limit (22 years of age) or graduates with a high school diploma, a district must reassess a pupil before exiting that pupil from special education.

(Ed. Code, § 56381, subds. (h), (i).) As set forth in Factual Findings 1 – 3, 6 – 7, and 10 – 11, none of the factors excluding Student from special education exist here.

19. Further, even if there was a "condition precedent" created by 56041, that condition has been met here. As discussed in Factual Findings 6, 7 and 10, Student had an IEP in effect at the time he turned 18 years old. That IEP was developed on August 24, 2007, when Student was 17 years old. That IEP called for Student's special education and related services to remain in effect for one year, until August 24, 2008, after Student's 18th birthday. The IEP also looked ahead to Student's next triennial assessment date in June 2009. It was clear that the August 24, 2007 IEP team determined that Student needed special education after age 18.

20. The District's interpretation of Education Code section 56041 would also violate public policy because it would permit a district to circumvent the procedural requirements of IDEA. In the instant case, no findings of eligibility were made after Student's 18th birthday because no IEP meetings were held for him. In effect, the District is arguing that, by failing to comply with its statutory duty to hold IEP meetings for Student, a school district can make a pupil ineligible for special education beyond his 18th birthday. In its written closing argument, the District cites Student's reluctance to attend school while at the juvenile facility as a reason that an IEP team might have decided that Student was not eligible for special education after he turned 18 years old. Perhaps that would have been a factor for the IEP team to consider had an IEP team meeting been properly held. However, there was no such IEP team meeting and no findings made by an IEP team in this regard. That is not a defense in the instant case.

21. The District argues that the application of Education Code section 56041 would lead to "absurd" results because school districts might be responsible to provide special education to students who are incarcerated many miles away. However, the situation is no different from a residential placement under section 56041, in which a district many miles away may be responsible for providing the education. This "absurdity" argument was considered and rejected by the OAH decision in case number 2009010064 discussed above.

22. The District also contends that a district would not be able to track a pupil who left the district and later ended up in jail. For example, in the instant case as set forth in Factual Findings 3 – 5 above, Student attended SEA Southgate outside the jurisdiction of the District for a few months before his arrest. The District contends that it would be a great burden for school districts to have to track every child who left the district to see if they ended up in jail.

23. While that is a legitimate concern, it does not make Education Code section 56041 inapplicable here. A school district has an obligation to seek out children with disabilities who may need special education within its jurisdiction. (Ed. Code, §§ 56300,

56301.) It is the District's responsibility to make arrangements with the Sheriff's Department to notify the District about inmates who are eligible for special education.[6]

24. The evidence supports a finding that the District was responsible for providing Student with a FAPE after he turned 18 and was incarcerated in the Los Angeles County Jail.

The District Has Denied Student a FAPE Since June 19, 2008, by Failing to Offer or Provide Student With Any Special Education or Related Services.

25. The congressional mandate to provide a FAPE to a child includes both a procedural and a substantive component. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034], the United States Supreme Court utilized a two-prong test to determine if a school district had complied with the IDEA. First, the district is required to comply with statutory procedures. Second, a court will examine the child's IEP to determine if it was reasonably calculated to enable the student to receive educational benefit. (*Id.* at pp. 206 – 207.) If a school district's program was designed to address a student's unique educational needs, was reasonably calculated to provide him some educational benefit, and comported with his IEP, then the district provided a FAPE, even if the student's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

26. As discussed in Factual Findings 10 – 16 above, in the instant case, the District provided no special education or related services whatsoever to Student, even after the District received actual notice of Student's request for those services in February 2009. Under those circumstances, there is no dispute that the District's program (or lack thereof) did not address Student's unique needs, did not comply with his IEP and was not reasonably calculated to provide him with educational benefit. The District denied Student a FAPE.

27. The District also denied Student a FAPE due to its failure to provide Student with related services, in particular speech and language services. The term "related services" means transportation and "such developmental, corrective, and other supportive services (including speech-language pathology and audiology services...) as may be required to assist an individual with exceptional needs to benefit from special education...." (Ed. Code, § 56363, sub. (a).) A district is required to provide related services called for by the pupil's IEP. As discussed in Factual Findings 6 – 7 and 10 – 11, Student's prior IEP called for him to receive speech and language therapy as a related service. The District never provided that service to Student after he turned 18 years old.

[6] The CDE compliance complaint report indicated that the jail has made changes to its prisoner intake procedures to try to determine if incoming individuals are eligible for special education, so it can notify the applicable LEA.

28. Student met his burden of proving that the District denied him a FAPE by failing to provide any special education or related services from and after June 19, 2008, when he was transferred to the adult jail facility.

The District Denied Student a FAPE by Failing to Comply with the Procedural Requirements of IDEA and California Education Law.

29. The IDEA and California Education law provide numerous procedural requirements that a school district must follow in developing and implementing a special education program for a pupil. Student contends that the District has violated four of these. In particular, Student contends that the District: 1) failed to notify Student of his procedural rights; 2) failed to adopt or develop an IEP for Student within 30 days of his transfer from the Barry J. Nidorf Juvenile Hall School to the Los Angeles County Jail on June 19, 2008; 3) failed to hold an annual IEP team meeting to review Student's progress, evaluate his need for re-assessment, if any, and revise his educational program as needed; and 4) after Student made written requests for special education, failed to provide prior written notice explaining the reasons for refusing such services. The evidence supports a finding that the District failed to comply with all four of these procedural requirements.

30. An LEA must provide a notice of procedural safeguards to a parent at least one time during a school year. (20 U.S.C. § 1415(d)(1)(A); 34 CFR § 300.504(a) (2006); Ed. Code, § 56301, subd. (d)(2). Once the student turns 18 years old, the notice of procedural safeguards must be provided to both the student and the parent. (Ed. Code, § 56041.5.) As set forth in Factual Finding 10, the District never provided that notice of procedural safeguards to Student.

31. Under IDEA and California special education law, an LEA is required to hold an IEP team meeting at least annually. (20 U.S.C. § 1414(d)(4)(A)(i); Ed. Code, §§ 56043, subd. (d), 56343, subd. (d).) As set forth in Factual Finding 10, the District failed to hold any annual IEP team meetings for Student after he transferred to the adult jail.

32. If a pupil moves from one school district to another during the school year, the new district must provide the services from the student's existing IEP for a period not to exceed 30 days, "by which time the [district] shall adopt the previously approved [IEP] or shall develop, adopt, and implement a new [IEP] that is consistent with federal and state law...." (Ed. Code, § 56043, subd. (m).) As set forth in Factual Finding 10, the District never implemented the existing IEP services or held a meeting to adopt the existing IEP or draft a new one.

33. An LEA is required to provide written notice to a pupil whenever the LEA refuses to initiate or change the identification, assessment or educational placement of the pupil. (Ed. Code, § 56500.4, subd. (a).) The law specifies in detail the information which must be contained in that notice. (Ed. Code, § 56500.4, subd. (b).) As set forth in Factual Findings 15 – 16, the District failed to provide the prior written notice of its denial of services after Student made his request in February 2009. The District's letter stating that the

District would investigate and get back to the Student was by no means the detailed prior written notice required by the code.

34. Not every procedural violation of IDEA results in a substantive denial of FAPE. (*W.G. v. Board of Trustees of Target Range School District* (9th Cir. 1992) 960 F.2d 1479, 1484.) According to Education Code section 56505, subdivision (f)(2), a procedural violation may result in a substantive denial of FAPE only if it:

(A) Impeded the child's right to a free appropriate public education;

(B) Significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or

(C) Caused a deprivation of educational benefits.

35. The evidence supports a finding that each of these four procedural violations resulted in a substantive denial of FAPE. The failure to provide Student with his notice of procedural rights impeded his opportunity to participate in the decision making process regarding his education. He did not even know he was entitled to special education in the jail. The failure to hold an interim IEP meeting and an annual IEP meeting caused a deprivation of educational benefits because Student received no special education whatsoever and his skills began to regress. The failure to provide prior written notice regarding the District's refusal to provide Student with special education left him uncertain regarding whether he would receive education from the District, thereby impeding his right to a FAPE.

36. Student met his burden of proving that the District committed procedural violations of IDEA and that those violations resulted in a substantive denial of FAPE.

Student is Entitled to One-to-One Educational Instruction and Compensatory Education as a Result of the District's Denial of FAPE.

37. The final question is the appropriate remedy for the denial of FAPE. When a district fails to provide a pupil with a FAPE, compensatory education may be awarded as a remedy. Compensatory education is an equitable remedy designed to "ensure that the student is appropriately educated within the meaning of the IDEA." (*Parents of Student W v. Puyallup School District, No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.) There is no obligation to provide a day-for-day compensation for time missed. The remedy of compensatory education depends on a "fact-specific analysis" of the individual circumstances of the case. (*Ibid.*) The court is given broad discretion in fashioning a remedy, as long as the relief is appropriate in light of the purpose of special education law. (*School Committee of the Town*

of Burlington, Massachusetts v. Department of Education (1985) 471 U.S. 359, 369 [105 S.Ct. 1996].)[7]

38. The District contends that one hour a week of "educational support" would be sufficient to meet Student's needs and that Student should be educated in a "home study" situation. The District's proposal is not reasonable given Student's very severe needs and his lack of any special education services for over a year.

39. Student contends that Flores' recommendations for services would be appropriate for Student's education and compensatory education. As discussed in Factual Findings 23 – 28 above, Flores recommended 3 one-to-one sessions of reading and math per week, three sessions of speech and language per week, and one session of psychotherapy per week.

40. Flores' opinion regarding the reading and math services is persuasive. Flores conducted the most recent assessment of Student and is familiar with his needs. Flores' recommendation for one-to-one instruction is reasonable given Student's unique needs and circumstances in the high-security jail. The evidence established that Student is allowed to receive visitors, and is allowed to have some types of books, pencils and papers. Given the depth of Student's needs, the one-to-one sessions must be provided by a credentialed special education teacher. If the District does not have such a teacher available, it will be responsible for contracting with another agency or a nonpublic agency to provide one.

41. Flores' opinion that Student needs an additional one-hour session per week of one-to-one instruction in reading and math as compensatory education is also persuasive. Student has lost an entire year of education. He needs this intense extra instruction to help him recover some of the educational time he has lost.

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[7] During the hearing, the ALJ requested that both parties provide guidance through evidence and argument on what special education services could be provided to Student given Student's high-security environment. In Student's written closing argument, Student complained that this request placed an extra burden of proof on Student, beyond the burden normally held by a petitioner. Student is mistaken. A pupil who seeks compensatory education or other remedies is required to provide evidence to support the type and amount of any education requested, given the pupil's unique circumstances. In the instant case, Student's unique needs and circumstances include his incarceration. Any education provided to Student must, by necessity, take into account the need for his own safety and the safety of others in his current environment. For example, the least restrictive environment appropriate for Student must, due to his current circumstances, be the jail facility where he is incarcerated. (See, 34 C.F.R. § 300.324(d)(2).)

The ALJ's request for guidance was directed to *both* parties, not just Student, and was intended to provide the basis for a detailed order which the District could follow. A specific order of that type would provide Student with the immediate educational services he requires and hopefully prevent any delay of those necessary services due to a dispute over the manner of providing services. However, because neither party chose to introduce evidence regarding what is logistically permissible in Student's current environment, this Decision will make a more general order for educational services and compensatory education. It will be the District's responsibility to work with the Sheriff's Department and other correctional agencies to determine how best to implement that order to meet Student's unique educational needs until a new IEP team meeting is held and a new IEP agreed upon by the parties.

42. Flores' opinion regarding the speech and language services is more troubling, because he admitted during his testimony that he is not a speech and language expert. His recommendation for three 30-minute speech and language sessions per week is twice as much as the 45 minutes per week called for in the last agreed-upon IEP for Student. However, the District presented no expert testimony to counter Flores' opinion in this regard, and Flores' opinion is persuasive that, after losing a year of speech services, Student requires more than he previously received. Flores' opinion that an additional 30-minute session per week of speech and language services is necessary to compensate Student for the year's work of lost services is also reasonable and persuasive.

43. As stated in Factual Findings 24 – 27 above, the parties dispute whether Student requires 60 minutes of counseling per week in order to gain benefit from his special education. Although Gonzalez is a highly qualified and credible expert, Flores' testimony is more persuasive in this case. Flores actually met with Student and assessed him, while Gonzalez based his opinion solely on test results written on paper. The last IEP team to consider Student's unique needs believed that counseling services were required. Although Flores' recommended more counseling than the amount called for in the May 5, 2008 addendum to Student's IEP, Student's circumstances have changed.

44. However, the evidence does not support a finding that only a counselor who has experience working with pupils with auditory processing disorders or a cognitive behavior therapist should provide the counseling services. Student presented no evidence that such an individual exists who would be available and willing to provide counseling in a jail. Instead, the services should be provided by a mental health professional duly licensed to provide services in the State of California.

45. Finally, Student requests that the other accommodations recommended by Flores, discussed in Factual Finding 26, be ordered. However, aside from the one-to-one instruction, it would not be appropriate to order the remaining recommendations. Flores did not testify regarding which of those accommodations could be provided to Student in jail. The District will already have to work with the Sheriff's Department to determine the appropriate manner to provide the services to meet Student's unique needs. It would not be appropriate to lock the District into an accommodation that may not be available or safe in the jail setting. If Student believes that further accommodations are necessary, Student can request an IEP team meeting to discuss them. That will enable both parties to explore what can and cannot be safely provided to Student in his current high-security environment.

ORDER

1. Student's request for relief is granted.

2. The Los Angeles Unified School District is the entity legally responsible for providing Student with a free appropriate public education while he is incarcerated in the Los Angeles County Jail.

3. Within 60 days of the date of this Decision, the District shall begin providing special education to Student as follows:

a. Three 1-hour sessions per week of one-to-one instruction in reading provided by a credentialed special education teacher.

b. Three 1-hour sessions per week of one-to-one instruction in math provided by a credentialed special education teacher.

c. Speech-language therapy provided one-to-one by a licensed speech-language pathologist for 90 minutes per week, divided into three 30-minute sessions.

d. One-to-one counseling for one hour per week provided by a California licensed mental health professional, such as a psychologist, psychiatrist, or social worker, or a credentialed school psychologist.

e. The special education and related services described above will continue until Student is no longer eligible for special education, is transferred out of the Los Angeles County Jail, or a new IEP is signed or ordered as a result of a due process hearing.

4. In addition to the weekly services discussed above, the District shall provide Student with the following special education and related services as compensatory education:

a. One hour per week of one-to-one special education instruction in math provided by a credentialed special education teacher.

b. One hour per week of one-to-one special education instruction in reading provided by a credentialed special education teacher; and

c. 30 minutes per week of speech and language therapy provided by a licensed speech-language pathologist.

d. The compensatory education services shall begin within 60 days from the date of this Decision and shall continue for one year after the starting date of those services.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on all issues heard and decided in this case.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision in accordance with Education Code section 56505, subdivision (k).

Dated: November 16, 2009

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 09-9289-VBF(RCx)** Dated: **May 4, 2010**

Title: Los Angeles Unified School District -v- Michael Garcia

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PRESENT: HONORABLE VALERIE BAKER FAIRBANK, U.S. DISTRICT JUDGE

Joseph Remigio
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS: None Present

ATTORNEYS PRESENT FOR DEFENDANTS: None Present

PROCEEDINGS (IN CHAMBERS): **COURT ORDER RE LOS ANGELES UNIFIED SCHOOL DISTRICT'S APPEAL OF NOVEMBER 2009 DECISION OF OFFICE OF ADMINISTRATIVE HEARINGS (DKT. #20)**

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. **The hearing set on this Motion for May 10, 2010 at 1:30 p.m. is hereby vacated and the matter is taken off calendar.**

The Court has received, read, and considered Plaintiff Los Angeles Unified School District's ("LAUSD") Appeal Of November 2009 Decision Of Office Of Administrative Hearings (OAH) (dkt. #20), Defendant Michael Garcia's Opposition (dkt. #21), and LAUSD's Reply (dkt. #25).

I. Ruling

The Court hereby affirms the November 2009 Decision of the Office of Administrative Hearings relating to Michael Garcia. The Court finds that (1) the OAH correctly determined that Cal. Educ. § 56041 applies to make LAUSD responsible for providing special education services to Garcia;[1]

[1]The Court does not now opine on whether institutions other than LAUSD may also be responsible for providing special education services to Garcia. The Court's instant opinion is limited to the appeal of the OAH decision finding LAUSD to be responsible.

(2) Garcia's right to special education services did not end upon his eighteenth birthday; and (3) insufficient basis exists to overturn the remedy determined by the OAH.

II. Analysis

In an action for judicial review of an administrative decision, LAUSD bears the burden of persuasion as the party challenging the ruling. *L.M. ex. rel. Sam M. v. Capistrano Unified School District*, 556 F.3d 900, 910 (9th Cir. 2009).

A district court reviews the decision of the OAH officer under a modified de novo standard. *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1471-73 (9th Cir.1993); *Orange County Dept. of Educ. v. A.S.*, 567 F. Supp. 2d 1165, 1167 (2008). The Court must consider the entire administrative record and any additional evidence as requested by the parties. 20 U.S.C. § 1415(i)(2). While the Court must give due weight to the findings of fact and judgments regarding education policy in the OAH Decision, it reviews de novo conclusions of law. *Orange County Dept. of Educ.*, 567 F. Supp. 2d at 1167; *see also Ojai Unified*, 4 F.3d at 1471-72.

A. Applicability of California Education Code § 56041

The OAH construed California Education Code § 56041 to require LAUSD to provide special education services to Garcia in county jail because Garcia's mother resided in the territory of LAUSD at the time of Garcia's incarceration in county jail.

Cal. Educ. Code § 56041 provides, in relevant part:

> 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.

Under 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 18 and 22 years and that Garcia's mother has at all relevant times resided within the Los Angeles Unified School District.

LAUSD contends that Educ. Code § 56041 is inapplicable because (1) nothing in the Code references adult students in correctional facilities; (2) nothing in Assembly Bill 2773, which added the § 56041 to the Code, mentions educational services for students in county jail; and (3) the California Special Education Hearing Office (OAH's predecessor) construed § 56041 in a different manner. The Court does not find LAUSD's arguments persuasive.

LAUSD cites to *Orange County Department of Education v. A.S.*, 567 F. Supp. 2d. 1165 (C.D. Cal. 2008) for the proposition that where the Legislature fails to place responsibility for the provision of special education services on a particular local education agency, the California Department of Education is responsible for providing the services. Mtn. at 12:23-26. However, this case is inapposite because it determined responsibility for the education of a parentless minor, bringing the case outside of the plain language of Educ. Code § 56041; indeed, the case did not mention Educ. Code § 56041 at all.

LAUSD also cites to *Student v. Berkeley Unified School District and Albany Unified School District*, SEHO Case No. 2003-1989 ("*Berkeley*") in support of its position. However, *Berkeley* is inapposite because it involved a student who moved of his own accord into a new district, instead of Garcia's involuntary relocation due to his incarceration. *Berkeley* is also inapposite because it interpreted a superseded version of Educ. Code § 56028(a)(2), effective January 1, 2003 to September 28, 2004, whereby an adult pupil for whom no guardian or conservator has been appointed became his own "parent." Here, LAUSD does not argue under the current version of Educ. Code § 56028, which lacks the language on which *Berkeley* relied, that Garcia can be considered his own parent for purposes of determining the district responsible under Educ. Code § 56041.

LAUSD also argues that the legislative history of Educ. Code § 56041 makes it inapplicable to incarcerated students. This argument also fails. First, the statute is clear enough on its face that the Court not reach the legislative history. *See Arlington Cent. School Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006)("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.")(*internal punctuation and citations omitted*). The plain

language of Cal. Educ § 56041 encapsulates incarcerated students. Second, the plain meaning of Cal. Educ. § 56041, which places responsibility for a student's special education services based on the residency of the parents for students between 18 to 22 years of age, is generally similar to the use of parent's residency for assigning responsibility for providing special education services to students under 18 years of age. *See* Cal. Educ. Code §§ 48200, 48204. Construing Cal. Educ § 56041 to apply to incarcerated students is not absurd, especially since neither party can cite to any other statute or regulation specifically allocating responsibility for the special education of incarcerated students aged 18 to 22 years. Thirdly, even 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.

In sum, the Court finds that the OAH correctly determined Cal. Educ. Code § 56041 to be applicable to Garcia's claim for special education services, and correctly determined LAUSD to be responsible for providing such services pursuant to § 56041.

B. Garcia's Qualification For Special Education Services

LAUSD contends that Garcia is not eligible for special education services even if Educ. Code § 56041 were applicable, because a determination that Garcia is eligible for services beyond age 18 is a condition precedent to claiming any services under § 56041. In support of this argument, LAUSD cites to the portion of Educ. Code § 56041 which assigns responsibility for providing a special education services to pupils between the ages of 18 to 22 years "if it is determined by the individualized education program team that special education services are required beyond the pupil's 18th birthday." LAUSD's argument is not persuasive.

As Garcia contends, LAUSD's argument essentially asks the Court to adopt a default position that students with disabilities lose their eligibility for special education upon their eighteenth birthdays unless their IEP team has explicitly determined otherwise. Opp. at 12:1-4. LAUSD's interpretation conflicts with other portions the IDEA and the implementing provisions of

the California Education Code. These provisions require that, unless a student reaches age 22 or some other specified factor occurs making the student ineligible, the LEA shall perform an assessment before exiting the student from special education. *See* 20 U.S.C. §1414(c)(5)(A); Cal. Educ Code §§ 56026(c); 56381(h),(i). LAUSD has not indicated that any factor enumerated in these provisions has occurred that would exclude Garcia from receipt of special education services. Therefore, LAUSD has not shown that Garcia lost his entitlement to receive special education services upon his eighteenth birthday.

Furthermore, at Garcia's most recent annual IEP team meeting conducted on August 24, 2007, the IEP team determined Garcia's IEP to provide for special education and related services continuing for one year from that date, *i.e.*, until August 24, 2008. *See* Administrative Record ("AR") at OAH 1066, ALJ's Findings of Fact ("Fact") No. 6. Because Garcia turned 18 years old on June 1, 2008 (AR at OAH 1067, Fact No. 10), the August 24, 2007 IEP team essentially determined that Garcia needed special education after age 18.

In sum, LAUSD does has not shown that the OAH was in error when it concluded that Garcia remained entitled to special education services beyond his eighteenth birthday.

C. Reasonableness of OAH's Remedy

LAUSD contends that the remedy ordered by OAH is unreasonable under the standard set forth in *Board of Ed. of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176 (1982). *Rowley* held that a Free and Appropriate Public Education ("FAPE") requires that education services be reasonably calculated to enable the student to receive educational benefits. *Id.* at 207. OAH ordered LAUSD to provide Garcia (1) four weekly 1-hour sessions of one-to-one reading instruction (including one hour remedial); (2) four weekly 1-hour sessions of one-to-one math instruction (including one hour remedial); (3) four weekly 30 minute speech language therapy sessions (one session remedial); and (4) one hour per week of mental health counseling. AR OAH01080.

LAUSD argues that given the *Rowley* standard and economic realities, and given that Garcia is incarcerated, Garcia's services should not exceed the average per-pupil funding that LAUSD receives from State and federal sources. Mtn. at 25:7-11. However, LAUSD does not attack the evidence underlying the OAH's decision regarding the appropriate remedy, including the testimony of Dr. Flores, a neuropsychologist who evaluated Garcia and recommended an education program. AR OAH01077-OAH01079. In addition, LAUSD's Motion neither cites to any

authority for its proposed funding limits, nor proposes any other education plan that it would deem reasonable.

In sum, LAUSD has provided insufficient basis for the Court to overturn the OAH's findings regarding a reasonable FAPE for Garcia.

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EXHIBIT 5

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1991 CA A.B. 2773

CALIFORNIA 1991-92 REGULAR SESSION

ASSEMBLY BILL 2773

ASSEMBLY BILL NO. 2773
CHAPTER 1360

1991 Bill Text **CA** A.B. **2773**

VERSION: Enacted

VERSION-DATE: February 14, 1992

SYNOPSIS: An act to amend Sections 41851.2, 48911, 48912, 48915.5, 56026, 56100, 56171, 56321, 56341, 56344, 56364, 56500.1, 56500.2, 56501, 56502, 56505, and 56601 of, to add Sections 56041, 56138, 56337.5, 56345.1, 56500.3, 56504.5, 56505.1, 56508, and 56731 to, to add Article 2.6 (commencing with Section 56339) to Chapter 4 of Part 30 of, to repeal Section 48212 of, and to repeal and add Sections 56503 and 56507 of, the Education Code, relating to special education.

[Approved by Governor September 30, 1992. Filed with Secretary of State September 30, 1992.]

DIGEST:

LEGISLATIVE COUNSEL'S DIGEST

AB 2773, Farr. Special education.

(1) Existing law authorizes the governing board of any school district to exclude from attendance in regular school classes any pupil whose physical or mental disability causes his or her attendance to be inimical to the welfare of other pupils.

This bill would repeal this specific authority.

(2) Under existing law, before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs is required to be conducted, as specified. Whenever an assessment for the development or revision of the individualized education program is to be conducted, the parent of the pupil is required to be given a proposed plan within 15 days of the referral for assessment.

This bill would specify that this 15-day period does not include days between school sessions or terms or days of school vacation in excess of 5 schooldays, as specified.

(3) Existing law specifies the manner in which a pupil may be suspended.

This bill makes various technical changes to laws relating to the suspension of handicapped pupils and refers to these pupils as disabled rather than handicapped.

(4) Existing law relating to special education defines individuals with exceptional needs as handicapped children as specified in certain federal statutes.

This bill would revise this definition to instead refer to children with disabilities. The bill would also require the Superintendent of Public Instruction to conduct a pilot program to authorize school districts, special education local plan areas, and county offices to establish an alternative dispute resolution process prior to the initiation of due process hearings for parents and public education agencies.

The bill would specifically exempt specified state agencies from local reporting requirements for pupils eligible for special education.

The bill would entitle a pupil to special education who is assessed as being dyslexic or whose educational performance is adversely affected by a suspected or diagnosed attention deficit disorder or attention deficit hyperactivity disorder and who demonstrates a need for special education and related services, thereby imposing a state-mandated local program on local school districts.

(5) Existing law specifies the procedure for developing an individualized education program for pupils in special education.

This bill would revise the procedures governing the use of attorneys as participants in meetings to develop these programs and would make other various changes in the procedure specified to develop the programs.

Existing law requires an individualized education program team to produce a written statement of the individualized education program for each pupil with exceptional needs. The statement must address certain factors and the program must include certain provisions.

This bill, in addition, would require a statement of needed transition services, as specified, be included in the pupil's individualized education program beginning at age 16 years, or 14 years or younger when appropriate, and annually thereafter.

(6) Under existing law, a state-level hearing to resolve a dispute involving the special education needs of a pupil is required to be conducted by a person knowledgeable in administrative hearings under contract with the State Department of Education.

This bill would instead require the department to contract with a single, nonprofit organization or entity to conduct mediation conferences and due process hearings, as specified. The bill would also revise the procedure for the use of attorneys in a due process hearing.

(7) The bill would authorize the Superintendent of Public Instruction to collect and utilize social security numbers of individuals with exceptional needs as pupil identification numbers beginning in the 1993-94 fiscal year.

(8) This bill would incorporate additional changes in Section 48911 of the Education Code, proposed by AB 2632, to be operative only if AB 2632 and this bill are both chaptered and become effective January 1, 1993, and this bill is chaptered last.

(9) This bill would incorporate additional changes in Section 56026 of the Education Code, proposed by SB 807, to be operative only if SB 807 and this bill are both chaptered and become effective January 1, 1993, and this bill is chaptered last.

(10) This bill would incorporate additional changes in Section 56341 of the Education Code, proposed by AB 2267 or SB 2026, or both, to become operative only if AB 2267 or SB 2026, or both, and this bill are chaptered and become effective on or before January 1, 1993, and this bill is chaptered last.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

TEXT: The people of the State of California do enact as follows:

SECTION 1. Section 41851.2 of the Education Code is amended to read:

41851.2. No later than December 31, 1992, the Superintendent of Public Instruction shall develop guidelines for use by individualized education program teams during their annual reviews pursuant to Section 56343. The guidelines shall specify when special education transportation services, as defined in Section 41850, are required and shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 48212 of the Education Code is repealed.

SEC. 3. Section 48911 of the Education Code is amended to read:

48911. (a) The principal of the school, the principal's designee, or the superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for no more than five consecutive schooldays.

(b) Suspension by the principal, the principal's designee, or the superintendent shall be preceded by an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil and, whenever practicable, the teacher or supervisor or school employee who referred the pupil to the principal or the principal's designee or the superintendent of schools. At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense.

(c) A principal or the principal's designee or the superintendent of schools may suspend a pupil without affording the pupil an opportunity for a conference only if the principal or the principal's designee or the superintendent of schools

determines that an emergency situation exists. "Emergency situation," as used in this article, means a situation determined by the principal, the principal's designee, or the superintendent to constitute a clear and present danger to the lives, safety, or health of pupils or school personnel. If a pupil is suspended without a conference prior to suspension, both the parent and the pupil shall be notified of the pupil's right to a conference, and the pupil's right to return to school for the purpose of a conference. The conference shall be held within two schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference.

(d) At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension.

(e) A school employee shall report the suspension of the pupil, including the cause therefor, to the governing board of the school district or to the district superintendent in accordance with the regulations of the governing board.

(f) The parent or guardian of any pupil shall respond without delay to any request from school officials to attend a conference regarding his or her child's behavior.

No penalties may be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with school officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at the conference.

(g) In a case where expulsion from any school or suspension for the balance of the semester from continuation school is being processed by the governing board, the school district superintendent or other person designated by the superintendent in writing may extend the suspension until such time as the governing board has rendered a decision in the action. However, an extension may be granted only if the superintendent or the superintendent's designee has determined, following a meeting in which the pupil and the pupil's parent or guardian are invited to participate, that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process. If the pupil or the pupil's parent or guardian has requested a meeting to challenge the original suspension pursuant to Section 48914, the purpose of the meeting shall be to decide upon the extension of the suspension order under this section and may be held in conjunction with the initial meeting on the merits of the suspension.

(h) Notwithstanding subdivisions (a) and (g), an individual with exceptional needs may be suspended for up to, but not more than, 10 consecutive schooldays if he or she poses an immediate threat to the safety of himself or herself or others. In the case of a truly dangerous child, a suspension may exceed 10 consecutive schooldays, or the pupil's placement may be changed, or both, if either of the following occurs:

(1) The pupil's parent or guardian agrees.

(2) A court order so provides.

(i) For the purposes of this section, a "principal's designee" is any one or more administrators at the schoolsite specifically designated by the principal, in writing, to assist with disciplinary procedures.

In the event that there is not an administrator in addition to the principal at the schoolsite, a certificated person at the schoolsite may be specifically designated by the principal, in writing, as a "principal's designee," to assist with disciplinary procedures. The principal may designate only one such person at a time as the principal's primary designee for the school year.

An additional person meeting the requirements of this subdivision may be designated by the principal, in writing, to act for the purposes of this article when both the principal and the principal's primary designee are absent from the schoolsite. The name of the person, and the names of any person or persons designated as "principal's designee," shall be on file in the principal's office.

This section is not an exception to, nor does it place any limitation on, Section 48903.

SEC. 3.5. Section 48911 of the Education Code is amended to read:

48911. (a) The principal of the school, the principal's designee, or the superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for not more than five consecutive schooldays.

(b) Suspension by the principal, the principal's designee, or the superintendent shall be preceded by an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil and, whenever practicable, the teacher or supervisor or school employee who referred the pupil to the principal or the principal's designee or the superintendent of schools. At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense.

(c) A principal or the principal's designee or the superintendent of schools may suspend a pupil without affording the pupil an opportunity for a conference only if the principal or the principal's designee or the superintendent of schools determines that an emergency situation exists. "Emergency situation," as used in this article, means a situation determined by the principal, the principal's designee, or the superintendent to constitute a clear and present danger to the lives, safety, or health of pupils or school personnel. If a pupil is suspended without a conference prior to suspension, both the parent and the pupil shall be notified of the pupil's right to a conference, and the pupil's right to return to school

for the purpose of a conference. The conference shall be held within two schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference.

(d) At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Within one schoolday of the decision to suspend a pupil, a school employee shall mail a notice to the pupil's parent or guardian. The notice shall be provided, to the extent practicable, in the primary language and in a form that the parent or guardian can understand.

(e) A school employee shall report the suspension of the pupil, including the cause therefor, to the governing board of the school district or to the district superintendent in accordance with the regulations of the governing board.

(f) The parent or guardian of any pupil shall respond without delay to any request from school officials to attend a conference regarding his or her child's behavior.

No penalties may be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with school officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at that conference.

(g) In a case where expulsion from any school or suspension for the balance of the semester from continuation school is being processed by the governing board, the school district superintendent, or other person designated by the superintendent in writing, may extend the suspension until the governing board has rendered a decision in the action, except that the designee shall not be a person employed at the school where the pupil is enrolled. However, an extension may be granted only if both of the following conditions are met:

(1) Prior to the decision regarding the extension, the pupil and his or her parent or guardian are provided an opportunity to meet with the superintendent or the superintendent's designee regarding the extension.

(2) The superintendent or the superintendent's designee has determined, by clear and convincing evidence, that the presence of the pupil at the school or in a placement at another school would cause a continuing danger to persons or property or an ongoing threat of disrupting the instructional process.

(h) Notwithstanding subdivisions (a) and (g), an individual with exceptional needs may be suspended for up to, but not more than, 10 consecutive schooldays if he or she poses an immediate threat to the safety of himself or herself or others. In the case of a truly dangerous child, a suspension may exceed 10 consecutive schooldays, or the pupil's placement may be changed, or both, if either of the following occurs:

(1) The pupil's parent or guardian agrees.

(2) A court order so provides.

(i) For the purposes of this section, a "principal's designee" is any one or more administrators at the schoolsite specifically designated by the principal, in writing, to assist with disciplinary procedures.

If there is not an administrator in addition to the principal at the schoolsite, a certificated person at the schoolsite may be specifically designated by the principal, in writing, as a "principal's designee," to assist with disciplinary procedures. The principal may designate only one person at a time as the principal's primary designee for the school year.

An additional person meeting the requirements of this subdivision may be designated by the principal, in writing, to act for the purposes of this article when both the principal and the principal's primary designee are absent from the schoolsite. The name of the person, and the names of any person or persons designated as "principal's designee," shall be on file in the principal's office.

This section is not an exception to, nor does it place any limitation on, Section 48903.

SEC. 4. Section 48912 of the Education Code is amended to read:

48912. (a) The governing board may suspend a pupil from school for any of the acts enumerated in Section 48900 for any number of schooldays within the limits prescribed by Section 48903.

(b) Notwithstanding the provisions of Section 35145 of this code and Section 54950 of the Government Code, the governing board of a school district shall, unless a request has been made to the contrary, hold closed sessions if the board is considering the suspension of, disciplinary action against, or any other action against, except expulsion, any pupil, if a public hearing upon that question would lead to the giving out of information concerning a school pupil which would be in violation of Article 5 (commencing with Section 49073) of Chapter 6.5.

(c) Before calling a closed session to consider these matters, the governing board shall, in writing, by registered or certified mail or by personal service, notify the pupil and the pupil's parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board to call and hold a closed session. Unless the pupil or the pupil's parent or guardian shall, in writing, within 48 hours after receipt of the written notice of the board's intention, request that the hearing be held as a public meeting, the hearing to consider these matters shall be conducted by the governing board in closed session. In the event that a written request is served upon the clerk or secretary of the governing board, the meeting shall be public, except that any discussion at that meeting which may be in conflict with the right to privacy of any pupil other than the pupil requesting the public meeting, shall be in closed session.

SEC. 5. Section 48915.5 of the Education Code is amended to read:

48915.5. (a) In a matter involving a pupil with previously identified exceptional needs who is currently enrolled in a special education program, the governing board may order the pupil expelled pursuant to subdivisions (b) and (c) of Section 48915 only if all of the following conditions are met:

(1) An individualized education program team meeting is held and conducted pursuant to Article 3 (commencing with Section 56340) of Chapter 2 of Part 30.

(2) The team determines that the misconduct was not caused by, or was not a direct manifestation of, the pupil's identified disability.

(3) The team determines that the pupil had been appropriately placed at the time the misconduct occurred.

The term "pupil with previously identified exceptional needs," as used in this section, means a pupil who meets the requirements of Section 56026 and who, at the time the alleged misconduct occurred, was enrolled in a special education program, including enrollment in nonpublic schools pursuant to Section 56365 and state special schools.

(b) For purposes of this section, all applicable procedural safeguards prescribed by federal and state law and regulations apply to proceedings to expel pupils with previously identified exceptional needs, except that, notwithstanding Section 56321, subdivision (e) of Section 56506, or any other provision of law, parental consent is not required prior to conducting a preexpulsion educational assessment pursuant to subdivision (e), or as a condition of the final decision of the local board to expel.

(c) Each local educational agency, pursuant to the requirements of Section 56221, shall develop procedures and time lines governing expulsion procedures for individuals with exceptional needs.

(d) The parent of each pupil with previously identified exceptional needs has the right to participate in the individualized education program team meeting conducted pursuant to subdivision (a) preceding the commencement of expulsion proceedings, following the completion of a preexpulsion assessment pursuant to subdivision (e), through actual participation, representation, or a telephone conference call. The meeting shall be held at a time and place mutually convenient to the parent and local educational agency within the period, if any, of the pupil's preexpulsion suspension. A telephone conference call may be substituted for the meeting. Each parent shall be notified of his or her right to participate in the meeting at least 48 hours prior to the meeting. Unless a parent has requested a postponement, the meeting may be conducted without the parent's participation, if the notice required by this subdivision has been provided. The notice shall specify that the meeting may be held without the parent's participation, unless the parent requests a postponement for up to three additional schooldays pursuant to this subdivision. Each parent may request that the meeting be postponed for up to three additional schooldays. In the event that a postponement has been granted, the local educational agency may extend any suspension of a pupil for the period of postponement if the pupil continues to pose an immediate threat to the safety of himself, herself, or others and the local educational agency notifies the parent that the suspension will be continued during the postponement. However, the suspension shall not be extended beyond 10 consecutive schooldays unless agreed to by the parent, or by a court order. If a parent who has received proper notice of the meeting refuses to consent to an extension beyond 10 consecutive schooldays and chooses not to participate, the meeting may be conducted without the parent's participation.

(e) In determining whether a pupil should be expelled, the individualized education program team shall base its decision on the results of a preexpulsion educational assessment conducted in accordance with the guidelines of Section 104.35 of Title 34 of the Code of Federal Regulations, which shall include a review of the appropriateness of the pupil's placement at the time of the alleged misconduct, and a determination of the relationship, if any, between the pupil's behavior and his or her disability.

In addition to the preexpulsion educational assessment results, the individualized education program team shall also review and consider the pupil's health records and school discipline records. The parent, pursuant to Section 300.504 of Title 34 of the Code of Federal Regulations, is entitled to written notice of the local educational agency's intent to conduct a preexpulsion assessment. The parent shall make the pupil available for the assessment at a site designated by the local educational agency without delay. The parent's right to an independent assessment under Section 56329 applies despite the fact that the pupil has been referred for expulsion.

(f) If the individualized education program team determines that the alleged misconduct was not caused by, or a direct manifestation of, the pupil's disability, and if it is determined that the pupil was appropriately placed, the pupil shall be subject to the applicable disciplinary actions and procedures prescribed under this article.

(g) The parent of each pupil with previously identified exceptional needs has the right to a due process hearing conducted pursuant to Section 1415 of Title 20 of the United States Code if the parent disagrees with the decision of the individualized education program team made pursuant to subdivision (f), or if the parent disagrees with the decision to rely upon information obtained, or proposed to be obtained, pursuant to subdivision (e).

(h) No expulsion hearing shall be conducted for an individual with exceptional needs until all of the following have occurred:

(1) A preexpulsion assessment is conducted.

(2) The individualized education program team meets pursuant to subdivision (a).

(3) Due process hearings and appeals, if initiated pursuant to Section 1415 of Title 20 of the United States Code, are completed.

(i) Pursuant to subdivision (a) of Section 48918, the statutory times prescribed for expulsion proceedings for individuals with exceptional needs shall commence after the completion of paragraphs (1), (2), and (3) in subdivision (h).

(j) If an individual with exceptional needs is excluded from schoolbus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent.

SEC. 6. Section 56026 of the Education Code, as amended by Section 2 of Chapter 223 of the Statutes of 1991, is amended to read:

56026. "Individuals with exceptional needs" means those persons who satisfy all the following:

(a) Identified by an individualized education program team as having at least one of the disabilities defined for "children with disabilities," as specified in paragraph (1) of subsection (a) of Section 1401 of Title 20 of the United States Code.

(b) Their impairment, as described by subdivision (a), requires instruction, services, or both which cannot be provided with modification of the regular school program.

(c) Come within one of the following age categories:

(1) Younger than three years of age and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

(2) Between the ages of three to five years, inclusive, and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education; or between the ages of three and five years, inclusive, and identified by the district, special education local plan area, or county office pursuant to Section 56441.11.

(3) Between the ages of five and 18 years, inclusive.

(4) Between the ages of 19 and 21 years, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards prescribed pursuant to Sections 51215 and 51216.

(A) Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the then-current fiscal year, including an extended school year program for individuals with exceptional needs established pursuant to regulations of the State Board of Education.

(B) Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year if he or she becomes 22 years of age between July 1 to September 30, inclusive, of that new fiscal year. However, the person may complete an extended year program after July 1 if it is included in that person's individualized education program. Also, if a person who is in a year-round school program and is completing the requirements for obtaining a diploma in a term that extends into the new fiscal year, then the person may complete that term.

(C) Any person who becomes 22 years of age during the month of October, November, or December while participating in a program under this part shall be terminated from the program on December 31 of the then-current fiscal year, or at the end of the current fiscal year if the pupil is completing requirements for obtaining a diploma.

(D) No school district, special education local plan area, or county office of education may develop an individualized education program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives.

(d) Meet eligibility criteria set forth in regulations adopted by the board, including, but not limited to, those adopted pursuant to Article 2.5 (commencing with Section 56333) of Chapter 4.

(e) Unless disabled within the meaning of subdivisions (a) to (d), inclusive, pupils whose educational needs are due primarily to unfamiliarity with the English language; temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors are not individuals with exceptional needs.

(f) This section shall remain in effect only until California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five years, inclusive, pursuant to Section 56448, and as of that date is repealed.

SEC. 6.5. Section 56026 of the Education Code, as amended by Section 2 of Chapter 223 of the Statutes of 1991, is amended to read:

56026. "Individuals with exceptional needs" means those persons who satisfy all the following:

(a) Identified by an individualized education program team as having at least one of the disabilities defined for "children with disabilities," as specified in paragraph (1) of subsection (a) of Section 1401 of Title 20 of the United States Code.

(b) Their impairment, as described by subdivision (a), requires instruction, services, or both which cannot be provided with modification of the regular school program.

(c) Come within one of the following age categories:

(1) Younger than three years of age and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

(2) Between the ages of three to five years, inclusive, and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education; or between the ages of three and five years, inclusive, and identified by the district, special education local plan area, or county office pursuant to Section 56441.11.

(3) Between the ages of five and 18 years, inclusive.

(4) Between the ages of 19 and 21 years, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards prescribed pursuant to Sections 51215 and 51216.

(A) Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year, including any extended school year program for individuals with exceptional needs established pursuant to regulations adopted by the State Board of Education, pursuant to Article 1 (commencing with Section 56100) of Chapter 2.

(B) Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age between July 1 to September 30, inclusive, of that new fiscal year. However, the person may complete an extended year program after July 1 if it is included in that person's individualized education program. Also, if a person is in a year-round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term.

(C) Any person who becomes 22 years of age during the month of October, November, or December while participating in a program under this act shall be terminated from the program on December 31 of the current fiscal year, unless the person would otherwise complete his or her individualized education program at the end of the current fiscal year or unless the person has not had an individual transition plan incorporated into his or her individualized education program and implemented from the age of 20 years, in which case the person shall be terminated from the program at the end of the fiscal year.

(D) No school district, special education local plan area, or county office of education may develop an individualized education program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives.

(d) Meet eligibility criteria set forth in regulations adopted by the board, including, but not limited to, those adopted pursuant to Article 2.5 (commencing with Section 56333) of Chapter 4.

(e) Unless disabled within the meaning of subdivisions (a) to (d), inclusive, pupils whose educational needs are due primarily to unfamiliarity with the English language; temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors are not individuals with exceptional needs.

(f) This section shall remain in effect only until California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five years, inclusive, pursuant to Section 56448, and as of that date is repealed.

SEC. 7. Section 56026 of the Education Code, as amended by Section 3 of Chapter 223 of the Statutes of 1991, is amended to read:

56026. "Individuals with exceptional needs" means those persons who satisfy all the following:

(a) Identified by an individualized education program team as having at least one of the disabilities defined for "children with disabilities," as specified in paragraph (1) of subsection (a) of Section 1401 of Title 20 of the United States Code.

(b) Their impairment, as described by subdivision (a), requires instruction, services, or both which cannot be provided with modification of the regular school program.

(c) Come within one of the following age categories:

(1) Younger than three years of age and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

(2) Between the ages of three years and four years and nine months, inclusive, and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

(3) Between the ages of four years and nine months and 18 years, inclusive.

(4) Between the ages of 19 and 21 years, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards prescribed pursuant to Sections 51215 and 51216.

(A) Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the then-current fiscal year, including an extended school year program for individuals with exceptional needs established pursuant to regulations of the State Board of Education.

(B) Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year if he or she becomes 22 years of age between July 1 to September 30, inclusive, of that new fiscal year. However, the person may complete an extended year program after July 1 if it is included in that person's individualized education program. Also, if a person who is in a year-round school program and is completing the requirements for obtaining a diploma in a term which extends into the new fiscal year, then the person may complete that term.

(C) Any person who becomes 22 years of age during the month of October, November, or December while participating in a program under this part shall be terminated from the program on December 31 of the then-current fiscal year, or at the end of the current fiscal year if the pupil is completing requirements for obtaining a diploma.

(D) No school district, special education local plan area, or county office of education may develop an individualized education program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives.

(d) Meet eligibility criteria set forth in regulations adopted by the board, including, but not limited to, those adopted pursuant to Article 2.5 (commencing with Section 56333) of Chapter 4.

(e) Unless disabled within the meaning of subdivisions (a) to (d), inclusive, pupils whose educational needs are due primarily to unfamiliarity with the English language; temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors are not individuals with exceptional needs.

(f) This section shall become operative on the date that California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five years, inclusive, pursuant to Section 56448.

SEC. 7.5. Section 56026 of the Education Code, as amended by Section 3 of Chapter 223 of the Statutes of 1991, is amended to read:

56026. "Individuals with exceptional needs" means those persons who satisfy all the following:

(a) Identified by an individualized education program team as having at least one of the disabilities defined for "children with disabilities," as specified in paragraph (1) of subsection (a) of Section 1401 of Title 20 of the United States Code.

(b) Their impairment, as described by subdivision (a), requires instruction, services, or both which cannot be provided with modification of the regular school program.

(c) Come within one of the following age categories:

(1) Younger than three years of age and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

(2) Between the ages of three years and four years and nine months, inclusive, and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

(3) Between the ages of four years and nine months and 18 years, inclusive.

(4) Between the ages of 19 and 21 years, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards prescribed pursuant to Sections 51215 and 51216.

(A) Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year, including an extended school year program for individuals with exceptional needs established pursuant to regulations adopted by the State Board of Education, pursuant to Article 1 (commencing with Section 56100) of Chapter 2.

(B) Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year if he or she becomes 22 years of age between July 1 to September 30, inclusive, of that new fiscal year. However, the person may complete an extended year program after July 1 if it is included in that person's individualized education program. Also, if a person is in a year-round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term.

(C) Any person who becomes 22 years of age during the month of October, November, or December while participating in a program under this act shall be terminated from the program on December 31 of the current fiscal year, unless the person would otherwise complete his or her individualized education program at the end of the current fiscal year or unless the person has not had an individual transition plan incorporated into his or her individual education program and implemented from the age of 20 years, in which case the person shall be terminated from the program at the end of the fiscal year.

(D) No school district, special education local plan area, or county office of education may develop an individualized

education program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives.

(d) Meet eligibility criteria set forth in regulations adopted by the board, including, but not limited to, those adopted pursuant to Article 2.5 (commencing with Section 56333) of Chapter 4.

(e) Unless disabled within the meaning of subdivisions (a) to (d), inclusive, pupils whose educational needs are due primarily to unfamiliarity with the English language; temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors are not individuals with exceptional needs.

(f) This section shall become operative on the date that California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five years, inclusive, pursuant to Section 56448.

SEC. 8. Section 56041 is added to the Education Code, to read:

56041. 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.

SEC. 9. Section 56100 of the Education Code is amended to read:

56100. The State Board of Education shall do all of the following:

(a) Adopt rules and regulations necessary for the efficient administration of this part.

(b) Adopt criteria and procedures for the review and approval by the board of local plans. Local plans may be approved for up to three years.

(c) Adopt size and scope standards for use by districts, special education local plan areas, and county offices, pursuant to subdivision (a) of Section 56170.

(d) Provide review, upon petition, to any district, special education local plan area, or county office that appeals a decision made by the department which affects its providing services under this part except a decision made pursuant to Chapter 5 (commencing with Section 56500).

(e) Review and approve a program evaluation plan for special education programs provided by this part in accordance with Chapter 6 (commencing with Section 56600). This plan may be approved for up to three years.

(f) Recommend to the Commission on Teacher Credentialing the adoption of standards for the certification of professional personnel for special education programs conducted pursuant to this part.

(g) Adopt regulations to provide specific procedural criteria and guidelines for the identification of pupils as individuals with exceptional needs.

(h) Adopt guidelines of reasonable pupil progress and achievement for individuals with exceptional needs. The guidelines shall be developed to aid teachers and parents in assessing an individual pupil's education program and the appropriateness of the special education services.

(i) In accordance with the requirements of federal law, adopt regulations for all educational programs for individuals with exceptional needs, including programs administered by other state or local agencies.

(j) Adopt uniform rules and regulations relating to parental due process rights in the area of special education.

(k) Adopt rules and regulations regarding the ownership and transfer of materials and equipment, including facilities, related to transfer of programs, reorganization, or restructuring of special education local plan areas.

SEC. 10. Section 56138 is added to the Education Code, to read:

56138. (a) The superintendent shall conduct a pilot program for the 1993-94, 1994-95, and 1995-96 fiscal years to authorize districts, special education local plan areas, and county offices to establish an alternative dispute resolution process, the purpose of which will be to increase opportunities for parents and public education agencies to reach agreements regarding a free and appropriate public education for individuals with exceptional needs, prior to the initiation of due process hearings pursuant to Section 56502. The pilot program shall include participants from urban,

suburban, and rural areas of the state. The pilot program shall not abrogate any right provided to individuals with exceptional needs and their parents or guardians under the federal Individuals with Disabilities Act (20 U.S.C. Sec. 1400 and following).

(b) In developing the request for proposals for the pilot program, the superintendent shall consult with the Advisory Commission on Special Education and with other appropriate groups, parents, and persons involved in the education of individuals with exceptional needs. The pilot program shall include, but not be limited to, the following:

(1) Development of the capability for a district, special education local plan area, or county office, to acquire an ombudsperson who shall receive issues or grievances submitted by parents, individuals, public agencies, or organizations and bring the issues to the attention of the public education agency, provide advice regarding available resources and options, propose a resolution, or propose a systemic change related to the issues.

(2) Development of the capability for a district, special education local plan area, or county office, to acquire a mediator who shall provide a structured process that allows parents, pupils, and public education agencies a voluntary method to reach a settlement of their differences that results in an agreement which describes the future actions of both parties.

(3) Development of the capability for districts, special education local plan areas, or county offices, to acquire a placement specialist who shall assist the parent, pupil, when appropriate, and public education agency to identify and locate an appropriate educational placement or service and assist throughout the individualized education program process.

(c) The superintendent shall evaluate the effectiveness of the alternative dispute resolution process. The evaluation shall include, but not be limited to, reduction in the number of state due process hearings, cost effectiveness, consumer satisfaction, efficiency, and other issues specific to the alternative dispute resolution process. Following the evaluation, the superintendent shall submit a report of findings and recommendations to the Legislature by December 1, 1996.

(d) The pilot program shall be funded pursuant to Schedule (d) of Item 6110-161-890 of Section 2.00 of the Budget Act.

SEC. 11. Section 56171 of the Education Code is amended to read:

56171. In developing a local plan under Section 56170, each district shall do all of the following:

(a) Involve special and regular teachers selected by their peers and parents selected by their peers in an active role.

(b) Cooperate with the county office and other school districts in the geographic areas in planning its option under Section 56170 and, commencing with fiscal year 1982-83 and each fiscal year thereafter, notify the department, impacted special education local plan areas, and participating county offices of its intent to elect an alternative option from those specified in Section 56170, at least one year prior to the proposed effective date of the implementation of the alternative plan.

(c) Cooperate with the county office to assure that the plan is compatible with other local plans in the county and any county plan of a contiguous county.

(d) Join with the county office in countywide planning pursuant to subdivision (a) of Section 56140.

(e) Submit to the county office for review any plan developed under subdivision (a) or (b) of Section 56170.

SEC. 12. Section 56321 of the Education Code is amended to read:

56321. (a) Whenever an assessment for the development or revision of the individualized education program is to be conducted, the parent of the pupil shall be given, in writing, a proposed assessment plan within 15 days of the referral for assessment not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five schooldays from the date of receipt of the referral, unless the parent agrees, in writing, to an extension. However, in any event, the assessment plan shall be developed within 10 days after the commencement of the subsequent regular school year or the pupil's regular school term as determined by each district's school calendar for each pupil for whom a referral has been made 10 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 15-day time shall recommence on the date that the pupil's regular schooldays reconvene. A copy of the notice of parent rights shall be attached to the assessment plan. A written explanation of all the procedural safeguards under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following), and the rights and procedures contained in Chapter 5 (commencing with Section 56500), shall be included in the notice of parent rights, including information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; and the type of representative who may be invited to participate.

(b) The proposed assessment plan given to parents shall meet all the following requirements:

(1) Be in language easily understood by the general public.

(2) Be provided in the primary language of the parent or other mode of communication used by the parent, unless to do so is clearly not feasible.

(3) Explain the types of assessments to be conducted.

(4) State that no individualized education program will result from the assessment without the consent of the parent.

(c) No assessment shall be conducted unless the written consent of the parent is obtained prior to the assessment except pursuant to subdivision (e) of Section 56506. The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. Assessment may begin immediately upon receipt of the consent.

SEC. 13. Section 56337.5 is added to the Education Code, to read:

56337.5. (a) A pupil who is assessed as being dyslexic and meets eligibility criteria specified in Section 56337 and subdivision (j) of Section 3030 of Title 5 of the California Code of Regulations for the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following) category of specific learning disabilities is entitled to special education and related services.

(b) If a pupil who exhibits the characteristics of dyslexia or another related reading dysfunction is not found to be eligible for special education and related services pursuant to subdivision (a), the pupil's instructional program shall be provided in the regular education program.

(c) It is the intent of the Legislature that the program guidelines developed pursuant to Section 2 of Chapter 1501 of the Statutes of 1990, for specific learning disabilities, including dyslexia and other related disorders, be available for use by teachers and parents in order for them to have knowledge of the strategies that can be utilized with pupils for the remediation of the various types of specific learning disabilities.

SEC. 14. Article 2.6 (commencing with Section 56339) is added to Chapter 4 of Part 30 of the Education Code, to read:

Article 2.6. Attention Deficit and Hyperactivity Disorders

56339. (a) A pupil whose educational performance is adversely affected by a suspected or diagnosed attention deficit disorder or attention deficit hyperactivity disorder and demonstrates a need for special education and related services by meeting eligibility criteria specified in subdivision (f) or (i) of Section 3030 of Title 5 of the California Code of Regulations or Section 56337 and subdivision (j) of Section 3030 of Title 5 of the California Code of Regulations for the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following) categories of "other health impairments," "serious emotional disturbance," or "specific learning disabilities," is entitled to special education and related services.

(b) If a pupil with an attention deficit disorder or attention deficit hyperactivity disorder is not found to be eligible for special education and related services pursuant to subdivision (a), the pupil's instructional program shall be provided in the regular education program.

(c) It is the intent of the Legislature that local educational agencies promote coordination between special education and regular education programs to ensure that all pupils, including those with attention deficit disorders or attention deficit hyperactivity disorders, receive appropriate instructional interventions.

(d) It is further the intent of the Legislature that regular education teachers and other personnel be trained to develop an awareness about attention deficit disorders and attention deficit hyperactivity disorders and the manifestations of those disorders, and the adaptations that can be implemented in regular education programs to address the instructional needs of pupils having these disorders.

SEC. 15. Section 56341 of the Education Code is amended to read:

56341. (a) Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs, shall be conducted by an individualized education program team.

(b) The individualized education program team shall include all of the following:

(1) A representative other than the pupil's teacher designated by administration who may be an administrator, program specialist, or other specialist who is knowledgeable of program options appropriate for the pupil and who is qualified to provide, or supervise the provision of, special education.

(2) The pupil's present teacher. If the pupil does not presently have a teacher, this representative shall be the teacher with the most recent and complete knowledge of the pupil who has also observed the pupil's educational performance in an appropriate setting. If no such teacher is available, this representative shall be a regular classroom teacher referring the pupil, or a special education teacher qualified to teach a pupil of his or her age.

(3) One or both of the pupil's parents, a representative selected by the parent, or both, pursuant to Public Law 94-142.

(c) When appropriate, the team shall also include the following persons:

(1) The individual with exceptional needs.

(2) Other individuals, at the discretion of the parent, district, special education local plan area, or county office who possess expertise or knowledge necessary for the development of the individualized education program.

(d) If the team is developing, reviewing, or revising the individualized education program of an individual with exceptional needs who has been assessed for the purpose of that individualized education program, the district, special education local plan area, or county office shall ensure that a person is present at the meeting who has conducted an assessment of the pupil or who is knowledgeable about the assessment procedures used to assess the pupil and is familiar with the results of the assessment. The person shall be qualified to interpret the results if the results or recommendations, based on the assessment, are significant to the development of the pupil's individualized education program and subsequent placement.

(e) For pupils with suspected learning disabilities, at least one member of the individualized education program team, other than the pupil's regular teacher, shall be a person who has observed the pupil's educational performance in an appropriate setting. If the child is younger than five years or is not enrolled in a school, a team member shall observe the child in an environment appropriate for a child of that age.

(f) The parent shall have the right to present information to the individualized education program team in person or through a representative and the right to participate in meetings relating to eligibility for special education and related services, recommendations, and program planning.

(g) It is the intent of the Legislature that the individualized education program team meetings be nonadversarial and convened solely for the purpose of making educational decisions for the good of the individual with exceptional needs.

SEC. 15.3. Section 56341 of the Education Code is amended to read:

56341. (a) Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs, shall be conducted by an individualized education program team.

(b) The individualized education program team shall include all of the following:

(1) A representative other than the pupil's teacher designated by administration who may be an administrator, program specialist, or other specialist who is knowledgeable of program options appropriate for the pupil and who is qualified to provide, or supervise the provision of, special education.

(2) The pupil's present teacher. If the pupil does not presently have a teacher, this representative shall be the teacher with the most recent and complete knowledge of the pupil who has also observed the pupil's educational performance in an appropriate setting. If no teacher is available, this representative shall be a regular classroom teacher referring the pupil, or a special education teacher qualified to teach a pupil of his or her age.

(3) One or both of the pupil's parents, a representative selected by the parent, or both, pursuant to Public Law 94-142.

(c) When appropriate, the team shall also include the following persons:

(1) The individual with exceptional needs.

(2) Other individuals, at the discretion of the parent, district, special education local plan area, or county office who possess expertise or knowledge necessary for the development of the individualized education program.

(d) If the team is developing, reviewing, or revising the individualized education program of an individual with exceptional needs who has been assessed for the purpose of that individualized education program, the district, special education local plan area, or county office, shall ensure that a person is present at the meeting who has conducted an assessment of the pupil or who is knowledgeable about the assessment procedures used to assess the pupil and is familiar with the results of the assessment. The person shall be qualified to interpret the results if the results or recommendations, based on the assessment, are significant to the development of the pupil's individualized education program and subsequent placement.

(e) For pupils with suspected learning disabilities, at least one member of the individualized education program team, other than the pupil's regular teacher, shall be a person who has observed the pupil's educational performance in an appropriate setting. If the child is younger than five years or is not enrolled in a school, a team member shall observe the child in an environment appropriate for a child of that age.

(f) The parent shall have the right to present information to the individualized education program team in person or through a representative and the right to participate in meetings relating to eligibility for special education and related services, recommendations, and program planning.

(g) (1) Notwithstanding Section 632 of the Penal Code, the parent, district, special education local plan area, or county office shall have the right to electronically record the proceedings of individualized education program meetings on an audio tape recorder. The parent, district, special education local plan area, or county office shall notify the members of the individualized education program team of their intent to record a meeting at least 24 hours prior to the meeting. If the district, special education local plan area, or county office initiates the notice of intent to audio tape record a meeting and the parent objects or refuses to attend the meeting because it will be tape recorded, then the meeting shall not be recorded on an audio tape recorder.

(2) The Legislature hereby finds as follows:

(A) Under federal law, audio tape recordings made by a district, special education local plan area, or county office are subject to the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g).

(B) Parents have the right, pursuant to Sections 99.10 to 99.22, inclusive, of Title 34 of the Code of Federal Regulations, to (i) inspect and review the tape recordings, (ii) request that the tape recordings be amended if the parent believes that they contain information that is inaccurate, misleading, or in violation of the rights of privacy or other rights of the individual with exceptional needs, and (iii) challenge, in a hearing, information that the parent believes is inaccurate, misleading, or in violation of individual's rights of privacy or other rights.

(h) It is the intent of the Legislature that the individualized education program team meetings be nonadversarial and convened solely for the purpose of making educational decisions for the good of the individual with exceptional needs.

SEC. 15.5. Section 56341 of the Education Code is amended to read:

56341. (a) Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs, shall be conducted by an individualized education program team.

(b) The individualized education program team shall include all of the following:

(1) A representative other than the pupil's teacher designated by administration who may be an administrator, a qualified teacher of English learners, a program specialist, or other specialist who is knowledgeable of program options appropriate for the pupil and who is qualified to provide, or supervise the provision of, special education.

(2) The pupil's present teacher. If the pupil does not presently have a teacher, this representative shall be the teacher with the most recent and complete knowledge of the pupil who has also observed the pupil's educational performance in an appropriate setting. If that teacher is unavailable, this representative shall be a regular classroom teacher referring the pupil, or a special education teacher qualified to teach a pupil of his or her age.

(3) One or both of the pupil's parents, a representative selected by the parent, or both, pursuant to Public Law 94-142.

(c) When appropriate, the team shall also include the following persons:

(1) The individual with exceptional needs.

(2) Other individuals, at the discretion of the parent, district, special education local plan area, or county office who possess expertise or knowledge necessary for the development of the individualized education program.

(d) If the team is developing, reviewing, or revising the individualized education program of an individual with exceptional needs who has been assessed for the purpose of that individualized education program, the district, special education local plan area, or county office, shall ensure that a person is present at the meeting who has conducted an assessment of the pupil or who is knowledgeable about the assessment procedures used to assess the pupil and is familiar with the results of the assessment. The person shall be qualified to interpret the results if the results or recommendations, based on the assessment, are significant to the development of the pupil's individualized education program and subsequent placement.

(e) For pupils with suspected learning disabilities, at least one member of the individualized education program team, other than the pupil's regular teacher, shall be a person who has observed the pupil's educational performance in an appropriate setting. If the child is younger than five years or is not enrolled in a school, a team member shall observe the child in an environment appropriate for a child of that age.

(f) The parent shall have the right to present information to the individualized education program team in person or through a representative and the right to participate in meetings relating to eligibility for special education and related services, recommendations, and program planning.

(g) It is the intent of the Legislature that the individualized education program team meetings be nonadversarial and convened solely for the purpose of making educational decisions for the good of the individual with exceptional needs.

SEC. 15.7. Section 56341 of the Education Code is amended to read:

56341. (a) Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs, shall be conducted by an individualized education program team.

(b) The individualized education program team shall include all of the following:

(1) A representative other than the pupil's teacher designated by administration who may be an administrator, a qualified teacher of English learners, a program specialist, or other specialist who is knowledgeable of program options appropriate for the pupil and who is qualified to provide, or supervise the provision of, special education.

(2) The pupil's present teacher. If the pupil does not presently have a teacher, this representative shall be the teacher with the most recent and complete knowledge of the pupil who has also observed the pupil's educational performance in an appropriate setting. If that teacher is unavailable, this representative shall be a regular classroom teacher referring the pupil, or a special education teacher qualified to teach a pupil of his or her age.

(3) One or both of the pupil's parents, a representative selected by the parent, or both, pursuant to Public Law 94-142.

(c) When appropriate, the team shall also include the following persons:

(1) The individual with exceptional needs.

(2) Other individuals, at the discretion of the parent, district, special education local plan area, or county office who possess expertise or knowledge necessary for the development of the individualized education program.

(d) If the team is developing, reviewing, or revising the individualized education program of an individual with exceptional needs who has been assessed for the purpose of that individualized education program, the district, special education local plan area, or county office, shall ensure that a person is present at the meeting who has conducted an assessment of the pupil or who is knowledgeable about the assessment procedures used to assess the pupil and is familiar with the results of the assessment. The person shall be qualified to interpret the results if the results or

recommendations, based on the assessment, are significant to the development of the pupil's individualized education program and subsequent placement.

(e) For pupils with suspected learning disabilities, at least one member of the individualized education program team, other than the pupil's regular teacher, shall be a person who has observed the pupil's educational performance in an appropriate setting. If the child is younger than five years or is not enrolled in a school, a team member shall observe the child in an environment appropriate for a child of that age.

(f) The parent shall have the right to present information to the individualized education program team in person or through a representative and the right to participate in meetings relating to eligibility for special education and related services, recommendations, and program planning.

(g) (1) Notwithstanding Section 632 of the Penal Code, the parent, district, special education local plan area, or county office shall have the right to electronically record the proceedings of individualized education program meetings on an audio tape recorder. The parent, district, special education local plan area, or county office shall notify the members of the individualized education program team of their intent to record a meeting at least 24 hours prior to the meeting. If the district, special education local plan area, or county office initiates the notice of intent to audio tape record a meeting and the parent objects or refuses to attend the meeting because it will be tape recorded, then the meeting shall not be recorded on an audio tape recorder.

(2) The Legislature hereby finds as follows:

(A) Under federal law, audio tape recordings made by a district, special education local plan area, or county office are subject to the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g).

(B) Parents have the right, pursuant to Sections 99.10 to 99.22, inclusive, of Title 34 of the Code of Federal Regulations, to (i) inspect and review the tape recordings, (ii) request that the tape recordings be amended if the parent believes that they contain information that is inaccurate, misleading, or in violation of the rights of privacy or other rights of the individual with exceptional needs, and (iii) challenge, in a hearing, information that the parent believes is inaccurate, misleading, or in violation of the individual's rights of privacy or other rights.

(h) It is the intent of the Legislature that the individualized education program team meetings be nonadversarial and convened solely for the purpose of making educational decisions for the good of the individual with exceptional needs.

SEC. 16. Section 56344 of the Education Code is amended to read:

56344. An individualized education program required as a result of an assessment of a pupil shall be developed within a total time not to exceed 50 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension. However, such an individualized education program shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each district's school calendar for each pupil for whom a referral has been made 20 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 50-day time shall recommence on the date that pupil schooldays reconvene.

SEC. 17. Section 56345.1 is added to the Education Code, to read:

56345.1. A statement of needed transition services, pursuant to paragraphs (19) and (20) of subsection (a) of Section 1401 of Title 20 of the United States Code, shall be included in the pupil's individualized education program beginning not later than age 16 years and annually thereafter, or when determined appropriate for the pupil, beginning at age 14 years or younger. In addition, the program shall include, when appropriate, a statement of the interagency responsibilities or linkages, or both, before the pupil leaves the school setting.

SEC. 18. Section 56364 of the Education Code is amended to read:

56364. Special classes and centers that enroll pupils with similar and more intensive educational needs shall be available. The classes and centers shall enroll the pupils when the nature or severity of the disability precludes their participation in the regular school program for a majority of a schoolday. Special classes and centers and other removal of individuals with exceptional needs from the regular education environment shall occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

In providing or arranging for the provision of activities, each public agency shall ensure that each individual with exceptional needs participates in those activities with nondisabled pupils to the maximum extent appropriate to the needs of the individual with exceptional needs, including nonacademic and extracurricular services and activities. Special classes and centers shall meet standards adopted by the board.

SEC. 19. Section 56500.1 of the Education Code is amended to read:

56500.1. (a) All procedural safeguards under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following) shall be established and maintained by each noneducational and educational agency that provides education, related services, or both, to children who are individuals with exceptional needs.

(b) At each individualized education program meeting, the public education agency responsible for convening the meeting shall inform the parent and pupil of the federal and state procedural safeguards that were provided in the notice of parent rights pursuant to Section 56321.

SEC. 20. Section 56500.2 of the Education Code is amended to read:

56500.2. An expeditious and effective process shall be implemented for the resolution of complaints regarding any alleged violations of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following).

SEC. 21. Section 56500.3 is added to the Education Code, to read:

56500.3. (a) It is the intent of the Legislature that parties to special education disputes be encouraged to seek resolution through mediation prior to filing a request for a due process hearing. It is also the intent of the Legislature that these voluntary prehearing request mediation conferences be an informal process conducted in a nonadversarial atmosphere to resolve issues relating to the identification, assessment, or educational placement of the child, or the provision of a free, appropriate public education to the child, to the satisfaction of both parties. Therefore, attorneys or other independent contractors used to provide legal advocacy services shall not attend or otherwise participate in the prehearing request mediation conferences.

(b) Nothing in this part shall preclude the parent or the public education agency from being accompanied and advised by nonattorney representatives in the mediation conferences and consulting with an attorney prior to or following a mediation conference. For purposes of this section, "attorney" means an active, practicing member of the State Bar of California or another independent contractor used to provide legal advocacy services, but does not mean a parent of the pupil who is also an attorney.

(c) Requesting or participating in a mediation conference is not a prerequisite to requesting a due process hearing.

(d) All requests for a mediation conference shall be filed with the superintendent. The party initiating a mediation conference by filing a written request with the superintendent shall provide the other party to the mediation with a copy of the request at the same time the request is filed with the superintendent. The mediation conference shall be conducted by a person knowledgeable in the process of reconciling differences in a nonadversarial manner and under contract with the department pursuant to Section 56504.5. The mediator shall be knowledgeable in the laws and regulations governing special education.

(e) The prehearing mediation conference shall be scheduled within 15 days of receipt by the superintendent of the request for mediation. The mediation conference shall be completed within 30 days after receipt of the request for mediation unless both parties to the prehearing mediation conference agree to extend the time for completing the mediation.

(f) Based upon the mediation conference, the district superintendent, the county superintendent, or the director of the public education agency, or his or her designee, may resolve the issue or issues. However, this resolution shall not conflict with state or federal law and shall be to the satisfaction of both parties. A copy of the written resolution shall be mailed to each party within 10 days following the mediation conference.

(g) If the mediation conference fails to resolve the issues to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a state-level hearing pursuant to Section 56505. The mediator may assist the parties in specifying any unresolved issues to be included in the hearing request.

(h) Any mediation conference held pursuant to this section shall be held at a time and place reasonably convenient to the parent and pupil.

(i) The mediation conference shall be conducted in accordance with regulations adopted by the board.

(j) Notwithstanding any procedure set forth in this chapter, a public education agency and a parent may, if the party initiating the mediation conference so chooses, meet informally to resolve any issue or issues to the satisfaction of both parties prior to the mediation conference.

(k) The procedures and rights contained in this section shall be included in the notice of parent rights attached to the pupil's assessment plan pursuant to Section 56321.

SEC. 22. Section 56501 of the Education Code is amended to read:

56501. (a) The due process hearing procedures prescribed by this chapter extend to the parent, as defined in Section 56028, a pupil who has been emancipated, and a pupil who is a ward or dependent of the court or for whom no parent can be identified or located when the hearing officer determines that either the local educational agency has failed to appoint a surrogate parent as required by Section 7579.5 of the Government Code or the surrogate parent appointed by the local educational agency does not meet the criteria set forth in subdivision (e) of Section 7579.5 of the Government Code, and the public education agency involved in any decisions regarding a pupil. The appointment of a surrogate parent after a hearing has been requested by the pupil shall not be cause for dismissal of the hearing request. The parent and the public education agency involved may initiate the due process hearing procedures prescribed by this chapter under any of the following circumstances:

(1) There is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child.

(2) There is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child.

(3) The parent refuses to consent to an assessment of the child.

(b) The due process hearing rights prescribed by this chapter include, but are not limited to, all the following:

(1) The right to a mediation conference pursuant to Section 56500.3.

(2) The right to request a mediation conference at any point during the hearing process. A mediation conference shall be scheduled if both parties to the hearing agree to mediate and are willing to extend the 45-day limit for issuing a hearing decision for a period equal to the length of the mediation process. This limitation on the period of extension is not applicable if the parties agree to take the hearing off calendar. Notwithstanding subdivision (a) of Section 56500.3, attorneys and advocates are permitted to participate in mediation conferences scheduled after the filing of a request for due process hearing.

(3) The right to examine pupil records pursuant to Section 56504. This provision shall not be construed to abrogate the rights prescribed by Chapter 6.5 (commencing with Section 49060) of Part 27.

(4) The right to a fair and impartial administrative hearing at the state level, before a person knowledgeable in the laws governing special education and administrative hearings, under contract with the department, pursuant to Section 56505.

(c) In addition to the rights prescribed by subdivision (b), the parent has the following rights:

(1) The right to have the pupil who is the subject of the state hearing present at the hearing.

(2) The right to open the state hearing to the public.

SEC. 23. Section 56502 of the Education Code is amended to read:

56502. (a) All requests for a due process hearing shall be filed with the superintendent. The party initiating a due process hearing by filing a written request with the superintendent shall provide the other party to the hearing with a copy of the request at the same time as the request is filed with the superintendent. Within three days following receipt by the public education agency of a copy of the request, the public education agency shall advise the parent of free or low-cost legal services and other relevant services available within the geographical area. The superintendent shall take steps to ensure that within 45 days after receipt of the written hearing request the hearing is immediately commenced and completed, including, any mediation requested at any point during the hearing process pursuant to paragraph (2) of subdivision (b) of Section 56501, and a final administrative decision is rendered, unless a continuance has been granted pursuant to Section 56505.

(b) Notwithstanding any procedure set forth in this chapter, a public education agency and a parent may, if the party initiating the hearing so chooses, meet informally to resolve any issue or issues relating to the identification, assessment, or education and placement of the child, or the provision of a free, appropriate public education to the child, to the satisfaction of both parties prior to the hearing. The informal meeting shall be conducted by the district superintendent, county superintendent, or director of the public education agency or his or her designee. Any designee appointed pursuant to this subdivision shall have the authority to resolve the issue or issues.

(c) Upon receipt by the superintendent of a written request by the parent or public education agency, the superintendent or his or her designee or designees shall immediately notify, in writing, all parties of the request for the hearing and the scheduled date for the hearing. The notice shall advise all parties of all their rights relating to procedural safeguards. The superintendent or his or her designee shall provide both parties with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. This list shall include a brief description of the requirement to qualify for the services. The superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.

SEC. 24. Section 56503 of the Education Code is repealed.

SEC. 25. Section 56503 is added to the Education Code, to read:

56503. Nothing in this chapter shall preclude the parties to a hearing from agreeing to use a mediation conference or resolving their dispute in an informal, nonadversarial manner, even though a request for a state level hearing has been filed or even if the hearing has commenced.

SEC. 26. Section 56504.5 is added to the Education Code, to read:

56504.5. The department shall contract with a single, nonprofit organization or entity to conduct mediation conferences and due process hearings that does the following:

(a) Employs persons knowledgeable in administrative hearings and laws and regulations governing special education.

(b) Does not have a conflict of interest under state and federal laws and regulations governing special education and related services in conducting mediation conferences and due process hearings.

(c) Is not in the business of providing, or supervising, special education, related services, or care to children and youth.

SEC. 27. Section 56505 of the Education Code is amended to read:

56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board.

(b) The hearing shall be held at a time and place reasonably convenient to the parent and the pupil.

(c) The hearing shall be conducted by a person knowledgeable in the laws governing special education and administrative hearings pursuant to Section 56504.5. The hearing officer shall encourage the parties to a hearing to consider the option of mediation as an alternative to a hearing.

(d) During the pendency of the hearing proceedings, including the actual state level hearing, the pupil shall remain in his or her present placement unless the public agency and the parent agree otherwise.

(e) Any party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of children and youth with disabilities.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of witnesses.

(4) The right to a written or electronic verbatim record of the hearing.

(5) The right to written findings of fact and decisions. The findings and decisions shall be made available to the public consistent with the requirements of subsection (c) of Section 1417 of Title 20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to subsection (d) of Section 1415 of Title 20 of the United States Code.

(6) The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. Upon the request of a parent who is not represented by an attorney, the agency responsible for conducting hearings shall provide a mediator to assist the parent in identifying the issues and the proposed resolution of the issues.

(7) The right to prohibit the introduction of any evidence at the hearing that has not been disclosed to the party at least five days before the hearing.

(f) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision mailed to all parties to the hearing within 45 days from the receipt by the superintendent of the request for a hearing. Either party to the hearing may request the superintendent or his or her designee to grant a continuance. The continuance shall be granted upon a showing of good cause. Any continuance shall extend the time for rendering a final administrative decision for a period only equal to the length of the continuance.

(g) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(h) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(i) Nothing in this chapter shall preclude a party from exercising the right to appeal the decision to a court of competent jurisdiction. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of any administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), unless the public education agency and the parents of the child agree otherwise, the child involved in the hearing shall remain in his or her present educational placement.

SEC. 28. Section 56505.1 is added to the Education Code, to read:

56505.1. The hearing officer may do any of the following during the hearing:

(a) Question a witness on the record prior to any of the parties doing so.

(b) With the consent of both parties to the hearing, request that conflicting experts discuss an issue or issues with each other while on the record.

(c) Visit the proposed placement site or sites when the physical attributes of the site or sites are at issue.

(d) Call a witness to testify at the hearing if all parties to the hearing consent to the witness giving testimony or the hearing is continued for at least five days after the witness is identified and before the witness testifies.

(e) Order that an impartial assessment of the pupil be conducted for purposes of the hearing and continue the hearing until the assessment has been completed. The cost of any assessment ordered under this subdivision shall be included in the contract between the department and the organization or entity conducting the hearing.

(f) In decisions relating to the provision of related services by other public agencies, the hearing officer may call as witnesses independent medical specialists qualified to present evidence in the area of the pupil's medical disability. The cost for any witness called to testify under this subdivision shall be included in the contract between the department and the organization or entity conducting the hearing.

SEC. 29. Section 56507 of the Education Code is repealed.

SEC. 30. Section 56507 is added to the Education Code, to read:

56507. (a) If either party to a due process hearing intends to be represented by an attorney in the state hearing, notice of that intent shall be given to the other party at least 10 days prior to the hearing. The failure to provide that notice shall constitute good cause for a continuance.

(b) An award of reasonable attorneys' fees to the prevailing parent, guardian, or pupil, as the case may be, may only be made either with the agreement of the parties following the conclusion of the administrative hearing process or by a court of competent jurisdiction pursuant to paragraph (4) of subsection (e) of Section 1415 of Title 20 of the United States Code.

(c) Public education agencies shall not use federal funds distributed under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following), or other federal special education funds, for the agency's own legal counsel or other advocacy costs, that may include, but are not limited to, a private attorney or employee of an attorney, legal paraprofessional, or other paid advocate, related to a due process hearing or the appeal of a hearing decision to the courts. Nor shall the funds be used to reimburse parents who prevail and are awarded attorneys' fees, pursuant to subdivision (b), as part of the judgment. Nothing in this subdivision shall preclude public agencies from using these funds for attorney services related to the establishment of policy and programs, or responsibilities, under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following) and the program administration of these programs. This subdivision does not apply to attorneys and others hired under contract to conduct administrative hearings pursuant to subdivision (a) of Section 56505.

(d) The hearing decision shall indicate the extent to which each party has prevailed on each issue heard and decided, including issues involving other public agencies named as parties to the hearing.

SEC. 31. Section 56508 is added to the Education Code, to read:

56508. It is the intent of the Legislature that the department develop training materials that can be used locally by parents, public education agencies, and others and conduct workshops on alternative resolutions for resolving differences in a nonadversarial atmosphere with the mutual goal of providing a free and appropriate public education for children and youth with disabilities.

SEC. 32. Section 56601 of the Education Code is amended to read:

56601. (a) Each special education local plan area shall submit to the superintendent at least annually information, in a form and manner prescribed by the superintendent and developed in consultation with the special education local plan areas, in order for the superintendent to carry out the evaluation responsibilities pursuant to Section 56602. This information shall include other statistical data, program information, and fiscal information that the superintendent may require. The superintendent shall use this information to answer questions from the Legislature and other state and federal agencies on program, policy, and fiscal issues of statewide interest.

(b) In order to assist the state in evaluating the effectiveness of special education programs, including transition and work experience programs, the superintendent is authorized to collect and utilize social security numbers of individuals with exceptional needs as pupil identification numbers beginning in the 1993-94 fiscal year and phased in over a two-year period. In a situation where a social security number is not available, the superintendent shall assign another student identification number for purposes of evaluating special education programs and related services. The superintendent shall not disclose personally identifiable, individual pupil records to any person, institution, agency, or organization except as authorized by Section 1232g of Title 20 of the United States Code and Part 99 of Title 34 of the Code of Federal Regulations.

SEC. 33. Section 56731 is added to the Education Code, to read:

56731. (a) The Legislature hereby finds and declares that adjudicated individuals with exceptional needs in juvenile court schools, pursuant to Section 56150, require instructional programs in special education for up to 246 schooldays, depending on the number of schooldays court schools operate in that county, each fiscal year in order to comply with Section 104.33 of Title 34 of the Code of Federal Regulations, which is enforced in juvenile court schools by the federal Office for Civil Rights.

(b) The superintendent shall develop a funding formula, in consultation with the Legislative Analyst and the Director of Finance, for the distribution of increased federal funds under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following), in an amount not to exceed three million dollars ($ 3,000,000), to augment instructional units for the special education programs in juvenile court schools, beginning in fiscal year 1993, to cover the required number of days of instruction. The funding formula augmentation shall be developed and operational by July 1, 1993. Any adjustment to the funding level for the purposes of this section shall be made through the Budget Act.

SEC. 34. Section 3.5 of this bill incorporates amendments to Section 48911 of the Education Code proposed by both this bill and AB 2632. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1993, (2) each bill amends Section 48911 of the Education Code, and (3) this bill is enacted after AB 2632, in which case Section 3 of this bill shall not become operative.

SEC. 35. (a) Section 6.5 of this bill incorporates amendments to Section 56026 of the Education Code, as amended by Section 2 of Chapter 223 of the Statutes of 1991, proposed by both this bill and SB 807. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1993, (2) each bill amends Section 56026 of the Education Code, as amended by Section 2 of Chapter 223 of the Statutes of 1991, and (3) this bill is enacted after SB 807, in which case Section 6 of this bill shall not become operative.

(b) Section 7.5 of this bill incorporates amendments to Section 56026 of the Education Code, as amended by Section 3 of Chapter 223 of the Statutes of 1991, proposed by both this bill and SB 807. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1993, (2) each bill amends Section 56026 of the Education Code, as amended by Section 3 of Chapter 223 of the Statutes of 1991, and (3) this bill is enacted after SB 807, in which case Section 7 of this bill shall not become operative.

SEC. 36. (a) Section 15.3 of this bill incorporates amendments to Section 56341 of the Education Code proposed by both this bill and AB 2267. It shall only become operative if (1) both bills are enacted and become effective January 1, 1993, (2) each bill amends Section 56341 of the Education Code, and (3) SB 2026 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2267, in which case Sections 15, 15.5, and 15.7 of this bill shall not become operative.

(b) Section 15.5 of this bill incorporates amendments to Section 56341 of the Education Code proposed by both this bill and SB 2026. It shall only become operative if (1) both bills are enacted and become effective January 1, 1993, (2) each bill amends Section 56341 of the Education Code, (3) AB 2267 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2026 in which case Sections 15, 15.3, and 15.7 of this bill shall not become operative.

(c) Section 15.7 of this bill incorporates amendments to Section 56341 of the Education Code proposed by this bill, AB 2267, and SB 2026. It shall become operative if (1) all three bills are enacted and become effective January 1, 1993, (2) each bill amends Section 56341 of the Education Code, and (3) this bill is enacted after AB 2267 and SB 2026 in which case Sections 15, 15.3, and 15.5 of this bill shall not become operative.

SEC. 37. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because this act implements a federal law or regulation and involves only "costs mandated by the federal government," as defined by Section 17513 of the Government Code. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SPONSOR:
Farr

SUBJECT: PUBLIC SCHOOLS (99%); SPECIAL EDUCATION (99%); ALTERNATIVE DISPUTE RESOLUTION (99%); LAWYERS (99%); DISABLED (98%); SCHOOL BOARDS (97%); MISCONDUCT (96%); CONTRACTS & BIDS (92%); JUVENILE JUSTICE (91%); ACADEMIC TESTING (71%); TEACHERS (70%); ATTORNEYS FEES (69%); AMERICANS WITH DISABILITIES ACT (66%); PRIVACY RIGHTS (66%);

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EXHIBIT 6

Caution
As of: Oct 28, 2010

THOMAS WILLIAM HAYES, as Director, etc., Plaintiff and Respondent, v. COMMISSION ON STATE MANDATES, Defendant, Cross-defendant, and Respondent; DALE S. HOLMES, as Superintendent, etc., Real Party in Interest, Cross-complainant and Appellant; WILLIAM CIRONE, as Superintendent, etc., Real Party in Interest and Respondent; STATE OF CALIFORNIA et al., Cross-defendants and Respondents.

No. C009519

COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

11 Cal. App. 4th 1564; 15 Cal. Rptr. 2d 547; 1992 Cal. App. LEXIS 1498; 93 Cal. Daily Op. Service 17; 93 Daily Journal DAR 18

December 30, 1992, Decided

SUBSEQUENT HISTORY: [***1] Review Denied April 1, 1993, Reported at 1993 Cal. LEXIS 1988. Lucas, C.J., Kennard, J., and Arabian, J., are of the opinion the petition should be granted.

PRIOR HISTORY: Superior Court of Sacramento County, No. 352795, Eugene T. Gualco, Judge.

DISPOSITION: The judgment is affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant Riverside Schools sought review from a decision of the Superior Court of Sacramento County (California), which set aside an administrative decision that all local special education costs were state mandated and subject to state reimbursement and, denied appellant's writ of mandate that would have ordered respondent controller to issue a warrant in payment of its claim.

OVERVIEW: Appellant Riverside Schools filed claims seeking state reimbursement for alleged state-mandated costs incurred in connection with special education programs. After lengthy proceedings, the administrative agency decided that all local special education costs were state mandated and subject to reimbursement. On appeal, the lower court issued a writ of administrative mandate directing the agency to reconsider the matter and denying appellant's petition for a writ of mandate that would have directed issuance of a warrant in payment of its claim. The court affirmed the lower court decision and clarified the criteria to be applied by the administrative agency. The court concluded that, all financial assistance or funds under the Rehabilitation Education Act, 29 U.S.C.S. § 794 (1973) or, under the Education of the Handicapped Act, 20 U.S.C.S. § 1400 et seq., were federally mandated and thus, appellant was not entitled to reimbursement from the state for these types of programs.

OUTCOME: The court affirmed the judgment of the lower court, which set aside an administrative decision that all local special education costs were state mandated and subject to state reimbursement because the special education costs were federally mandated and thus, appellant Riverside Schools was not entitled to reimbursement from the state for these types of programs.

CORE TERMS: subvention, educational, reimbursement, mandated, special education, Handicapped Act, federal mandate, handicapped children, local agencies, school district's, handicapped, levels of service, local government's, local school districts, state-mandated, federal government, spending, accommodate, taxing, state mandates, funding, local agency, new programs, appropriation, Rehabilitation Act, state subvention, entity, fiscal year, Handicapped Act, public education

LexisNexis(R) Headnotes

Education Law > Departments of Education > State Departments of Education > Authority
Education Law > Departments of Education > U.S. Department of Education > Authority
[HN1]Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.

Education Law > Students > Right to Education
[HN2]States typically do purport to guarantee all of their children the opportunity for a basic education. In fact, in this state basic education is regarded as a fundamental All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate the educational needs of the children in their districts.

Education Law > Departments of Education > U.S. Department of Education > Authority
Education Law > Discrimination > Individuals With Disabilities Education Act > Coverage
Governments > Legislation > Statutory Remedies & Rights
[HN3]Since the 1975 amendment, the Education of the Handicapped Act requires recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education, 20 U.S.C.S. § 1412(1). The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states.

Civil Rights Law > Protection of Disabled Persons > Rehabilitation Act > Remedies
Constitutional Law > Supremacy Clause > General Overview
Governments > State & Territorial Governments > Relations With Governments
[HN4]Federal financial assistance is not the only incentive for a state to comply with the Education of the Handicapped Act, 20 U.S.C.S. § 1400 et seq. Congress intends the act to serve as a means by which state and local educational agencies can fulfill their obligations under the equal protection and due process provisions of the Constitution and under § 504 of the Rehabilitation Act of 1973, 29 U.S.C.S. § 794. Accordingly, where it is applicable the act supersedes claims under the Civil Rights Act, 42 U.S.C.S. § 1983 and § 504 of the Rehabilitation Act of 1973, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives.

Administrative Law > Judicial Review > General Overview
Constitutional Law > Supremacy Clause > General Overview
Education Law > Discrimination > Individuals With Disabilities Education Act > Enforcement
[HN5]As a result of the exclusive nature of the Education of the Handicapped Act, 20 U.S.C.S. § 1415(e)(2), dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention. This gives local agencies the first opportunity and the primary authority to determine appropriate placement and to resolve disputes. If a party is dissatisfied with the final result of the administrative process then he or she is entitled to seek judicial review in a state or federal court. In such a proceeding the court independently reviews the evidence but its role is restricted to that of review of the local decision and the court is not free to substitute its view of sound educational policy for that of the local authority.

Constitutional Law > State Constitutional Operation
Education Law > Students > Right to Education
[HN6]The constitutional provision requires state subvention when the Legislature or any State agency mandates a new program or higher level of service on local agencies. Cal. Const., art. XIII B, § 6.

Constitutional Law > State Constitutional Operation
Governments > Legislation > Interpretation
[HN7]As a general rule and unless the context clearly requires otherwise, reviewing court must assume that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

Two school districts filed claims with the State Board of Control for state reimbursement of alleged state-mandated costs incurred in connection with special education programs. The board determined that the costs were state mandated and subject to reimbursement by the state. In a mandamus proceeding, the trial court entered a judgment by which it issued a writ of administrative

mandate directing the Commission on State Mandates (the successor to the board) to set aside the board's administrative decision and to reconsider the matter in light of an intervening decision by the California Supreme Court, and by which it denied the petition of one of the school districts for a writ of mandate that would have directed the State Controller to issue a warrant in payment of the district's claim. (Superior Court of Sacramento County, No. 352795, Eugene T. Gualco, Judge.)

The Court of Appeal affirmed. It held that the 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. The court held that to the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state-mandated and subject to subvention under Cal. Const., art. XIII B, § 6. Thus, on remand to the commission, the court held, the commission was required to focus on the costs incurred by local school districts and on whether those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program. (Opinion by Sparks, Acting P. J., with Davis and Scotland, JJ., concurring.)

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 11 -- Fiscal Matters -- Reimbursement to Local Governments -- State-mandated Costs: Words, Phrases, and Maxims -- Subvention. -- "Subvention" generally means a grant of financial aid or assistance, or a subsidy. The constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services that the local agency is required by state law to provide to its residents. The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. Reimbursement is required when the state freely chooses to impose on local agencies any peculiarly governmental cost which they were not previously required to absorb.

(2) Schools § 4 -- School Districts -- Relationship to State. --A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. Local school districts are agencies of the state and have been described as quasi-municipal corporations. They are not distinct and independent bodies politic. The Legislature's power over the public school system is exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. The state is the beneficial owner of all school properties, and local districts hold title as trustee for the state. School moneys belong to the state, and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion, and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature.

(3) Property Taxes § 7.8 -- Real Property Tax Limitation -- Exemptions and Special Taxes -- Federally Mandated Costs. --Pursuant to Rev. & Tax. Code, § 2271 (local agency may levy rate in addition to maximum property tax rate to pay costs mandated by federal government that are not funded by federal or state government), costs mandated by the federal government are exempt from an agency's taxing and spending limits.

(4) State of California § 11 -- Fiscal Matters -- Reimbursement to Local Governments -- State-mandated Costs -- Costs Incurred Before Effective Date of Constitutional Provision. --Since Cal. Const., art. XIII B, requiring subvention for state mandates enacted after Jan. 1, 1975, had an effective date of July 1, 1980, a local agency may seek subvention for costs imposed by legislation after Jan. 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law.

(5) Schools § 53 -- Parents and Students -- Right or Duty to Attend -- Handicapped Children -- Federal Rehabilitation Act -- Obligations Imposed on Districts. --Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. § 794) does not only obligate local school districts to prevent handicapped children from being excluded from school. States typically purport to

guarantee all of their children the opportunity for a basic education. In California, basic education is regarded as a fundamental right. All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate the educational needs of the children in their districts. Section 504 does not permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. The statute imposes an obligation upon local school districts to take affirmative steps to accommodate the needs of handicapped children.

(6) **Schools § 53 -- Parents and Students -- Right or Duty to Attend -- Handicapped Children -- Education of the Handicapped Act.** --The federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.), which since its 1975 amendment has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education, is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. Congress intended the act to establish a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children. It is also apparent that Congress intended to achieve nationwide application.

(7) **Civil Rights § 6 -- Education -- Handicapped -- Scope of Federal Statute.** --Congress intended the Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) to serve as a means by which state and local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). Accordingly, where it is applicable, the act supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) and section 504, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. As a result of the exclusive nature of the Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention.

(8a) (8b) **State of California § 11 -- Fiscal Matters -- Reimbursement to Local Governments -- State-mandated Costs -- Special Education: Schools § 4 -- School Districts; Financing; Funds -- Special Education Costs -- Reimbursement by State.** --The 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention under Cal. Const., art. XIII B, § 6. Thus, on remand of a proceeding by school districts to the Commission on State Mandates for consideration of whether special education programs constituted new programs or higher levels of service mandated by the state entitling the districts to reimbursement, the commission was required to focus on the costs incurred by local school districts and whether those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program.

(9) **State of California § 11 -- Fiscal Matters -- Reimbursement to Local Governments -- Federally Mandated Costs.** --The constitutional subvention provision (Cal. Const., art. XIII B, § 6) and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no "true choice" in the manner of implementation of the federal mandate.

(10) **Statutes § 28 -- Construction -- Language -- Consistency of Meaning Throughout Statute.** --As a general rule and unless the context clearly requires otherwise, it must be assumed that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part.

(11) **State of California § 11 -- Fiscal Matters -- Reimbursement to Local Governments -- Federally Mandated Costs -- Subvention.** --Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The tax-

ing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state, then the state must provide a subvention to reimburse the local agency. Nothing in the scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Thus, the criteria set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits are applicable when subvention is the issue.

(12) State of California § 11 -- Fiscal Matters -- Reimbursement to Local Governments -- State-mandated Costs -- Special Education -- Applicable Criteria in Determining Whether Subvention Required. --In a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court did not err in determining that the board failed to consider the issues under the appropriate criteria as set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits. The board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) without any consideration of whether the act left the state any actual choice in the matter. It also relied on litigation involving another state. However, under the criteria set forth in the Supreme Court's case, the litigation in the other state did not support the board's decision but in fact strongly supported a contrary result.

(13) Courts § 34 -- Decisions and Orders -- Prospective and Retroactive Decisions -- Opinion Elucidating Existing Law. --In a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits, the court elucidated and enforced existing law. Under such circumstances, the rule of retrospective operation controls. Thus, in a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court correctly applied the Supreme Court decision to the litigation pending before it.

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Breon, O'Donnell, Miller, Brown & Dannis and Emi R. Uyehara as Amici Curiae on behalf of Real Party in Interest, Cross-complainant and Appellant.

No appearance for Real Party in Interest and Respondent.

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JUDGES: Opinion by Sparks, Acting P. J., with Davis and Scotland, JJ., concurring.

OPINION BY: SPARKS, Acting P. J.

OPINION

[*1570] [**550] This appeal involves a decade-long battle over claims for subvention by two county superintendents of schools [***2] for reimbursement for mandated special education programs. Section 6 of article XIII B of the California Constitution directs, with exceptions not relevant here, that "[w]henever the Legislature or any State agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, ..." The issue on appeal is whether the special education programs in question constituted new programs or higher levels of service mandated by the state entitling the school districts to reimbursement under section 6 of article XIII B of the California Constitution and related statutes for the cost of implementing them or whether these programs were instead mandated by the federal government for which no reimbursement is due.

The Santa Barbara County Superintendent of Schools and the Riverside County Superintendent of Schools each filed claims with the Board of Control for state reimbursement for alleged state-mandated costs

incurred in connection with special education programs. After a lengthy administrative process, the Board of Control rendered a decision [***3] finding that all local special education costs were state mandated and subject to state reimbursement. That decision was then successfully challenged in the Sacramento County Superior Court. The superior court entered a judgment by which it: (1) issued a writ of administrative mandate (Code Civ. Proc., § 1094.5), directing the Commission on State Mandates (the successor to the Board of [*1571] Control) to set aside the administrative decision and to reconsider the matter in light of the California Supreme Court's intervening decision in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 [266 Cal.Rptr. 139, 785 P.2d 522]; and (2) denied the Riverside County Superintendent of School's petition for a writ of mandate (Code Civ. Proc., § 1085), which would have directed the State Controller to issue a warrant in payment of the claim. The Riverside County Superintendent of Public Schools appeals. We shall clarify the criteria to be applied by the Commission on State Mandates on remand and affirm the judgment.

I. THE PARTIES

This action was commenced in July 1987 by Jesse R. Huff, then the Director of the [***4] California Department of Finance. Huff petitioned for a writ of administrative mandate to set aside the administrative decision which found all the special education costs to be state mandated. On appeal Huff appears as a respondent urging that we affirm the judgment.

The Commission on State Mandates (the Commission) is the administrative agency which now has jurisdiction over local agency claims for reimbursement for state-mandated costs. (Gov. Code, § 17525.) In this respect the Commission is the successor to the Board of Control. The Board of Control rendered the administrative decision which is at issue here. Since an appropriation for payment of these claims was not included in a local government claims bill before January 1, 1985, administrative jurisdiction over the claims has been transferred from the Board of Control to the Commission. (Gov. Code, § 17630.) The Commission is the named defendant in the petition for a writ of administrative mandate. In the trial court and on appeal the Commission has appeared as the agency having administrative jurisdiction over the claims, but has not expressed a position on the merits of the litigation.

[**551] The Santa Barbara County Superintendent [***5] of Schools (hereafter Santa Barbara) is a claimant for state reimbursement of special education costs incurred in the 1979-1980 fiscal year. Santa Barbara is a real party in interest in the proceeding for administrative mandate. Santa Barbara has not appealed from the judgment of the superior court and, although a nominal respondent on appeal, has not filed a brief in this court.

The Riverside County Superintendent of Schools (hereafter Riverside) represents a consortium of school districts which joined together to provide special education programs to handicapped students. Riverside seeks reimbursement for special education costs incurred in the 1980-1981 fiscal year. [*1572] Riverside is a real party in interest in the proceeding for writ of administrative mandate. It filed a cross-petition for a writ of mandate directing the Controller to pay its claim. Riverside is the appellant in this appeal.

The State of California and the State Treasurer are named cross- defendants in Riverside's cross-petition for a writ of mandate. They joined with Huff in this litigation. The State Controller is the officer charged with drawing warrants for the payment of moneys from the State [***6] Treasury upon a lawful appropriation. (Cal. Const., art. XVI, § 7.) The State Controller is a named defendant in Riverside's petition for a writ of mandate. In the trial court and on appeal the State Controller expresses no opinion on the merits of Riverside's reimbursement claim, but asserts that the courts lack authority to compel him to issue a warrant for payment of the claim in the absence of an appropriation for payment of the claim.

In addition to the briefing by the parties on appeal, we have permitted a joint amici curiae brief to be filed in support of Riverside by the Monterey County Office of Education, the Monterey County Office of Education Special Education Local Planning Area, and 21 local school districts.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Legislature has provided an administrative remedy for the resolution of local agency claims for reimbursement for state mandates. In *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62 [222 Cal.Rptr. 750], at pages 71 and 72, we described these procedures as follows (with footnotes deleted): " Section 2250 [Revenue & Taxation Code] and those following [***7] it provide a hearing procedure for the determination of claims by local governments. The State Board of Control is required to hear and determine such claims. (§ 2250.) For purposes of such hearings the board consists of the members of the Board of Control provided for in part 4 (commencing with § 13900) of division 3 of title 2 of the Government Code, together with two local government officials appointed by the Governor. (§ 2251.) The board was required to adopt procedures for receiving and hearing such claims. (§ 2252.) The first claim filed with respect to a statute or regulation is considered a 'test claim' or a 'claim of first

impression.' (§ 2218, subd. (a).) The procedure requires an evidentiary hearing where the claimant, the Department of Finance, and any affected department or agency can present evidence. (§ 2252.) If the board determines that costs are mandated, then it must adopt parameters and guidelines for the reimbursement of such claims. (§ 2253.2.) The claimant or the state is entitled to commence an action in administrative mandate pursuant to Code of Civil Procedure section 1094.5 to set aside a decision of the board on the grounds that the board's decision [***8] is not supported by substantial evidence. (§ 2253.5.)

[*1573] "At least twice each calendar year the board is required to report to the Legislature on the number of mandates it has found and the estimated statewide costs of these mandates. (§ 2255, subd. (a).) In addition to the estimate of the statewide costs for each mandate, the report must also contain the reasons for recommending reimbursement. (§ 2255, subd. (a).) Immediately upon receipt of the report a local government claims bill shall be introduced in the Legislature which, when introduced, must contain an appropriation sufficient to pay for the estimated costs of the mandates. [**552] (§ 2255, subd. (a).) In the event the Legislature deletes funding for a mandate from the local government claims bill, then it may take one of the following courses of action: (1) include a finding that the legislation or regulation does not contain a mandate; (2) include a finding that the mandate is not reimbursable; (3) find that a regulation contains a mandate and direct that the Office of Administrative Law repeal the regulation; (4) include a finding that the legislation or regulation contains a reimbursable mandate and direct that the [***9] legislation or regulation not be enforced against local entities until funds become available; (5) include a finding that the Legislature cannot determine whether there is a mandate and direct that the legislation or regulation shall remain in effect and be enforceable unless a court determines that the legislation or regulation contains a reimbursable mandate in which case the effectiveness of the legislation or regulation shall be suspended and it shall not be enforced against a local entity until funding becomes available; or (6) include a finding that the Legislature cannot determine whether there is a reimbursable mandate and that the legislation or regulation shall be suspended and shall not be enforced against a local entity until a court determines whether there is a reimbursable mandate. (§ 2255, subd. (b).) If the Legislature deletes funding for a mandate from a local government claims bill but does not follow one of the above courses of action or if a local entity believes that the action is not consistent with article XIII B of the Constitution, then the local entity may commence a declaratory relief action in the Superior Court of the County of Sacramento to declare [***10] the mandate void and enjoin its enforcement. (§ 2255, subd. (c).)

"Effective January 1, 1985, the Legislature has established a new commission to consider and determine claims based upon state mandates. This is known as the Commission on State Mandates and it consists of the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member with experience in public finance, appointed by the Governor and approved by the Senate. (Gov. Code, § 17525.) 'Costs mandated by the state' are defined as 'any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which [*1574] mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.' (Gov. Code, § 17514.) The procedures before the Commission are similar to those which were followed before the Board of Control. (Gov. Code, § 17500 et seq.) Any claims which had not been included in a local government claims [***11] bill prior to January 1, 1985, were to be transferred to and considered by the commission. (Gov. Code, § 17630; [Rev. & Tax. Code,] § 2239.)"

On October 31, 1980, Santa Barbara filed a test claim with the Board of Control seeking reimbursement for costs incurred in the 1979-1980 fiscal year in connection with the provision of special education services as required by Statutes 1977, chapter 1247, and Statutes 1980, chapter 797. Santa Barbara asserted that these acts should be considered an ongoing requirement of increased levels of service.

Santa Barbara's initial claim was based upon the "mandate contained in the two bills specified above [which require] school districts and county offices to provide full and formal due process procedures and hearings to pupils and parents regarding the special education assessment, placement and the appropriate education of the child." Santa Barbara asserted that state requirements exceeded those of federal law as reflected in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). [1] Santa [**553] Barbara's initial claim was for $ 10,500 in state-mandated costs for the 1979-1980 fiscal year.

1 Section 794 of title 29 of the United States Code will of necessity play an important part in our discussion of the issues presented in this case. That provision was enacted as section 504 of the Rehabilitation Act of 1973. (Pub.L. No. 93-112, tit. V, § 504 (Sept. 26, 1973) 87 Stat. 394.) It has been amended several times. (Pub.L. No. 95-602, tit. I, § 119, 122(d)(2) (Nov. 6, 1978) 92 Stat.

2982, 2987 [Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978]; Pub.L. No. 99- 506, tit. I, § 103(d)(2)(B), tit. X, § 1002(e)(4) (Oct. 21, 1986) 100 Stat. 1810, 1844; Pub.L. No. 100-259, § 4 (Mar. 22, 1988) 102 Stat. 29; Pub.L. No. 100-630, tit. II, § 206(d) (Nov. 7, 1988) 102 Stat. 3312.) The decisional authorities universally refer to the statute as "section 504." We will adhere to this nomenclature and subsequent references to section 504 will refer to title 29, United States Code, section 794.

[***12] During the administrative proceedings Santa Barbara amended its claim to reflect the following state-mandated activities alleged to be in excess of federal requirements: (1) the extension of eligibility to children younger and older than required by federal law; (2) the establishment of procedures to search for and identify children with special needs; (3) assessment and evaluation; (4) the preparation of "Individual Education Plans" (IEP's); (5) due process hearings in placement determinations; (6) substitute teachers; and (7) staff development programs. Santa Barbara was claiming reimbursement in excess of $ 520,000 for the cost of these services during the 1979- 1980 fiscal year.

[*1575] Also, during the administrative proceedings the focus of federally mandated requirements shifted from section 504 of the Rehabilitation Act to federal Public Law No. 94-142, which amended the Education of the Handicapped Act. (20 U.S.C. § 1401 et seq.) [2]

2 The Education of the Handicapped Act was enacted in 1970. (Pub.L. No. 91-230, tit. VI (Apr. 13, 1970) 84 Stat. 175.) It has been amended many times. The amendment of primary interest here was enacted as the Education for All Handicapped Children Act of 1975. (Pub.L. No. 94-142 (Nov. 29, 1975) 89 Stat. 774.) The 1975 legislation significantly amended the Education of the Handicapped Act, but did not change its short title. The Education of the Handicapped Act has now been renamed the Individuals with Disabilities Education Act. (Pub.L. No. 101-476, tit. IX, § 901(b)(21) (Oct. 30, 1990) 104 Stat. 1143; Pub.L. No. 101-476, tit. IX, § 901b; Pub.L. No. 102-119, § 25(b) (Oct. 7, 1991) 105 Stat. 607.) Since at all times relevant here the federal act was known as the Education of the Handicapped Act, we will adhere to that nomenclature.

[***13] The Board of Control adopted a decision denying Santa Barbara's claim. The board concluded that the Education of the Handicapped Act resulted in costs mandated by the federal government, that state special education requirements exceed those of federal law, but that "the resulting mandate is not reimbursable because the Legislature already provides funding for all Special Education Services through an appropriation in the annual Budget Act."

Santa Barbara sought judicial review by petition for a writ of administrative mandate. The superior court found the administrative record and the Board of Control's findings to be inadequate. Judgment was rendered requiring the Board of Control to set aside its decision and to rehear the matter to establish a proper record, including findings. That judgment was not appealed.

On October 30, 1981, Riverside filed a test claim for reimbursement of $ 474,477 in special education costs incurred in the 1980-1981 fiscal year. Riverside alleged that the costs were state mandated by chapter 797 of Statutes 1980. The basis of Riverside's claim was Education Code section 56760, a part of the state special education funding formula which, according [***14] to Riverside, "mandates a 10%% cap on ratio of students served by special education and within that 10%% mandates the ratio of students to be served by certain services." Riverside explained that chapter 797 of Statutes 1980 was enacted as urgency legislation effective July 28, 1980, and that at that time it was already "locked into" providing special education services to more than 13 percent of its students in accordance with prior state law and funding formulae. [3]

3 The 1980 legislation required that a local agency adopt an annual budget plan for special education services. (Ed. Code, § 56200.) Education Code section 56760 provided that in the local budget plan the ratio of students to be served should not exceed 10 percent of total enrollment. However, those proportions could be waived for undue hardship by the Superintendent of Public Instruction. (Ed. Code, § 56760, 56761.) In addition, the 1980 legislation included provisions for a gradual transition to the new requirements. (Ed. Code, § 56195 et seq.) The transitional provisions included a guarantee of state funding for 1980-1981 at prior student levels with an inflationary adjustment of 9 percent. (Ed. Code, § 56195.8.) The record indicates that Riverside applied for a waiver of the requirements of Education Code section 56760, but that the waiver request was denied due to a shortage of state funding. It also appears that Riverside did not receive all of the 109 percent funding guarantee under Education Code section 56195.8. In light of the current posture of this appeal we need not and do not consider whether the failure of the state to appropriate sufficient funds to satisfy its obligations under the 1980 legislation can be ad-

dressed in a proceeding for the reimbursement of state-mandated costs or must be addressed in some other manner.

[***15] [**554] The Riverside claim, like Santa Barbara's, evolved over time with increases in the amount of reimbursement sought. Eventually the Board of [*1576] Control denied Riverside's claim for the same reasons the Santa Barbara claim was denied. Riverside sought review by petition for a writ of administrative mandate. In its decision the superior court accepted the board's conclusions that the Education of the Handicapped Act constitutes a federal mandate and that state requirements exceed those of the federal mandate. However, the court disagreed with the board that any appropriation in the state act necessarily satisfies the state's subvention obligation. The court concluded that the Board of Control had failed to consider whether the state had fully reimbursed local districts for the state-mandated costs which were in excess of the federal mandate, and the matter was remanded for consideration of that question. That judgment was not appealed.

On return to the Board of Control, the Santa Barbara claim and the Riverside claim were consolidated. The Board of Control adopted a decision holding that all special education costs under Statutes 1977, chapter 1247, and Statutes 1980, chapter [***16] 797, are state-mandated costs subject to subvention. The board reasoned that the federal Education of the Handicapped Act is a discretionary program and that section 504 of the Rehabilitation Act does not require school districts to implement any programs in response to federal law, and therefore special education programs are optional in the absence of a state mandate.

The claimants were directed to draft, and the Board of Control adopted, parameters and guidelines for reimbursement of special education costs. The board submitted a report to the Legislature estimating that the total statewide cost of reimbursement for the 1980-1981 through 1985-1986 fiscal years would be in excess of $ 2 billion. Riverside's claim for reimbursement for the 1980-1981 fiscal year was now in excess of $ 7 million. Proposed legislation which would have appropriated funds for reimbursement of special education costs during the 1980-1981 through 1985- 1986 fiscal years failed to pass in the Legislature. (Sen. Bill No. 1082 (1985-1986 Reg. Sess.).) A separate bill which would have appropriated funds to reimburse Riverside [*1577] for its 1980-1981 claim also failed to pass. (Sen. Bill No. 238 [***17] (1987-1988 Reg. Sess.).)

At this point Huff, as Director of the Department of Finance, brought an action in administrative mandate seeking to set aside the decision of the Board of Control. Riverside cross-petitioned for a writ of mandate directing the state, the Controller and the Treasurer to issue a warrant in payment of its claim for the 1980-1981 fiscal year.

The superior court concluded that the Board of Control did not apply the appropriate standard in determining whether any portion of local special education costs are incurred pursuant to a federal mandate. The court found that the definition of a federal mandate set forth by the *Supreme Court in* City of Sacramento v. State of California, *supra,* 50 Cal.3d 51, "marked a departure from the narrower 'no discretion' test" of this court's earlier decision in City of Sacramento v. State of California (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258]. It further found that the standard set forth in the high court's decision in *City of Sacramento* "is to be applied retroactively." Accordingly, the superior court issued a [***18] peremptory writ of mandate directing the Commission on State Mandates to set aside [**555] the decision of the Board of Control, to reconsider the claims in light of the decision in City of Sacramento v. State of California, *supra,* 50 Cal.3d 51, and "to ascertain whether certain costs arising from Chapter 797/80 and Chapter 1247/77 are federally mandated, and if so, the extent, if any, to which the state-mandated costs exceed the federal mandate." Riverside's cross-petition for a writ of mandate was denied. This appeal followed.

III. PRINCIPLES OF SUBVENTION

(1) "Subvention" generally means a grant of financial aid or assistance, or a subsidy. (See Webster's Third New Internat. Dict. (1971) p. 2281.) As used in connection with state-mandated costs, the basic legal requirements of subvention can be easily stated; it is in the application of the rule that difficulties arise.

[HN1]Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].) [***19] This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services which the local agency is required by [*1578] state law to provide to its residents. (City of Sacramento v. State of California, *supra,* 50 Cal.3d at p. 70.) The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. (*Id.* at p. 68.) Reimbursement is required when the state "freely chooses to impose on local agencies *any* peculiarly 'governmental' cost which they were not previously required to absorb." (*Id.* at p. 70, italics in original.)

The requirement of subvention for state-mandated costs had its genesis in the "Property Tax Relief Act of 1972" which is also known as "SB 90" (Senate Bill No. 90). (City of Sacramento v. State of California, supra, 156 Cal.App.3d at p. 188.) That act established limitations upon the power of local governments to levy taxes and concomitantly prevented [***20] the state from imposing the cost of new programs or higher levels of service upon local governments. (Ibid.) The Legislature declared: "It is the intent in establishing the tax rate limits in this chapter to establish limits that will be flexible enough to allow local governments to continue to provide existing programs, that will be firm enough to insure that the property tax relief provided by the Legislature will be long lasting and that will afford the voters in each local government jurisdiction a more active role in the fiscal affairs of such jurisdictions." (Rev. & Tax. Code, former § 2162, Stats. 1972, ch. 1406, § 14.7, p. 2961.) [4] The act provided that the state would pay each county, city and county, city, and special district the sums which were sufficient to cover the total cost of new state-mandated costs. (See Rev. & Tax. Code, former § 2164.3, Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963.) New state-mandated costs would arise from legislative action or executive regulation after January 1, 1973, which mandated a new program or higher level of service under an existing mandated program. (Ibid.)

4 In addition to requiring subventions for new state programs and higher levels of service, Senate Bill No. 90 required the state to reimburse local governments for revenues lost by the repeal or reduction of property taxes on certain classes of property. In this connection the Legislature said: "It is the purpose of this part to provide property tax relief to the citizens of this state, as undue reliance on the property tax to finance various functions of government has resulted in serious detriment to one segment of the taxpaying public. The subventions from the State General Fund required under this part will serve to partially equalize tax burdens among all citizens, and the state as a whole will benefit." (Gov. Code, § 16101, Stats. 1972, ch. 1406, § 5, p. 2953.)

[***21] **(2)** [**556] **(See fn. 5.)** Senate Bill No. 90 did not specifically include school districts in the group of agencies entitled to reimbursement for state-mandated costs. [5] (Rev. & Tax. Code, former § 2164.3, Stats. 1972, ch. 1406. § 14.7, pp. 2962-2963.) In fact, at that time methods of financing education in this state were [*1579] undergoing fundamental reformation as the result of the litigation in Serrano v. Priest (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]. At the time of the *Serrano* decision local property taxes were the primary source of school revenue. (*Id.* at p. 592.) In *Serrano,* the California Supreme Court held that education is a fundamental interest, that wealth is a suspect classification, and that an educational system which produces disparities of opportunity based upon district wealth would violate principles of equal protection. (*Id.* at pp. 614-615, 619.) A major portion of Senate Bill No. 90 constituted new formulae for state and local contributions to education in a legislative response to the decision in *Serrano.* (Stats. 1972, ch. 1406, § 1.5-2.74, pp. 2931-2953. See Serrano v. Priest (1976) 18 Cal.3d 728, 736- 737 [135 Cal.Rptr. 345, 557 P.2d 929].) [***22] [6]

5 A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. (California Teachers Assn. v. Huff (1992) 5 Cal.App.4th 1513, 1524 [7 Cal.Rptr.2d 699].) Local school districts are agencies of the state and have been described as quasi-municipal corporations. (*Ibid.*) They are not distinct and independent bodies politic. (*Ibid.*) The Legislature's power over the public school system has been described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. (*Ibid.*) The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. (*Id.* at p. 1525.) The state is the beneficial owner of all school properties and local districts hold title as trustee for the state. (*Ibid.*) School moneys belong to the state and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. (*Ibid.*) While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature. (*Id.* at pp. 1523-1524.)

[***23]

6 After the first *Serrano* decision, the United States Supreme Court held that equal protection does not require dollar-for-dollar equality between school districts. (San Antonio School District v. Rodriguez (1973) 411 U.S. 1, 33-34 48-56, 61-62 [36 L.Ed.2d 16, 42-43, 51-56, 59-60, 93 S.Ct. 1278].) In the second *Serrano* decision, the California Supreme Court adhered to the first *Serrano* decision on independent state grounds. (Serrano v. Priest, supra, 18 Cal.3d at pp. 761-

766.) The court concluded that Senate Bill No. 90 and Assembly Bill No. 1267, enacted the following year (Stats. 1973, ch. 208, p. 529 et seq.), did not satisfy equal protection principles. (*Serrano v. Priest, supra,* 18 Cal.3d at pp. 776-777.) Additional complications in educational financing arose as the result of the enactment of article XIII A of the California Constitution at the June 1978 Primary Election (Proposition 13), which limited the taxes which can be imposed on real property and forced the state to assume greater responsibility for financing education (see Ed. Code, § 41060), and the enactment of Propositions 98 and 111 in 1988 and 1990, respectively, which provide formulae for minimum state funding for education. (See generally *California Teachers Assn. v. Huff, supra,* 5 Cal.App.4th 1513.)

[***24] The provisions of Senate Bill No. 90 were amended and refined in legislation enacted the following year. (Stats. 1973, ch. 358.) Revenue and Taxation Code section 2231, subdivision (a), was enacted to require the state to reimburse local agencies, including school districts, for the full costs of new programs or increased levels of service mandated by the Legislature after January 1, 1973. Local agencies except school districts were also entitled to reimbursement for costs mandated by executive regulation after January 1, 1973. (Rev. & Tax. Code, § 2231, subd. (d), added by Stats. 1973, ch. 358, § 3, p. 783 [*1580] and repealed by Stats. 1986, ch. 879, § 23, p. 3045.) In subsequent years legislation was enacted to entitle school districts to subvention for state-mandated costs imposed by legislative acts after January 1, 1973, or by executive regulation after January 1, 1978. (Rev. & Tax. Code, former § 2207.5, added by Stats. 1977, ch. 1135, § 5, p. 3646 and amended by Stats. 1980, ch. 1256, § 5, pp. 4248-4249.)

[**557] In the 1973 legislation, Revenue and Taxation Code section 2271 was enacted to provide, among other things: "A local agency may levy, or have levied on its behalf, [***25] a rate in addition to the maximum property tax rate established pursuant to this chapter (commencing with Section 2201) to pay costs mandated by the federal government or costs mandated by the courts or costs mandated by initiative enactment, which are not funded by federal or state government." **(3)** In this respect costs mandated by the federal government are exempt from an agency's taxing and spending limits. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 71, fn. 17.)

At the November 6, 1979, General Election, the voters added article XIII B to the state Constitution by enacting Proposition 4. That article imposes spending limits on the state and all local governments. For purposes of article XIII B the term "local government" includes school districts. (Cal. Const., art. XIII B, § 8, subd. (d).) The measure accomplishes its purpose by limiting a governmental entity's annual appropriations to the prior year's appropriations limit adjusted for changes in the cost of living and population growth, except as otherwise provided in the article. (Cal. Const., art. XIII B, § 1.) [7] The appropriations subject [***26] to limitation do not include, among other things: "Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly." (Cal. Const., art. XIII B, § 9, subd. (b).)

7 As it was originally enacted, article XIII B required that all governmental entities return revenues in excess of their appropriations limits to the taxpayers through tax rate or fee schedule revisions. In Proposition 98, adopted at the November 1988 General Election, article XIII B was amended to provide that half of state excess revenues would be transferred to the state school fund for the support of school districts and community college districts. (See Cal. Const., art. XVI, § 8.5; *California Teachers Assn. v. Huff, supra,* 5 Cal.App.4th 1513.)

Like its statutory predecessor, the constitutional initiative measure includes a provision [***27] designed "to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities." (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835-836 [244 Cal.Rptr. 677, 750 P.2d 318].) Section 6 of article XIII B of the state Constitution provides: "Whenever the Legislature or any State agency mandates a new program or higher level of service on any local government, the [*1581] State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [P] (a) Legislative mandates requested by the local agency affected; [P] (b) Legislation defining a new crime or changing an existing definition of a crime; or [P] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

Although article XIII B of the state Constitution [***28] requires subvention for state mandates enacted after January 1, 1975, the article had an effective date of July 1, 1980. (Cal. Const., art. XIII B, § 10.) **(4)** Accordingly, under the constitutional provision, a local agency may seek subvention for costs imposed by legis-

lation after January 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. (City of Sacramento v. State of California, supra, 156 Cal.App.3d at pp. 190-193.) Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law. (See 68 Ops.Cal.Atty.Gen. 244 (1985).)

The constitutional subvention provision, like the statutory scheme before it, requires state reimbursement whenever "the Legislature or any State agency" mandates a new program or higher level of service. (Cal. Const., art. XIII B, § 6.) Accordingly, it has been held that state [**558] subvention is not required when the federal government imposes new costs on local governments. (City of Sacramento v. State of California, supra, 156 Cal.App.3d at p. 188; see also Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d 521, 543 [234 Cal.Rptr. 795].) [***29] In our *City of Sacramento* decision this court held that a federal program in which the state participates is not a federal mandate, regardless of the incentives for participation, unless the program leaves state or local government with no discretion as to alternatives. (156 Cal.App.3d at p. 198.)

In its *City of Sacramento* opinion, [8] the California Supreme Court rejected this court's earlier formulation. In doing so the high court noted that the vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. (50 Cal.3d at p. 73.) However, "certain regulatory standards imposed by the federal government [*1582] under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense." (*Id.* at pp. 73-74.) The test for determining whether there is a federal mandate is whether compliance with federal standards "is a matter of true choice," that is, whether participation in the federal program "is truly voluntary." (*Id.* at p. 76.) The court went on to say: "Given the variety [***30] of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (*Ibid.*)

8 The Supreme Court's decision in *City of Sacramento* was not a result of direct review of this court's decision. The Supreme Court denied a petition for review of this court's *City of Sacramento* decision. After the Board of Control had adopted parameters and guidelines for reimbursement under this court's decision, the Legislature failed to appropriate the funds necessary for such reimbursement. The litigation which resulted in the Supreme Court's *City of Sacramento* decision was commenced as an action to enforce the result on remand from this court's *City of Sacramento* decision. (See 50 Cal.3d at p. 60.)

[***31] IV. SPECIAL EDUCATION

The issues in this case cannot be resolved by consideration of a particular federal act in isolation. Rather, reference must be made to the historical and legal setting of which the particular act is a part. Our consideration begins in the early 1970's.

In considering the 1975 amendments to the Education of the Handicapped Act, Congress referred to a series of "landmark court cases" emanating from 36 jurisdictions which had established the right to an equal educational opportunity for handicapped children. (See Smith v. Robinson (1984) 468 U.S. 992, 1010 [82 L.Ed.2d 746, 763, 104 S.Ct. 3457].) Two federal district court cases, Pennsylvania Ass'n, Ret'd Child. v. Commonwealth of Pa. (E.D.Pa. 1972) 343 F.Supp. 279 (see also Pennsylvania Ass'n, Retard. Child. v. Commonwealth of Pa. (E.D.Pa. 1971) 334 F.Supp. 1257), and Mills v. Board of Education of District of Columbia (D.D.C. 1972) 348 F.Supp. 866, were the most prominent of these judicial decisions. (See Hendrick Hudson Dist. Bd. of Ed. v. Rowley (1982) 458 U.S. 176, 180, fn. 2 [73 L.Ed.2d 690, 695, 102 S.Ct. 3034].) [***32]

In the Pennsylvania case, an association and the parents of certain retarded children brought a class action against the commonwealth and local school districts in the commonwealth, challenging the exclusion of retarded children from programs of education and training in the public schools. (Pennsylvania Ass'n, Ret'd. Child. v. Commonwealth of Pa., supra, 343 F.Supp. at p. 282.) The matter was assigned to a three- judge panel which heard evidence on the plaintiffs' due process and equal protection claims. (*Id.* at p. 285.) The parties [**559] then agreed to resolve the litigation by means of a consent [*1583] judgment. (*Ibid.*) The consent agreement required the defendants to locate and evaluate all children in need of special education services, to reevaluate placement decisions periodically, and to accord due process hearings to parents who are dissatisfied with placement decisions. (*Id.* at pp. 303-306.) It required the defendants to provide "a free public program of education and training appropriate to the child's capacity." (*Id.* at p. 285, italics deleted.)

In view of the consent agreement the district court was not required to resolve the plaintiffs' equal [***33]

protection and due process contentions. Rather, it was sufficient for the court to find that the suit was not collusive and that the plaintiffs' claims were colorable. The court found: "Far from an indication of collusion, however, the Commonwealth's willingness to settle this dispute reflects an intelligent response to overwhelming evidence against [its] position." (*Pennsylvania Ass'n, Ret'd. Child. v. Commonwealth of Pa., supra,* 343 F.Supp. at p. 291.) The court said that it was convinced the due process and equal protection claims were colorable. (*Id.* at pp. 295-296.)

In the *Mills* case, an action was brought on behalf of a number of school-age children with exceptional needs who were excluded from the Washington, D.C., public school system. (*Mills v. Board of Education of District of Columbia, supra,* 348 F.Supp. at p. 868.) The district court concluded that equal protection entitled the children to a public-supported education appropriate to their needs and that due process required a hearing with respect to classification decisions. (*Id.* at pp. 874-875.) The court said: "If sufficient funds are not available to finance [***34] all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child." (*Id.* at p. 876.)

In the usual course of events, the development of principles of equal protection and due process as applied to special education, which had just commenced in the early 1970's with the authorities represented by the *Pennsylvania* and *Mills* cases, would have been fully expounded through appellate processes. However, the necessity of judicial development was truncated by congressional action. In the Rehabilitation Act of 1973, section 504, Congress provided: "No otherwise qualified handicapped individual in the United States, as defined in section 706(7) [now 706(8)] of this title, [*1584] shall, solely by reason of his handicap, [***35] be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ...." (29 U.S.C. § 794, Pub.L. No. 93- 112, tit. V, § 504 (Sept. 26, 1973) 87 Stat. 394.).[9] Since federal assistance to education is pervasive (see, e.g., Ed. Code, § 12000- 12405, 49540 et seq., 92140 et seq.), section 504 was applicable to virtually all public educational programs in this and other states.

9 In section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, the application of section 504 was extended to federal executive agencies and the United States Postal Service. (Pub.L. No. 95-602, tit. I, § 119 (Nov. 6, 1978) 92 Stat. 2982.) The section is now subdivided and includes subdivision (b), which provides that the section applies to all of the operations of a state or local governmental agency, including local educational agencies, if the agency is extended federal funding for any part of its operations. (29 U.S.C. § 794.) This latter amendment was in response to judicial decisions which had limited the application of section 504 to the particular activity for which federal funding is received. (See *Consolidated Rail Corporation v. Darrone* (1984) 465 U.S. 624, 635-636 [79 L.Ed.2d 568, 577-578, 104 S.Ct. 1248].)

[***36] The Department of Health, Education and Welfare (HEW) promulgated regulations to ensure compliance with section 504 [**560] by educational agencies.[10] The regulations required local educational agencies to locate and evaluate handicapped children in order to provide appropriate educational opportunities and to provide administrative hearing procedures in order to resolve disputes. The federal courts concluded that section 504 was essentially a codification of the equal protection rights of citizens with disabilities. (See *Halderman v. Pennhurst State School & Hospital* (E.D.Pa. 1978) 446 F.Supp. 1295, 1323.) Courts also held that section 504 embraced a private cause of action to enforce its requirements. (*Sherry v. New York State Ed. Dept.* (W.D.N.Y. 1979) 479 F.Supp. 1328, 1334; *Doe v. Marshall* (S.D.Tex. 1978) 459 F.Supp. 1190, 1192.) It was further held that section 504 imposed upon school districts and other public educational agencies "the duty of analyzing individually the needs of each handicapped student and devising a program which will enable each individual handicapped student to receive [***37] an appropriate, free public education. The failure to perform this analysis and structure a program suited to the needs of each handicapped child, constitutes discrimination against that child and a failure to provide an appropriate, free [*1585] public education for the handicapped child." (*Doe v. Marshall, supra,* 459 F.Supp. at p. 1191. See also *David H. v. Spring Branch Independent School Dist.* (S.D.Tex. 1983) 569 F.Supp. 1324, 1334; *Halderman v. Pennhurst State School & Hospital, supra,* 446 F.Supp. at p. 1323.)

10 HEW was later dissolved and its responsibilities are now shared by the federal Department of Education and the Department of Health and Human Services. The promulgation of regula-

tions to enforce section 504 had a somewhat checkered history. Initially HEW determined that Congress did not intend to require it to promulgate regulations. The Senate Public Welfare Committee then declared that regulations were intended. By executive order and by judicial decree in *Cherry v. Mathews* (D.D.C. 1976) 419 F.Supp. 922, HEW was required to promulgate regulations. The ensuing regulations were embodied in title 45 Code of Federal Regulations part 84, and are now located in title 34 Code of Federal Regulations part 104. (See *Southeastern Community College v. Davis* (1979) 442 U.S. 397, 404, fn. 4 [60 L.Ed.2d 980, 987, 99 S.Ct. 2361]; *N. M. Ass'n for Retarded Citizens v. State of N. M.* (10th Cir. 1982) 678 F.2d 847, 852.)

[***38] (5) Throughout these proceedings Riverside, relying upon the decision in *Southeastern Community College v. Davis, supra,* 442 U.S. 397 [60 L.Ed.2d 980], has contended that section 504 cannot be considered a federal mandate because it does not obligate local school districts to take any action to accommodate the needs of handicapped children so long as they are not excluded from school. That assertion is not correct.

In the *Southeastern Community College* case a prospective student with a serious hearing disability sought to be admitted to a postsecondary educational program to be trained as a registered nurse. As a result of her disability the student could not have completed the academic requirements of the program and could not have attended patients without full-time personal supervision. She sought to require the school to waive the academic requirements, including an essential clinical program, which she could not complete and to otherwise provide full-time personal supervision. That demand, the Supreme Court held, was beyond the scope of section 504, which did not require the school to modify its program affirmatively [***39] and substantially. (442 U.S. at pp. 409-410 [60 L.Ed.2d at pp. 990-991].)

The *Southeastern Community College* decision is inapposite. States typically do not guarantee their citizens that they will be admitted to, and allowed to complete, specialized postsecondary educational programs. State educational institutions often impose stringent admittance and completion requirements for such programs in higher education. In the *Southeastern Community College* case the Supreme Court simply held that an institution of higher education need not lower or effect substantial modifications of its standards in order to accommodate a handicapped person. (442 U.S. at p. 413 [60 L.Ed.2d at pp. 992-993].) The court did not hold that a primary or secondary [**561] educational agency need do nothing to accommodate the needs of handicapped children. (See *Alexander v. Choate* (1985) 469 U.S. 287, 301 [83 L.Ed.2d 661, 672, 105 S.Ct. 712].)

[HN2]States typically do purport to guarantee all of their children the opportunity for a basic [***40] education. In fact, in this state basic education is regarded as a fundamental right. (*Serrano v. Priest, supra,* 18 Cal.3d at pp. 765-766.) All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate [*1586] the educational needs of the children in their districts. Section 504 would not appear to permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. (Compare *Lau v. Nichols* (1974) 414 U.S. 563 [39 L.Ed.2d 1, 94 S.Ct. 786], which required the San Francisco Unified School District to take affirmative steps to accommodate the needs of non-English speaking students under section 601 of the Civil Rights Act of 1964.)

Riverside's view of section 504 is inconsistent with congressional intent in enacting it. The congressional record makes it clear that section 504 was perceived to be necessary not to combat affirmative animus but to cure society's benign neglect of the handicapped. [***41] The record is replete with references to discrimination in the form of the denial of special educational assistance to handicapped children. In *Alexander v. Choate, supra,* 469 U.S. at pages 295 to 297 [83 L.Ed.2d at pages 668- 669], the Supreme Court took note of these comments in concluding that a violation of section 504 need not be proven by evidence of purposeful or intentional discrimination. With respect to the *Southeastern Community College v. Davis, supra,* 442 U.S. 397 case, the high court said: "The balance struck in *Davis* requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made. ..." (*Alexander v. Choate, supra,* 469 U.S. at p. 301 [83 L.Ed.2d at p. 672], [***42] fn. omitted.)

Federal appellate courts have rejected the argument that the *Southeastern Community College* case means that pursuant to section 504 local educational agencies need do nothing affirmative to accommodate the needs of handicapped children. (*N. M. Ass'n for Retarded Citizens v. State of N. M., supra,* 678 F.2d at pp. 852-853; *Tatro v. State of Texas* (5th Cir. 1980) 625 F.2d 557, 564 [63 A.L.R. Fed. 844].) [11] We are satisfied that section 504 does impose an obligation upon local school districts to accommodate the needs of handicapped children. How-

ever, as was the case with constitutional principles, full judicial development of section 504 as it relates to special education in elementary and secondary school districts was truncated by congressional action.

11 Following a remand and another decision by the Court of Appeals, the *Tatro* litigation, *supra,* eventually wound up in the Supreme Court. (*Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883 [82 L.Ed.2d 664, 104 S.Ct. 3371].) However, by that time the Education of the Handicapped Act had replaced section 504 as the means for vindicating the education rights of handicapped children and the litigation was resolved, favorably for the child, under that act.

[***43] [*1587] In 1974 Congress became dissatisfied with the progress under earlier efforts to stimulate the states to accommodate the educational needs of handicapped children. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at p. 180 [73 L.Ed.2d at p. 695].) These earlier efforts had included a 1966 amendment to the Elementary and Secondary Education Act of 1965, and the 1970 version of the Education of the Handicapped Act. (*Ibid.*) The prior acts had been grant programs that did not contain specific guidelines for a state's use of grant funds. (*Ibid.*) In 1974 Congress greatly increased federal funding for education of the handicapped and simultaneously required recipient [**562] states to adopt a goal of providing full educational opportunities to all handicapped children. ([73 L.Ed.2d at pp. 695-696].) The following year Congress amended the Education of the Handicapped Act by enacting the Education for All Handicapped Children Act of 1975. ([73 L.Ed.2d at p. 696].)

[HN3]Since the 1975 amendment, the Education [***44] of the Handicapped Act has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412(1).) **(6)** The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. (*Smith v. Robinson, supra,* 468 U.S. at p. 1010 [82 L.Ed.2d at p. 764].) To accomplish this purpose the act incorporates the major substantive and procedural requirements of the "right to education" cases which were so prominent in the congressional consideration of the measure. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at p. 194 [73 L.Ed.2d at p. 704].) The substantive requirements of the act have been interpreted in a manner which is "strikingly similar" to the requirements of section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson, supra,* 468 U.S. at pp. 1016-1017 [82 L.Ed.2d at p. 768].) The Supreme [***45] Court has noted that Congress intended the act to establish "'a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children.'" (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at p. 200 [73 L.Ed.2d at p. 708] citing the House of Representatives Report.) [12]

12 Consistent with its "basic floor of opportunity" purpose, the act does not require local agencies to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Rather, the act requires that handicapped children be accorded meaningful access to a free public education, which means access that is sufficient to confer some educational benefit. (Ibid.)

It is demonstrably manifest that in the view of Congress the substantive requirements of the 1975 amendment to the Education of the Handicapped Act were commensurate with the [***46] constitutional obligations of state and local [*1588] educational agencies. Congress found that "State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children;" and "it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law." (20 U.S.C. former § 1400(b)(8) & (9).) [13]

13 That Congress intended to enforce the Fourteenth Amendment to the United States Constitution in enacting the Education of the Handicapped Act has since been made clear. In *Dellmuth v. Muth* (1989) 491 U.S. 223 at pages 231232 [105 L.Ed.2d 181, 189-191, 109 S.Ct. 2397], and the court noted that Congress has the power under section 5 of the Fourteenth Amendment to abrogate a state's Eleventh Amendment immunity from suit in federal court, but concluded that the Education of the Handicapped Act did not clearly evince such a congressional intent. In 1990 Congress responded by expressly abrogating state sovereign immunity under the act. (20 U.S.C. § 1403.)

[***47] It is also apparent that Congress intended the act to achieve nationwide application: "It is the purpose of this chapter to assure that all handicapped children have available to them, within the time periods specified in section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children

and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children." (20 U.S.C. former § 1400(c).)

[**563] In order to gain state and local acceptance of its substantive provisions, the Education of the Handicapped Act employs a "cooperative federalism" scheme, which has also been referred to as the "carrot and stick" approach. (See *City of Sacramento v. State of California, supra,* 50 Cal.3d at pp. 73-74; *City of Sacramento v. State of California, supra,* 156 Cal.App.3d at p. 195.) [***48] As an incentive Congress made substantial federal financial assistance available to states and local educational agencies that would agree to adhere to the substantive and procedural terms of the act. (20 U.S.C. § 1411, 1412.) For example, the administrative record indicates that for fiscal year 1979- 1980, the base year for Santa Barbara's claim, California received $ 71.2 million in federal assistance, and during fiscal year 1980-1981, the base year for Riverside's claim, California received $ 79.7 million. We cannot say that such assistance on an ongoing basis is trivial or insubstantial.

Contrary to Riverside's argument, [HN4]federal financial assistance was not the only incentive for a state to comply with the Education of the Handicapped Act. (7) Congress intended the act to serve as a means by which state and [*1589] local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973. Accordingly, where it is applicable the act supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) [***49] and section 504 of the Rehabilitation Act of 1973, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. (*Smith v. Robinson, supra,* 468 U.S. at pp. 1009, 1013, 1019 [82 L.Ed.2d at pp. 763, 766, 769].) [14]

14 In *Smith v. Robinson, supra,* the court concluded that since the Education of the Handicapped Act did not include a provision for attorney fees, a successful complainant was not entitled to an award of such fees even though such fees would have been available in litigation under section 504 of the Rehabilitation Act of 1973 or section 1983 of the Civil Rights Act. Congress reacted by adding a provision for attorney fees to the Education of the Handicapped Act. (20 U.S.C. § 1415(e)(4)(B).)

[HN5]As a result of the exclusive nature of the Education of the Handicapped [***50] Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention. (*Smith v. Robinson, supra,* 468 U.S. at p. 1011 [82 L.Ed.2d at p. 764].) This gives local agencies the first opportunity and the primary authority to determine appropriate placement and to resolve disputes. (*Ibid.*) If a party is dissatisfied with the final result of the administrative process then he or she is entitled to seek judicial review in a state or federal court. (20 U.S.C. § 1415(e)(2).) In such a proceeding the court independently reviews the evidence but its role is restricted to that of review of the local decision and the court is not free to substitute its view of sound educational policy for that of the local authority. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at pp. 206-207 [73 L.Ed.2d at p. 712].) And since the act provides the exclusive remedy for addressing a handicapped child's right to an appropriate education, where the act applies a party [***51] cannot pursue a cause of action for constitutional violations, either directly or under the Civil Rights Act (42 U.S.C. § 1983), nor can a party proceed under section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson, supra,* 468 U.S. at pp. 1013, 1020 [82 L.Ed.2d at pp. 766, 770].)

Congress's intention to give the Education of the Handicapped Act nationwide application was successful. By the time of the decision in *Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* all states except New Mexico had become recipients under the act. (458 U.S. at pp. 183-184 [73 L.Ed.2d at p. 698].) It is important at this point in our discussion to consider the experience of New Mexico, both because the Board of Control relied upon that state's failure to adopt the Education [**564] of the Handicapped Act as proof that the act is not federally mandated, and because it illustrates the consequences of a failure to adopt the act. [*1590]

In *N. M. Ass'n for Retarded Citizens v. State of N. M.* (D.N.M. 1980) 495 F.Supp. 391, [***52] a class action was brought against New Mexico and its local school districts based upon the alleged failure to provide a free appropriate public education to handicapped children. The plaintiffs' causes of action asserting constitutional violations were severed and stayed pending resolution of the federal statutory causes of action. (*Id.* at p. 393.) The district court concluded that the plaintiffs could not proceed with claims under the Education of the Handicapped Act because the state had not adopted that act and, without more, that was a governmental decision within the state's power. (*Id.* at p. 394.) [15] The court then considered the cause of action under section 504 and found that both the state and its local school districts were in violation of that section by failing to provide a free appropriate education to handicapped children within their territories. (495 F.Supp. at pp. 398-399.)

15 The plaintiffs alleged that the failure of the state to apply for federal funds under the Education of the Handicapped Act was itself an act of discrimination. The district court did not express a view on that question, leaving it for resolution in connection with the constitutional causes of action. (Ibid.)

[***53] After the district court entered an injunctive order designed to compel compliance with section 504, the matter was appealed. (*N. M. Ass'n for Retarded Citizens v. State of N. M., supra,* 678 F.2d 847.) The court of appeals rejected the defendants' arguments that the plaintiffs were required to exhaust state administrative remedies before bringing their action and that the district court should have applied the doctrine of primary jurisdiction to defer ruling until the Office of Civil Rights could complete its investigation into the charges. (*Id.* at pp. 850-851.) The court also rejected the defendants' arguments that section 504 does not require them to take action to accommodate the needs of handicapped children and that proof of disparate treatment is essential to a violation of section 504. (678 F.2d at p. 854.) The court found sufficient evidence in the record to establish discrimination against handicapped children within the meaning of section 504. (678 F.2d at p. 854.) However, the reviewing court concluded that the district court had applied an erroneous standard in reaching its decision, [***54] and the matter was remanded for further proceedings. (*Id.* at p. 855.)

On July 19, 1984, during the proceedings before the Board of Control, a representative of the Department of Education testified that New Mexico has since implemented a program of special education under the Education of the Handicapped Act. We have no doubt that after the litigation we have just recounted New Mexico saw the handwriting on the wall and realized that it could either establish a program of special education with federal financial assistance under the Education of the Handicapped Act, or be compelled through litigation to accommodate the educational needs of handicapped [*1591] children without federal assistance and at the risk of losing other forms of federal financial aid. In any event, with the capitulation of New Mexico the Education of the Handicapped Act achieved the nationwide application intended by Congress. (20 U.S.C. § 1400(c).)

California's experience with special education in the time period leading up to the adoption of the Education of the Handicapped Act is examined as a case study in Kirp et al., *Legal Reform of Special Education: Empirical* [***55] *Studies and Procedural Proposals* (1974) 62 Cal.L.Rev. 40, at pages 96 through 115. As this study reflects, during this period the state and local school districts were struggling to create a program to accommodate adequately the educational needs of the handicapped. (*Id.* at pp. 97-110.) Individuals and organized groups, such as the California Association for the Retarded and the California Association for Neurologically Handicapped Children, were exerting pressure through political and other means at every level of the educational system. (Ibid.) Litigation was becoming so prevalent [**565] that the authors noted: "Fear of litigation over classification practices, prompted by the increasing number of lawsuits, is pervasive in California." (*Id.* at p. 106, fn. 295.) [16]

16 Lawsuits primarily fell into three types: (1) Challenges to the adequacy or even lack of available programs and services to accommodate handicapped children. (*Id.* at p. 97, fns. 255, 257.) (2) Challenges to classification practices in general, such as an overtendency to classify minority or disadvantaged children as "retarded." (*Id.* at p. 98, fns. 259, 260.) (3) Challenges to individual classification decisions. (*Id.* at p. 106.) In the absence of administrative procedures for resolving classification disputes, dissatisfied parents were relegated to self-help remedies, such as pestering school authorities, or litigation. (*Ibid.*)

[***56] In the early 1970's the state Department of Education began working with local school officials and university experts to design a "California Master Plan for Special Education." (Kirp et al., *Legal Reform of Special Education: Empirical Studies and Procedural Proposals, supra,* 62 Cal.L.Rev. at p. 111.) In 1974 the Legislature enacted legislation to give the Superintendent of Public Instruction the authority to implement and administer a pilot program pursuant to a master plan adopted by State Board of Education in order to determine whether services under such a plan would better meet the needs of children with exceptional needs. (Stats. 1974, ch. 1532, § 1, p. 3441, enacting Ed. Code, § 7001.) In 1977 the Legislature acted to further implement the master plan. (Stats. 1977, ch. 1247, especially § 10, pp. 4236-4237, enacting Ed. Code, § 56301.) In 1980 the Legislature enacted urgency legislation revising our special education laws with the express intent of complying with the 1975 amendments to the Education of the Handicapped Act. (Stats. 1980, ch. 797, especially § 9, pp. 2411-2412, enacting Ed. Code, § 56000.)

As this history demonstrates, in determining whether to [***57] adopt the requirements of the Education of the Handicapped Act as amended in 1975, our [*1592] Legislature was faced with the following circumstances: (1) In the *Serrano* litigation, our Supreme Court had declared basic education to be a fundamental right and, without even considering special education in the equation, had found our educational system to be violative of equal protection principles. (2) Judicial decisions from

other jurisdictions had established that handicapped children have an equal protection right to a free public education appropriate to their needs and due process rights with regard to placement decisions. (3) Congress had enacted section 504 of the Rehabilitation Act of 1973 to codify the equal protection rights of handicapped children in any school system that receives federal financial assistance and to threaten the state and local districts with the loss of all federal funds for failure to accommodate the needs of such children. (4) Parents and organized groups representing handicapped children were becoming increasingly litigious in their efforts to secure an appropriate education for handicapped children. (5) In enacting the 1975 amendments to [***58] the Education of the Handicapped Act, Congress did not intend to require state and local educational agencies to do anything more than the Constitution already required of them. The act was intended to provide a means by which educational agencies could fulfill their constitutional responsibilities and to provide substantial federal financial assistance for states that would agree to do so.

(8a) Under these circumstances we have no doubt that enactment of the 1975 amendments to the Education of the Handicapped Act constituted a federal mandate under the criteria set forth in *City of Sacramento v. State of California, supra,* 50 Cal.3d at page 76. The remaining question is whether the state's participation in the federal program was a matter of "true choice" or was "truly voluntary." The alternatives were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event. We conclude [***59] that so far [**566] as the state is concerned the Education of the Handicapped Act constitutes a federal mandate.

V. SUBVENTION FOR SPECIAL EDUCATION

Our conclusion that the Education of the Handicapped Act is a federal mandate with respect to the state marks the starting point rather than the end of the consideration which will be required to resolve the Santa Barbara and Riverside test claims. In *City of Sacramento v. State of California, supra,* 50 Cal.3d at pages 66 through 70, the California Supreme Court concluded that the costs at issue in that case (unemployment insurance premiums) were not subject to state subvention because they were incidental to a law of general [*1593] application rather than a new governmental program or increased level of service under an existing program. The court addressed the federal mandate issue solely with respect to the question whether the costs were exempt from the local government's taxing and spending limitations. (*Id.* at pp. 70-71.) It observed that prior authorities had assumed that if a cost was federally mandated it could not be a state mandated cost subject to subvention, and [***60] said: "We here express no view on the question whether 'federal' and 'state' mandates are mutually exclusive for purposes of state subvention, but leave that issue for another day. ..." (*Id.* at p. 71, fn. 16.) The test claims of Santa Barbara and Riverside present that question which we address here for the guidance of the Commission on remand.

(9) The constitutional subvention provision and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions [HN6]themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. (Cal. Const., art. XIII B, § 6.) Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. (See Rev. & Tax. Code, former § 2164.3 [Stats. 1972, ch. 1406, § 14.7, pp. 2962- 2963], 2231 [Stats. 1973, ch. 358, § 3, pp. 783-784], 2207 [Stat. 1975, ch. 486, § 1.8, pp. 997-998], 2207.5 [***61] [Stats. 1977, ch. 1135, § 5, pp. 3646-3647].) When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no "true choice" in the manner of implementation of the federal mandate. (See *City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 76.)

This reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state. A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 68.) Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies [***62] without subvention merely because those costs were imposed upon the state by the federal government. In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which [*1594] is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a fed-

eral program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed [**567] upon the state by the federal government.

The Education of the Handicapped Act is a comprehensive measure designed to provide all handicapped children with basic educational opportunities. While the act includes certain substantive and procedural requirements which must be included in a state's plan for implementation of the act, it leaves primary responsibility for implementation to the state. (20 U.S.C. § 1412, 1413.) **(8b)** In short, even though the state had no real choice in deciding whether to comply with the federal act, the act did not necessarily require the state to impose all of [***63] the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention.

We can illustrate this point with a hypothetical situation. Subvention principles are intended to prevent the state from shifting the cost of state governmental services to local agencies and thus subvention is required where the state imposes the cost of such services upon local agencies even if the state continues to perform the services. (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at pp. 835-836.) The Education of the Handicapped Act requires the state to provide an impartial, state-level review of the administrative decisions of local or intermediate educational agencies. (20 U.S.C. § 1415(c), (d).) Obviously, the state could not shift the actual performance of these new administrative reviews to local districts, but it could attempt to shift the costs to local districts [***64] by requiring local districts to pay the expenses of reviews in which they are involved. An attempt to do so would trigger subvention requirements. In such a hypothetical case, the state could not avoid its subvention responsibility by pleading "federal mandate" because the federal statute does not require the state to impose the costs of such hearings upon local agencies. Thus, as far as the local agency is concerned, the burden is imposed by a state rather than a federal mandate.

In the administrative proceedings the Board of Control did not address the "federal mandate" question under the appropriate standard and with proper focus on local school districts. In its initial determination the board concluded that the Education of the Handicapped Act constituted a federal mandate and that the state-imposed costs on local school districts in excess of the federally imposed costs. However, the board did not consider the [*1595] extent of the state-mandated costs because it concluded that any appropriation by the state satisfied its obligation. On Riverside's petition for a writ of administrative mandate the superior court remanded to the Board of Control to consider whether [***65] the state appropriation was sufficient to reimburse local school districts fully for the state-mandated costs. On remand the board clearly applied the now-discredited criteria set forth in this court's decision in *City of Sacramento v. State of California, supra,* 156 Cal.App.3d 182, and concluded that the Education of the Handicapped Act is not a federal mandate at any level of government. Under these circumstances we agree with the trial court that the matter must be remanded to the Commission for consideration in light of the criteria set forth in the Supreme Court's *City of Sacramento* decision. We add that on remand the Commission must focus upon the costs incurred by local school districts and whether those costs were imposed *on local districts* by federal mandate or by the state's voluntary choice in its implementation of the federal program.

VI. RIVERSIDE'S OBJECTIONS

In light of this discussion we may now consider Riverside's objections to the trial court's decision to remand the matter to the Commission for reconsideration.

Riverside asserts that the California Supreme Court opinion in *City of Sacramento* is not [***66] on point because the court did not address the federal mandate question with respect to state subvention principles. Riverside implies that the definition of a federal mandate may be different [**568] with respect to state subvention than with respect to taxing and spending limitations. [HN7] **(10)** As a general rule and unless the context clearly requires otherwise, we must assume that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part. (*Lungren v. Davis* (1991) 234 Cal.App.3d 806, 823 [285 Cal.Rptr. 777].) **(11)** Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's [***67] taxing and spending limitations. If the costs are imposed by the state then the state must provide a subvention to reimburse the local agency. Nothing in this scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Accordingly, we reject the claim that the criteria set forth in [*1596] the Supreme Court's *City of*

Sacramento decision do not apply when subvention is the issue.

(12) Riverside asserts that the trial court erred in concluding that the Board of Control did not consider the issues under the appropriate criteria and that the board did in fact consider the factors set forth in the Supreme Court's *City of Sacramento* decision. From our discussion above it is clear that we must reject these assertions. In its decision the board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act without any consideration whether the act left the state any actual choice in the matter. In support of its conclusion the board relied upon the New Mexico litigation which we have also discussed. However, as we have pointed out, under [***68] the criteria set forth in the Supreme Court's *City of Sacramento* decision, the New Mexico litigation does not support the board's decision but in fact strongly supports a contrary result. We are satisfied that the trial court correctly concluded that the board did not apply the appropriate criteria in reaching its decision.

Riverside asserts that the Supreme Court's *City of Sacramento* decision elucidated and enforced prior law and thus no question of retroactivity arises. (See Donaldson v. Superior Court (1983) 35 Cal.3d 24, 37 [196 Cal.Rptr. 704, 672 P.2d 110].) **(13)** We agree that in *City of Sacramento* the Supreme Court elucidated and enforced existing law. Under such circumstances the rule of retrospective operation controls. (See also Wellenkamp v. Bank of America (1978) 21 Cal.3d 943, 953- 954 [148 Cal.Rptr. 379, 582 P.2d 970]; County of Los Angeles v. Faus (1957) 48 Cal.2d 672, 680-681 [312 P.2d 680].) Pursuant to that rule the trial court correctly applied the *City of Sacramento* decision to the [***69] litigation pending before it. As we have seen, that decision supports the trial court's determination to remand the matter to the Commission for reconsideration.

Riverside asserts that if further consideration under the criteria of the Supreme Court's *City of Sacramento* decision is necessary then the trial court should have, and this court must, engage in such consideration to reach a final conclusion on the question. To a limited extent we agree. In our previous discussion we have concluded that under the criteria set forth in *City of Sacramento,* the Education of the Handicapped Act constitutes a federal mandate as far as the state is concerned. We are satisfied that is the only conclusion which may be drawn and we so hold as a matter of law. However, that conclusion does not resolve the question whether new special education costs were imposed upon local school districts by federal mandate or by state choice in the implementation of the federal program. The issues were not addressed by the parties or the Board of Control in this light. The [*1597] Commission on State Mandates is the entity with the responsibility for considering the issues in [**569] the first instance [***70] and which has the expertise to do so. We agree with the trial court that it is appropriate to remand the matter to the Commission for reconsideration in light of the appropriate criteria which we have set forth in this appeal.

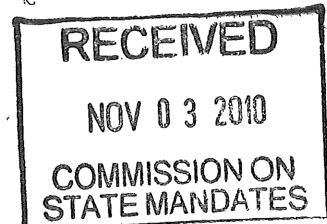
In view of the result we have reached we need not and do not consider whether it would be appropriate otherwise to fashion some judicial remedy to avoid the rule, based upon the separation of powers doctrine, that a court cannot compel the State Controller to make a disbursement in the absence of an appropriation. (See Carmel Valley Fire Protection Dist. v. State of California, supra, 190 Cal.App.3d at pp. 538- 541.)

DISPOSITION

The judgment is affirmed.

Davis, J., and Scotland, J., concurred. The petition of plaintiff and respondent for review by the Supreme Court was denied April 1, 1993. Lucas, C.J., Kennard, J., and Arabian, J., were of the opinion that the petition should be granted.

COMMISSION ON STATE MANDATES
TEST CLAIM FORM
Authorized by Government Code section 17553
(Revised 1/2005)



GENERAL INSTRUCTIONS

☐ Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

☐ Type all responses.

☐ Complete sections 1 through 8, as indicated. Failure to complete any of these sections will result in this test claim being returned as incomplete.

☐ Original test claim submissions shall be unbound, single-sided, and without tabs. Copies may be double-sided, but unbound and without tabs.

☐ Mail, or hand-deliver, one original and seven copies of your test claim submission to:

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Within ten (10) days of receipt of a test claim, or its amendment, Commission staff will notify the claimant or claimant representative whether the submission is complete or incomplete. Test claims will be considered incomplete if any of the required sections are not included or are illegible. If a completed test claim is not received within thirty (30) calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim may be accepted on the same statute or executive order alleged to impose a mandate.

You may download this form from our website! If you have any questions, please contact us:

Web Site:	www.csm.ca.gov
Telephone:	(916) 323-3562
Fax:	(916) 445-0278
E-Mail:	csminfo@csm.ca.gov

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PROOF OF SERVICE BY OVERNIGHT DELIVERY

I am employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2049 Century Park East, 5th Floor, Los Angeles, California 90067.3107. On November 2, 2010, I deposited with Overnight Express, a true and correct copy of the within documents:

TEST CLAIM FORMS AND SUPPORTING DOCUMENTS

in a sealed envelope, addressed as follows:

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Following ordinary business practices, the envelope was sealed and placed for collection by 5:30 pm on this date, and would, in the ordinary course of business, be retrieved by for overnight delivery on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 2, 2010, at Los Angeles, California.

Carolyn Ward

LITTLER MENDELSON
A PROFESSIONAL CORPORATION
2049 Century Park East
5th Floor
Los Angeles, CA 90067.3107
310.553.0308

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

COMMISSION ON STATE MANDATES
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November 27, 2013

Mr. Barrett K. Green, Esq.
Littler Mendelson, P.C.
2049 Century Park East, Suite 500
Los Angeles, CA 90067

And Parties, Interested Parties, and Interested Persons (See Enclosed Mailing List)

Re: **Notice of Draft Staff Analysis, Schedule for Comments and Notice of Hearing**
Special Education Services for Adult Students in County Jail, 10-TC-04
January 2010 Compliance Report from the California Department of Education,
November 16, 2009 Decision of the California Office of Administrative Hearings,
and California Education Code Section 56041
Los Angeles Unified School District, Claimant

Dear Mr. Green:

The draft staff analysis for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft staff analysis by **December 18, 2013.** You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see http://www.csm.ca.gov/dropbox.shtml on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, January 24, 2014,** at 10:00 a.m., in the State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about January 10, 2014. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Tyler Asmundson at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey
Executive Director

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ITEM ___

TEST CLAIM
DRAFT STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

January 2010 Compliance Report from the California Department of Education[1]

Special Education Services for Adult Students in County Jail

10-TC-04

Los Angeles Unified School District, Claimant

EXECUTIVE SUMMARY

Attached is the draft proposed statement of decision for this matter. This executive summary and the draft proposed statement of decision also function as the draft staff analysis, as required by section 1183.07 of the Commission on State Mandates' (Commission) regulations.

Overview

This test claim seeks reimbursement for costs incurred by school districts for providing special education services to eligible students in county jail. Education Code section 56041 provides a means for determining the district responsible for providing special education and related services beyond the pupil's 18th birthday. In 2009, the Office of Administrative Hearings (OAH) interpreted section 56041 and other *existing* state and federal laws and concluded that the claimant was required to provide special education services to the incarcerated students in county jail. In 2010, the California Department of Education (CDE) also applied section 56041 and issued a decision (2010 CDE Compliance Report) finding that claimant was responsible for providing special education to students incarcerated in county jail. Prior to the issuance of the 2010 CDE Compliance Report and OAH Decision, claimant did not provide special education services to inmates in county jail.

[1] Although only the January 2010 Compliance Report from the California Department of Education was listed in box 4 of the test claim form, the Commission also accepted jurisdiction over Education Code section 56041 and the November 16, 2009 decision by the Office of Administrative Hearings because Education Code section 56041 and the OAH Decision were clearly identified and alleged to contain a mandate in the written narrative of the test claim.

The claimant, Los Angeles Unified School District, seeks reimbursement for costs incurred to provide special education services to eligible students in county jail. Claimant alleges that the 2010 CDE Compliance Report, OAH Decision, and Education Code section 56041 have caused claimant to incur $33,750.17 in costs to provide special education services during the 2009-2010 fiscal year.[2] Claimant also alleges that it will incur approximately $100,000 in costs during fiscal year 2010-2011 and in each year going forward.[3]

Procedural History

Claimant filed the test claim on November 3, 2010. Based on the November 3, 2010 filing date, the potential period of reimbursement for this test claim begins on July 1, 2010. On February 7, 2011, Commission staff deemed the filing complete and numbered it 10-TC-04.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies, including school districts, are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions: all members of the class have the opportunity to participate in the test claim process, and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

[2] Test claim, dated November 3, 2010, section 6 (DECLARATION OF SHARON JARRETT), p. 3. Ms. Jarrett's declaration states that the total cost of the special education services for Mr. Garcia in the 2010-2011 fiscal year will be lower than in the 2009-2010 fiscal since Mr. Garcia was transferred out of jail and to a prison facility in September 2010.

[3] *Id*. Ms. Jarrett's declaration indicates that "it is difficult to specify the cost of special education services for other adult inmates in Fiscal Year 2011" because such costs is subject to unknown variables and estimates that special education services will be provided for more that 5 inmates per year going forward.

Claims

The following chart provides a summary of the claims and issues raised and staff's recommendation.

Subject	Description	Staff Recommendation
Education Code section 56041, as adopted in 1992.	Education Code section 56041 provides that the school district responsible for providing special education services for students beyond the age of 18 is based on the residence of the parent or conservator.	*Deny* –the plain language of section 56041 does not impose any state-mandated activities on school districts. Section 56041 identifies which school district is responsible for providing special education and related services pursuant to other state and federal statutes for students eligible to receive services after their 18th birthday. In addition, school districts have been fully funded for the provision of special education services required to be provided to *any* student between the ages of 18 and 22, including students in county jail. As such, applying section 56041 to require school districts to provide special education services to inmates incarcerated in county jail does not result in any increased cost to school districts.
2009 Decision by the Office of Administrative Hearings	The OAH Decision interprets Education Code section 56041 and other *existing* state and federal law and concludes that the claimant is required to provide special	*Deny* – the OAH Decision applies existing law and does not impose any new state-mandated activities

	education services to incarcerated students in county jail.	on school districts.
January 2010 Compliance Report from the California Department of Education	The 2010 CDE Compliance Report interprets Education Code section 56041 and other *existing* state and federal law and concludes that the claimant is required to provide special education services to incarcerated students in county jail.	*Deny* – the 2010 CDE Compliance Report applies existing law and does not impose any new state-mandated activities on school districts.

Analysis

Staff recommends that the Commission deny this test claim. The plain language of section 56041 does not require school districts to perform any activities. Instead, section 56041 identifies which school district is responsible for providing special education and related services for students eligible to receive services after their 18th birthday. The requirement for school districts to provide special education services is not new. The 2010 CDE Compliance Report and OAH decision applying section 56041 do not impose any new mandated duties on claimant. These decisions apply *existing* state and federal law and conclude that the claimant is required to provide special education services to incarcerated students in county jail since the district was the "last district of residence in effect prior to the pupil's attaining the age of majority." In addition, staff finds that school districts have been fully funded to comply with section 56041 and for the provision of special education services required to be provided to *any* student between the ages of 18 and 22. Therefore, Education Code section 56041, the 2010 CDE Compliance Report, and the OAH Decision do not result in any increased costs mandated by the state.

Accordingly, staff finds that Education Code section 56041, as enacted in 1992, the 2010 CDE Compliance Report, and the OAH Decision do not impose a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Conclusion and Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision to deny this test claim.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: January 2010 Compliance Report from the California Department of Education[4] Filed on November 3, 2010 By Los Angeles Unified School District, Claimant.	Case No.: 10-TC-04 *Special Education Services for Adult Students in County Jail* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted January 24, 2014*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 24, 2013. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

[4] Although only the January 2010 Compliance Report from the California Department of Education was listed in box 4 of the test claim form, the Commission also accepted jurisdiction over Education Code section 56041 and the November 16, 2009 decision by the Office of Administrative Hearings because Education Code section 56041 and the OAH Decision were clearly identified and alleged to contain a mandate in the written narrative of the test claim.

Summary of the Findings

This test claim addresses a compliance report issued by the California Department of Education (CDE) and a decision by the Office of Administrative Hearings (OAH) interpreting and applying Education Code section 56041. For those students ages 18 to 22 that are eligible for special education services pursuant to federal and state law, Education Code section 56041 provides a means for determining the district responsible for providing special education and related services beyond the pupil's 18th birthday. In December 2008, the Disability Rights Legal Center filed both a special education complaint with the CDE and a due process hearing complaint with the OAH on behalf of two students who were allegedly denied special education services that they were allegedly entitled to under federal and state law while incarcerated in Los Angeles County Jail. On November 19, 2009, the OAH interpreted and applied Education Code section 56041 and issued a decision (OAH Decision) finding that claimant was responsible for providing special education to students incarcerated in Los Angeles County Jail. In 2010, the CDE also interpreted and applied Education Code section 56041 and issued a decision (2010 CDE Compliance Report) finding that claimant was responsible for providing special education to students incarcerated in Los Angeles County Jail. Claimant requests reimbursement for complying with the OAH Decision, 2010 CDE Compliance Report, and Education Code section 56041. Claimant alleges that before the OAH Decision and 2010 CDE Compliance Report, it did not have to provide special education services to eligible students in county jail.

The Commission denies this test claim. The Commission finds that Education Code section 56041 is not new and that the 2010 Compliance Report and OAH Decision do not alter existing law. Rather the 2010 Compliance Report and the OAH Decision applied section 56041 and required claimant to comply with the law as it has existed since section 56041 was enacted in 1992. In addition, the Commission finds that Education Code section 56041, the 2010 CDE Compliance Report, and the OAH Decision do not result in any increased costs mandated by the state within the meaning of article XIII B, section 6. Accordingly, the Commission finds that Education Code section 56041, the 2010 CDE Compliance Report, and the OAH Decision do not impose a reimbursable state-mandated program on school districts.

COMMISSION FINDINGS

I. Chronology

11/03/2010	Claimant, Los Angeles Unified School District (LAUSD), filed the test claim with the Commission.
02/07/2011	Commission staff deemed the filing complete and issued a notice of complete test claim filing and schedule for comments.

II. Background

This test claim seeks reimbursement for costs incurred to provide special education services to adult students, between the ages of 18 and 22, incarcerated in county jail. The costs incurred

by the claimant are alleged to result from a compliance report issued by the California Department of Education (CDE) and a decision by the Office of Administrative Hearings (OAH). The report and decision both interpreted and applied Education Code section 56041 to find, as a matter of law, that LAUSD, rather than the county jail or another school district providing adult education services to incarcerated adults, was required to provide special education services to 18-22 year old students in county jail. To better understand this test claim, existing state and federal law on special education is summarized below.

A. <u>Federal and State Special Education Requirements</u>

Under federal law, the Individuals with Disabilities Education Act (IDEA) requires that a free and appropriate public education (FAPE) be provided to children with disabilities.[5] Pursuant to the IDEA and section 56026 of the California Education Code, children who are eligible for special education services are entitled to continue receiving those services until they turn 22 or receive a high school diploma.[6] IDEA requires that if a child between the ages 18 and 22 received special education services in his last educational placement prior to being incarcerated in an adult correctional facility, that child remains entitled to services while he is incarcerated.[7]

Each state is responsible for ensuring compliance with the IDEA and is required to specify which state education agency (SEA) or local educational agency (LEA) is responsible for providing special education services to certain students, including students who are incarcerated.[8] States are generally responsible for ensuring IDEA's requirements are met.[9] Thus, although federal law imposes a mandate to provide special education services, the question of which agency is responsible for providing a student with a FAPE pursuant to this federal mandate is determined under state law.[10] Apart from a state's supervisory responsibilities, a state can be required to provide direct services to a child if the responsible

[5] Title 20 United States Codes section 1400 et seq.

[6] Title 20 United States Codes section 1412(a)(1)(A). As discussed further below, the Commission addressed reimbursement for activities required by Education Code section 56026 in a prior test claim, *Special Education*, CSM-3986, and the state and certain interested parties later entered into a settlement agreement to resolve all claims regarding the Special Education test claim, including claims for reimbursement incurred to provide special education as required by Education Code section 56026.

[7] Title 20 United States Codes section 1412(a)(1)(B)(ii); Title 34 Code of Federal Regulations section 300.102(a)(2)(ii).

[8] See Title 20 United States Codes section 1412(a).

[9] *Id.*; Title 20 United States Codes section 1412(a)(11)(C) (responsibility for meeting requirements for incarcerated children may be assigned to any public agency in the state).

[10] See *Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525–27.

LEA is unable or unwilling to provide those services.[11] States are also responsible for providing services when there is no state law or regulation that delegates the state's responsibility to another educational agency.[12] In most circumstances, however, a state will assign responsibility for providing special education services to an LEA, such as a school district. In California, the responsible LEA is usually the school district where the child would otherwise be assigned.[13] California's compulsory school attendance law requires that children between the ages of six and eighteen attend school in "the school district in which the residency of either the parent or legal guardian is located."[14] Section 48200 "embodies the general rule that parental residence dictates a pupil's proper school district."[15] There are exceptions to this rule,[16] mostly for students who do not reside with their parents, but generally students ages six to eighteen receive special education services from the school district in which their parents reside.

B. Education Code Section 56041

Education Code sections 56000 through 56865 *et. seq.* set forth state requirements for the provision of special education programs within California. Education Code sections 56000 through 56001 state the Legislature's intent to provide special education instruction and services to "individuals with exceptional needs."[17] An "individual with exceptional needs" is defined by Education Code section 56026 in order to determine which pupils are eligible for special education services.[18] Section 56026 also requires the provision of special education services for qualifying pupils with exceptional needs up to 22 years of age if the pupil has not yet completed the prescribed course of study, has not met proficiency standards, or has not

[11] Title 20 United States Codes section 1413(g).

[12] *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1052-53.

[13] *See Orange County Department of Education. v. A.S.* (C.D.Cal.2008) 567 F.Supp.2d 1165, 1167.

[14] Education Code section 48200.

[15] *Katz v. Los Gatos–Saratoga Joint Union High School District* (2004) 117 Cal.App.4th 47, 53.

[16] Education Code section 48204.

[17] Education Code section 56000, as last amended by Statutes 2007, chapter 454; Education Code section 56000.5, as last amended by Statutes 1994, chapter 1126; and Education Code section 56001, as last amended by Statutes 2005, chapter 653.

[18] Education Code section 56026, as last amended by Statutes 2007, chapter 56.

graduated from high school with a regular high school diploma.[19] Education Code section 56026, as last amended in 2007, provides in full that:

> "Individuals with exceptional needs" means those persons who satisfy all the following:
>
> (a) Identified by an individualized education program team as a child with a disability, as that phrase is defined in Section 1401(3)(A) of Title 20 of the United States Code.
>
> (b) Their impairment, as described by subdivision (a), requires instruction and services which cannot be provided with modification of the regular school program in order to ensure that the individual is provided a free appropriate public education pursuant to Section 1401(9) of Title 20 of the United States Code.
>
> (c) Come within one of the following age categories:
>
> (1) Younger than three years of age and identified by the local educational agency as requiring intensive special education and services, as defined by the board.
>
> (2) Between the ages of three to five years, inclusive, and identified by the local educational agency pursuant to Section 56441.11.
>
> (3) Between the ages of five and 18 years, inclusive.
>
> (4) Between the ages of 19 and 21 years, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards or has not graduated from high school with a regular high school diploma.
>
> (A) Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year, including any extended school year program for individuals with exceptional needs established pursuant to Section 3043 of Title 5 of the California Code of Regulations and Section 300.106 of Title 34 of the Code of Federal Regulations.
>
> (B) Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in July, August, or September of that

[19] Education Code section 56026(c).

new fiscal year. However, if a person is in a year-round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term.

(C) Any person who becomes 22 years of age during the months of October, November, or December while participating in a program under this act shall be terminated from the program on December 31 of the current fiscal year, unless the person would otherwise complete his or her individualized education program at the end of the current fiscal year.

(D) No local educational agency may develop an individualized education program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives.

(d) Meet eligibility criteria set forth in regulations adopted by the board, including, but not limited to, those adopted pursuant to Article 2.5 (commencing with Section 56333) of Chapter 4.

(e) Unless disabled within the meaning of subdivisions (a) to (d), inclusive, pupils whose educational needs are due primarily to limited English proficiency; a lack of instruction in reading or mathematics; temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors are not individuals with exceptional needs.

For those pupils ages 18 to 22 that are eligible for special education services pursuant to Education Code section 56026, Education Code section 56041 identifies the district responsible for providing special education and related services beyond the pupil’s 18th birthday as the district of residence of the parent or conservator. Education Code section 56061, which was adopted in 1992, provides in full that:

> 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.[20]

C. 2010 Department of Education Compliance Report and OAH Decision

i. Office of Administrative Hearing Decisions and Department of Education Compliance Reports Regarding Education Code Section 56041

The CDE has established a formal process for submitting and reviewing complaints regarding noncompliance with federal and state special education laws, such as failure to implement an individualized education program (IEP) for a student eligible for special education.[21] Once the CDE receives a special education complaint that meets certain procedural requirements, the CDE will conduct an investigation regarding the allegations, prepare an investigation report, and, where appropriate, suggest corrective action by the school district or other public agency providing special education services.[22] The CDE may apply sanctions if corrective actions are not taken by the responsible school district or other public agency providing special education services.[23]

In addition to the CDE's investigation process, parents, guardians, or surrogates of children with disabilities have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of their child or the provision of FAPE.[24]

[20] Added by Statutes. 1992, chapter. 1360, section 8. Effective January 1, 1993. [Former section 56041, added by Statutes 1977, chapter 1247, operative July 1, 1978, relating to certification of private school, was repealed by Statutes 1980, chapter 797, effective September 28, 1980. Section 56041 was also derived from former section 56037, enacted by Statutes 1976, chapter 1010 (relating to creation of minimum education standards for "exceptional children") and Education Code section 6874.5, added by Statutes 1968, chapter 472 (relating to creation of minimum education standards for "exceptional children"), amended by Statutes 1969, chapter 1524, section 4.]

[21] Title 34 Code of Federal Regulations sections 300.151, 300.152, 300.153; Education Code sections 56043(p) and 56500.2; California Code of Regulations, Title 5, sections 4660-4670.

[22] *Ibid.*

[23] *Ibid.*

[24] Title 20 United States Code sections 1415(f)(1)(A), 1415[f][3][A]-[D]; Title 34 Code of Federal Regulations section 300.511; Education Code section 56501[b][4].

These due process hearings are provided by the Special Education Division of the OAH.[25] Due process complaints are filed when there is disagreement about what should be included in an IEP or where the IEP should be implemented. In contrast, CDE complaints are filed when a school district is alleged to have failed to abide by federal or state special education laws or comply with a previously established IEP.

In December 2008, the Disability Rights Legal Center filed both a special education complaint with the CDE and a due process hearing complaint with the OAH on behalf of Michael Garcia and another unidentified student alleging that Mr. Garcia and the other student were denied FAPE while incarcerated in Los Angeles County Jail.[26] Mr. Garcia's complaints alleged a systemic failure of various public agencies to identify and serve eligible adults while incarcerated in the Los Angeles County Jail. Mr. Garcia's OAH due process complaint named a variety of education and correctional agencies, but not the claimant. OAH dismissed the allegations regarding a systematic failure to provide special education services for lack of jurisdiction and dismissed various named agencies on the grounds that each dismissed agency was not responsible for providing FAPE for Mr. Garcia.[27]

Following the dismissal of Mr. Garcia's due process complaint, CDE continued its investigation and during this process the claimant asserted that LAUSD was not the LEA responsible for providing Mr. Garcia with special education services. Instead, claimant argued that the LEA responsible for providing special education services was either: (1) the Los Angeles County Jail pursuant to statutory law which requires counties to provide juvenile and adult education to inmates; or (2) the Hacienda La Puente Unified School District, which contracted with the Los Angeles Sheriff's Department to provide adult education services to inmates of county jails.[28] On June 10, 2009, CDE issued a compliance report (2009 CDE Compliance Report) which required that LAUSD provide special education services to Mr. Garcia, the other unidentified complainant, and other eligible students between the ages of 18 and 22 incarcerated in Los Angeles County Jail. The 2009 CDE Compliance Report specifically found the following:

> Eligibility: State and federal laws state that individuals with disabilities who are identified as needing special education instruction and related services continue

[25] Department of General Services, Office of Administrative Hearings, Understanding Special Education Due Process Hearings Provided By The Office of Administrative Hearings (2009), p. VI.

[26] Test claim, dated November 3, 2010, section 7 (DOCUMENTATION), Exhibit 1, June 10, 2009 Compliance Report issued by the California Department of Education, p. 5, "Background Information."

[27] *Ibid.*

[28] *Id.* at p. 91-10, citing Government Code sections 26600 and 26605 and California Code of Regulations, Title 15, section 1061.

to be eligible for those services from age 3 until they reach the age of 22 (*EC* Section 56026)(c); 34 *CFR* Section 300.101(a).) There is a specific exception for individuals incarcerated in adult correctional facilities who were not identified for special education before the age of 18. However, the exception for CDEs does not apply in this case. There is no other exception that would make incarcerated adults ineligible for special education if they were identified before age 18. Therefore Students 1 and 2 in this case are still eligible to receive the services required by the IEPs.

Residence: As a general rule, the local education agency (LEA) of a student's parents' residence is required to provide the procedural safeguards and special education services necessary for FAPE as described in the student's IEP. *(EC* Section 48200) Education Code Section 56041 states that, if the IEP team determines that a student needs special education after turning 18, responsibility for providing special education and related services between the ages of 18 and 22 shall be assigned to the "last district of residence in effect prior to the pupil's attaining the age of majority." When a student turns 18, the last LEA of the parents' residence is required to notify the student and the parents that all of the parents' procedural rights have transferred to the student *(EC* Section 56041.5). Although the parents' rights regarding participation in the IEP process transfer to the student at age 18, it appears that an adult student's responsible LEA continues to be the district of the residence of the parents under section 56041. In the instant case, since the parents of Student 1 and 2 are residents of LAUSD, that district is responsible for providing FAPE.

No statute indicates how an LEA is supposed to locate and serve a student over 18 who has left public school. It seems reasonable to imply that such individuals have the duty to inform the appropriate LEA of their location and their continued desire to receive instruction and services after age 18. Once on notice, the responsible LEA has the duty to provide the required instruction and related services or to pay for the provision of services. (*EC* Section 56041(a)[29]

The 2009 CDE Compliance Report also imposed the following corrective actions upon claimant:

1. By December 30, 2009, the LAUSD will adopt written policies and procedures to ensure that inmates (aged 18-22) of the LACJ who are eligible to receive special education through LAUSD and who request special education services will be provided services while incarcerated in the LACJ. Acceptable evidence would include a copy of policies and procedures and evidence that such policies have been provided to appropriate LAUSD personnel.

[29] *Id*. at pp. 15-16, "Conclusion."

2. By August 30, 2009, the LAUSD will request an agreement with the LACJ indicating the circumstances under which special education services will be provided to eligible individuals while incarcerated in the LACJ. If such agreement is reached, a copy shall be provided to CDE. LAUSD and LACJ may contract with and LEA or SELPA to provide those services. Acceptable evidence will include written evidence of any agreed upon contract.
3. By April 30, 2009, LAUSD will revise their SELPA policies and procedures to include language that provides for the procedural guarantees and services for incarcerated detainees, 18 to 22, eligible for special education services detained in the LACJ. Acceptable evidence would include a copy of the section of the SELPA that reflects this revision.
4. By June 30, 2009, LAUSD will conduct an IEP team meeting for Student 2, perform any necessary assessments, and determine if student still qualifies for and is available to receive special education services, and determine, if any, compensatory services are owed to student since LAUSD acknowledged the existence of the student on February 20, 2009.
5. Beginning June 30, 2009, the CDE will monitor the required corrective actions in this compliance complaint for a period not to exceed on year. The period for monitoring will include quarterly reports beginning September 30, 2009, and subsequently each quarter following. Acceptable evidence would include a list of incarcerated inmates who are eligible to receive special education services and are receiving services on a monthly basis in the LACJ. The quarterly report will reflect the number of inmates begin served.[30]

On June 5, 2009, Mr. Garcia filed an amended due process complaint with the OAH naming only the claimant as a respondent. On July 15, 2009, the CDE set aside its June 2009 Compliance Report because the issues presented in Mr. Garcia's complaint to the CDE were also subject to an ongoing OAH due process hearing. On November 16, 2009, the OAH issued its decision (OAH Decision) regarding Mr. Garcia's complaint. The OAH Decision found that that Mr. Garcia was eligible to receive special education services.[31] After applying Education Code section 56041, OAH concluded that the claimant, LAUSD, was responsible for the student's education while he was incarcerated in Los Angeles County Jail because Mr. Garcia's mother resided within the claimant's jurisdictional boundaries at all time relevant

[30] *Id*. at pp. 18-19, "Required Corrective Actions."

[31] *Id*. at pp. 7-8.

to Mr. Garcia's complaint.[32] The OAH Decision ordered the claimant to begin providing special education services to Mr. Garcia within 60 days of the date of the OAH Decision.[33]

Following the issuance of the OAH Decision, on January 15, 2010, the CDE issued an amended compliance report (2010 CDE Compliance Report). The 2010 CDE Compliance Report included the same findings as the 2009 CDE Compliance Report, but extended the corrective action deadlines imposed upon claimant by six months. [34]

ii. Ongoing Litigation Pursued By Claimant Regarding Education Code Section 56041

Claimant appealed the OAH decision and, on May 4, 2010, the U.S. District Court for the Central District of California issued an order affirming the OAH decision. The District Court found that the OAH decision correctly determined that Education Code section 56041 "applies to make LAUSD responsible for providing special education services to Garcia…" and that "Garcia's right to special education services did not end upon his eighteenth birthday…"[35] The claimant then appealed to the U.S. Court of Appeal for the Ninth Circuit. The Ninth Circuit found that section 56041 was controlling, but also found that no controlling California precedent had addressed whether section 56041 requires school districts to provide special education to eligible students incarnated in county jails. Thus, rather than decide this novel issue of California law itself, the Ninth Circuit requested that the California Supreme Court address this issue and decide the question of state law pending before the Ninth Circuit.[36] On March 28, 2012, the California Supreme Court granted the Ninth Circuit's request.[37] This matter was argued and submitted to the California Supreme Court on October 10, 2013. [38]

[32] *Id*. at pp. 8-12.

[33] *Id*. at p. 17.

[34] *Id*., Exhibit 3, January 15, 2010 Compliance Report issued by the California Department of Education, pp. 18-19, "Required Corrective Actions." Although claimant did not include all portions of the 2010 CDE Compliance Report in the test claim, it appears that the 2009 CDE Compliance Report and 2010 CDE Compliance Report are identical except for the corrective action deadlines.

[35] Test claim, dated November 3, 2010, section 7 (DOCUMENTATION), Exhibit 4, *Los Angeles Unified School District v. Garcia* (C.D. Cal. 2010, Case No. CV 09-9289-VBF(RCx).

[36] *Los Angeles Unified School District v. Garcia* (9th Cir. 2012) 669 F.3d 956, 963.

[37] *See* Exhibit F, California Courts Web site, Appellate Courts Case Information, Supreme Court Docket for *Los Angeles Unified School District v. Garcia* (Case No. S199639), http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=2003486&doc_no=S199639 (accessed on November 6, 2013).

[38] *Ibid*.

Although the Court has not yet issued a decision, the Court should decide this matter within 90 days.[39]

D. Prior Related Special Education Test Claims and Settlement Agreement

In the *Special Education* test claims (Board of Control SB90-3453, CSM-3986, and 3986A) the Commission considered the question of whether costs incurred to provide various special education services as required by the Education Code were reimbursable.[40] After years of litigation, the state and the parties to the *Special Education* test claims entered to a settlement agreement which resulted in legislation settling all disputes regarding the *Special Education* test claims, including claims seeking reimbursement for costs incurred for providing special education services pursuant to Education Code section 56026.

The state and the parties to the *Special Education* test claims entered into a settlement agreement to resolve all outstanding issues and any potential litigation regarding the *Special Education* test claims. Every LEA in the state, including claimant, agreed to be bound by the terms of the settlement agreement. Pursuant to the settlement agreement, on August 12, 2001, the Governor approved Senate Bill 982 (Stats 2001,Ch. 203) as urgency legislation resolving and providing funding to each district based on the total average daily attendance of students in the district.[41] Senate Bill 982 added Education Code section 56836.156 (f), which provides funding, in the amount of $100 million, to be used for special education services established pursuant to Sections 56000 to 56885, inclusive, and Sections 3000 to 4671, inclusive, of Title 5 of the California Code of Regulations, "as those sections read on or before July 1, 2000." The statute further clarifies in subdivision (f)(6) and (10) that the funding shall be applied to special education services established pursuant to Education Code section 56026 as that section read on July 1, 2000, that are provided to pupils ages 18 to 21. The statute states that the services "shall be deemed to be fully funded within the meaning of subdivision (e) of Section 17556 of the Government Code."

[39] Article VI, section 19 of the California Constitution (setting 90-day deadline for judicial decisions after a matter is submitted for decision and penalizing judges who do not comply by withholding salary). *See also* Government Code section 68210; Internal Operating Practice and Procedure of the California Supreme Court, sections VII and X ("Unless good cause to vacate submission appears, the opinions are filed on or before the 90th day after submission.").

[40] The original test claim filed in 1980, which was ultimately consolidated with several other test claims, alleged, among other things, that Education Code section 56026 imposed a new program or higher level of service within an existing program upon school districts by requiring the provision of special education services beyond age 21 under certain circumstances.

[41] Senate Bill 982, approved by Governor August 12, 2001 (2001-2002 Regular Session).

III. Position of the Parties

Claimant's Position

Claimant asserts that the 2010 CDE Compliance Report, OAH Decision, and Education Code section 56041 impose a reimbursable state-mandated program or higher level of service within an existing program. Claimant requests reimbursement for complying with the 2010 CDE Compliance Report and OAH Decision, which both found that Education Code section 56041 requires claimant to provide special education services for eligible students in county jail for students whose parents reside within claimant's district at the time the student reached the age of 18. Claimant alleges the 2010 CDE Compliance Report, OAH Decision, and Education Code section 56041:

> …result in new activities and costs by virtue of LAUSD paying for special education services for adult inmates in county jail. The funding for such services will come from dedicated state and federal funds that currently support other programs and services. Some of the financing for these programs and services will be redirected toward special education services for adult inmates. Thus, the funding for special education services for adult inmates results in a reduction in other programs and services.[42]

Claimant alleges that the 2010 CDE Compliance Report, OAH Decision, and Education Code section 56041 have caused claimant to incur $33,750.17 in costs during the 2009-2010 fiscal year.[43] Claimant estimates that it will incur approximately $100,000 in costs during fiscal year 2010-2011 and in each year going forward.[44] Claimant estimates that the statewide cost for school districts to comply with the 2010 CDE Compliance Report, OAH Decision, and Education Code section 56041 will exceed $1,000,000 per year.[45]

[42] Test claim, dated November 3, 2010, section 5 (WRITTEN NARRATIVE), p. 2.

[43] *Id*. at section 6 (DECLARATION OF SHARON JARRETT), p. 3. Ms. Jarrett's declaration states that the total cost of the special education services for Mr. Garcia in the 2010-2011 fiscal year will be lower than in the 2009-2010 fiscal since Mr. Garcia was transferred out of jail and to a prison facility in September 2010.

[44] *Id*. Ms. Jarrett's declaration indicates that "it is difficult to specify the cost of special education services for other adult inmates in Fiscal Year 2011" because such costs is subject to unknown variables and estimates that special education services will be provided for more that 5 inmates per year going forward.

[45] *Id*. Claimant's statewide cost estimate is "based on the number of total students statewide in contrast to the number of LAUSD students." Claimant did not present any other evidence, such as surveys or declarations from other school districts, to support its statewide cost estimate.

State Agency Position

No state agency has filed comments on this test claim.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature *may, but need not*, provide a subvention of funds for the following mandates:
>
> (1) Legislative mandates requested by the local agency affected.
>
> (2) Legislation defining a new crime or changing an existing definition of a crime.
>
> (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[46] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[47]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[48]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and CDEs not apply generally to all residents and entities in the state.[49]

[46] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[47] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[48] *San Diego Unified School Dist. v. Commission on State Mandates* (*San Diego Unified School Dist.*) (2004) 33 Cal.4th 859, 874.

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[50]

4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[51]

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[52] The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[53] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[54]

A. <u>Education Code section 56041, the 2010 CDE Compliance Report, and the OAH Decision do not mandate a new program or higher level of service on school districts.</u>

Claimant contends that the findings of the 2010 CDE Compliance Report and OAH decision, holding that Education Code section 56041 requires claimant to provide special education services for students' while incarcerated in Los Angeles County Jail, mandates a new program or higher level of service within an existing program. The Commission disagrees.

Education Code section 56041 was originally enacted in 1992 and provides that the district responsible for providing special education services for students beyond the age of 18 is based on the residence of the parent or conservator. The statute currently states the following:

> 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

[49] *Id*. at 874-875 (reaffirming the test set out in *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.)

[50] *San Diego Unified School Dist*., *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

[51] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[52] *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

[53] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

[54] *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose*, *supra*].

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.

The plain language of section 56041 does not require school districts to perform any activities. Instead, section 56041 identifies which school district is responsible for providing special education and related services for students eligible to receive services after their 18th birthday.

In addition, the 2010 CDE Compliance Report and OAH decision do not impose any new mandated duties on claimant. These decisions interpret *existing* state and federal law and conclude that the claimant is required to provide special education services to incarcerated students in county jail since the district was the "last district of residence in effect prior to the pupil's attaining the age of majority."

The duty to provide special education services to students between the ages of 18 and 22 who are incarcerated in county jail was imposed by prior federal law[55] and Education Code section 56026, a state statute originally enacted in 1980 and last amended in 2007. No new mandated duties are required of the claimant.

Accordingly, the Commission finds that Education Code section 56041, the 2010 CDE Compliance Report, and the OAH decision do not mandate a new program or higher level of service.

B. Additional revenue specifically intended to fund the cost of special education services to students between the ages of 18 and 22 has been appropriated in an amount sufficient to cover the costs of any activities required by prior law and, thus, there are no costs mandated by the state.

The claimant, in this case, asserts that it incurred direct and indirect costs in the amount of $33,750.17 for providing special education services to Mr. Garcia from July 1, 2009 through June 30, 2010. The claimant further argues that it will incur future costs in excess of $100,000 per year, based on an estimate that it will provide services for five inmates per year. The claimant acknowledges there is existing funding, including funding from the special education

[55] Title 20 United States Code section 1400 et seq.

settlement agreement, but argues that the funding was not intended to fund the provision of services to adult inmates in county jails.

The Commission disagrees and finds, as a matter of law, that school districts have been fully funded for the provision of special education services required to be provided to *any* student between the ages of 18 and 22.

Government Code section 17556(e) states that the Commission shall not find costs mandates by the state, as defined in Section 17514, if the Commission finds that "the statute, executive order, or an appropriation in a Budget Act or other bill … includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."

As indicated in section II. Background of this analysis, Education Code section 56836.156(f) was enacted to fund the Special Education settlement agreement and expressly provides that the funds appropriated shall be "used for costs of *any state-mandated special education services established pursuant to Sections 56000 to 56885, inclusive, and Sections 3000 to 4671, inclusive, of Title 5 of the California Code of Regulations,* as those sections read on or before July 1, 2000." (Emphasis added.) In addition, Education Code section 56836.156 (f)(6) and (f)(10) state that the settlement funds shall be deemed to fully fund, within the meaning of Government Code section 17556(e), the services provided to the following students: "[m]aximum age limit established pursuant to paragraph (4) of subdivision (c), as this section read on July 1, 2000," and (2) [s]pecial education for pupils ages 3 to 5, inclusive, and 18 to 21, inclusive, established pursuant to Education Code section 56026, as this section read on July 1, 2000."

Although the settlement agreement does not specifically include students who are 22, Education Code section 56026 provides that certain eligible students who become 22 while participating in a special education program continue to be eligible to participate in special education program for a set period of time.[56] As indicated above, the requirement to provide

[56] Education Code section 56026(c)(4)(A) states that "Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year…" Education Code section 56026(c)(4)(B) states that "Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in July, August, or September of that new fiscal year. However, if a person is in a year-round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term." Education Code section 56026(c)(4)(C) states that: "Any person who becomes 22 years of age during the months of October, November, or December while participating in a program under this act shall be terminated from the program on December 31 of the current fiscal year, unless the person would otherwise complete his or her individualized education program at the end of the current fiscal year."

special education services to students between the ages of 18 and 22, and the identity of the responsible district have been contained in Education Code sections 56026 and 56041 since before July 1, 2000 and therefore is not new.

In addition, the funding pursuant to section 56836.156 is appropriated to each district based on the district's average daily attendance of pupils and, in this case, the claimant did not count county jail inmates as part of their ADA before the CDE Compliance Report and OAH decision were issued. However, the plain language of section 56836.156(f) provides funding in an amount sufficient to pay for *any* state-mandated special education services required by California law that became effective on or before July 1, 2000. Thus, as a matter of law, the Commission finds that Education Code section 56836.156(f) includes additional revenue that was specifically intended to fund the costs of any state mandated activity required by the Education Code in an amount sufficient to fund the cost of the state mandate and, thus, there are no increased costs mandated by the state.

As the courts have determined, "Section 6 was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State."[57] In this case, these elements have not been met and reimbursement is not required.

V. <u>Conclusion</u>

Based on the foregoing, the Commission concludes that the Education Code section 56041, the 2010 CDE Compliance Report, and the OAH Decision do not impose a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission therefore denies this test claim.

[57] *City of San Jose v. State of California (1996)* 45 Cal.App.4th 1802, 1816; see also, *Lucia Mar Unified School District v. State of California* (1988) 44 Cal.3d 830, 835; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On November 27, 2013, I served the:

> **Draft Staff Analysis, Schedule for Comments and Notice of Hearing**
> *Special Education Services for Adult Students in County Jail*, 10-TC-04
> January 2010 Compliance Report from the California Department of Education, November 16, 2009 Decision of the California Office of Administrative Hearings, and California Education Code Section 56041
> Los Angeles Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 27, 2013 at Sacramento, California.

Heidi J. Palchik
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/27/13

Claim Number: 10-TC-04

Matter: Special Education Services for Adult Students in County Jail

Claimant(s): Los Angeles Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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RECEIVED
January 17, 2014
Commission on State Mandates

January 17, 2014

Heather Halsey, Esq.
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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Re: ***Special Education Services for Adult Students in County Jail*, 10-TC-04**

Written Comments Of Claimant Los Angeles Unified School District On Staff Analysis

Dear Executive Director Halsey:

Please consider this the written comments of Claimant Los Angeles Unified School District on the staff analysis issued by the Commission staff on November 27, 2013 (the "Staff Analysis").

Summary Of Comments

The gravamen of the Staff Analysis is that the test claim should be denied for two reasons:

1. The requirement that school districts provide special education services to inmates in county jails is not a new State requirement, but is a longstanding requirement of the Individuals With Disabilities Education Act ("IDEA"); and

2. Even if the requirement were a state mandated cost, Claimant (and other school districts) were reimbursed for the cost of providing the services as part of a subvention for services issued by the Legislature in 2001.

It is respectfully submitted that the Staff Analysis should be reconsidered for the following reasons:

1. The IDEA does not require that the services be provided by school districts. Rather, the State of California assigned the requirement to school districts by enacting Education Code section 56041 long after the approval of Proposition 4 in 1979.

2. The undisputed evidence is that at no time prior to 2009 was it contemplated that special education services would be provided by school districts to county jail inmates. Government Code section 17556(e), upon which the Staff Analysis relies, expressly requires that a subvention be "***specifically intended*** to fund the costs of the state mandate," in order for a test claim to be denied. [Emphasis added.] Here, there is simply no substantial evidence that the 2001 subvention in any way covered the provision of services to inmates.

Comments

A. The IDEA Does Not Require That The Services Be Provided By School Districts. Rather, The State Of California Assigned The Requirement To School Districts By Enacting Education Code Section 56041.

Neither the IDEA nor federal law designates which state entity is required to provide special education services to inmates in county jail. Rather, the federal government leaves that matter to the states to decide. (See *Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46686 (2006).)

In a decision issued after the draft Staff Analysis was filed herein, the California Supreme Court explained this as follows:

> Although the IDEA's requirements to obtain federal funding are substantial, it " 'leaves to the States the primary responsibility for developing and executing educational programs' " for disabled students. (*Schaffer v. Weast* (2005) 546 U.S. 49, 52, quoting *Hendrick Hudson Dist. Bd. of Ed. v. Rowley* (1982) 458 U.S. 176, 183, 207.) The IDEA likewise leaves it to the states to decide how they will allocate among the various state and local public agencies the responsibility for providing, and funding, special education programs in accordance with its provisions. (See *Manchester School Dist. v. Crisman* (1st Cir. 2002) 306 F.3d 1, 10 ["The IDEA nowhere purports to allocate financial liability among the multitude of school districts housed within the fifty states."]; see also *J.S. v. Shoreline School Dist.* (W.D.Wn. 2002) 220 F. Supp. 2d 1175, 1191–1192 [the assignment of responsibility for providing a FAPE typically turns on the issue of residency, which is a matter of state law]; *Linda W. v. Indiana Dept. of Education* (N.D.Ind. 1996) 927 F. Supp. 303, 307.)
>
> Of relevance here, federal rulemakers intentionally declined to designate the entity responsible for providing special education and related services to incarcerated individuals. According to the federal Department of Education's analysis of comments to proposed changes in the regulations implementing the IDEA, "[w]hether [such services to eligible incarcerated individuals] are provided directly by the State or through [a local educational agency] is a decision that is best left to States and [local educational agencies] to determine." (U.S. Dept. of Education, Off. of Special Education and Rehabilitation Services, final Regs., Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, Analysis of Comments and Changes, com. to § 300.324(d), 71 Fed.Reg. 46540, 46686 (Aug. 14, 2006).)

(*Los Angeles Unified School District v. Garcia*, 58 Cal. 4th 175, 184-185 (2013).)

California never enacted a statute, expressly identifying which agency would be responsible for the provision of special education services to inmates in county jail.

In a related class action filed by Garcia against the Los Angeles County Sheriff's Department and other public agencies, the California Department of Education openly acknowledged that there was 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.

(Transcript of April 21, 2010 hearing on motion for class certification at 29:20-25, 48:23-49:2, and 10:5-15. Copies of these excerpts are attached hereto as Exhibit A.)

Prior to 2009, when Garcia filed the request for services that is the subject of the test claim herein, the LAUSD had never before received a request to provide special education services to inmates in County jail. (See Declaration of Sue Spears, attached hereto as Exhibit B, at pars. 3 and 4, and Exhibit 1 thereto.)

Litigation ultimately ensued as to which entity is responsible for the provision of services, resulting in the Ninth Circuit Court of Appeals referring the matter to the California Supreme Court to resolve. (*Los Angeles Unified School District v. Garcia*, 669 F.3d 956 (9th Cir. Cal., 2012).)

Last month, in December 2013, the California Supreme Court issued a seminal decision, holding that California Education Code section 56041 requires that such services be provided by the school district in which the inmate resided at the time the inmate turned 18 years of age. (*Los Angeles Unified School District v. Garcia*, 58 Cal. 4th 175 (2013).)

Education Code section 56041 was enacted by Stats. 1992 ch 1360 § 8 (AB 2773), effective January 1, 1993.

In summary, the law and the course of dealings reflect the following:

a. The IDEA does not require local school districts to provide special education services to adult students in county jail;

b. In December 2013, the California Supreme Court determined that Education Code section 56041 requires that school districts provide such services;

c. Education Code section 56041 was enacted effective 2003;

d. The Garcia request for services from 2009 was the first time LAUSD received a request to provide special education services to an inmate in county jail; and

e. Once the CDE and District Court determined that LAUSD was responsible for the provision of services, LAUSD filed the test claim herein – more than three years before the dispute was even finally resolved by the California Supreme Court.

The uncontroverted evidence is that the services are a state mandated cost.

It should be noted that, once the test claim was filed, not a single comment was submitted to the Commission staff opposing LAUSD's test claim, let alone LAUSD's position that the services are a state mandated cost.

B. The 2001 Subvention Did Not Cover The Provision Of Services To Inmates, A Claim For Services That Was Never Raised Until Eight Years Later.

In 1979, the People of the State of California approved Proposition 4, which added Article XIII B to the California Constitution.

Section 6(a) of Article XIII B requires that whenever the Legislature or any state agency mandates a new program or higher level of service on local government, the state must provide a subvention of funds to reimburse the associated costs, as follows:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:
>
> (1) Legislative mandates requested by the local agency affected.

> (2) Legislation defining a new crime or changing an existing definition of a crime.
>
> (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

California Proposition 4 was sponsored by Paul Gann and is sometimes referred to as the "Spirit of 13" Initiative in reference to Proposition 13, which was approved the previous year. Proposition 4 was also supported by current California Governor Jerry Brown.

The Legislature created the Commission to hear and decide "test claims" that allege that the Legislature or a state agency imposed a reimbursable state mandate program upon local government. (See Government Code section 17500 et seq.)

Under Government Code section 17556(e), the Commission is directed to not find costs mandated to be state mandated if the Commission determines that "the statute, executive order, or an appropriation in a Budget Act or other bill ... includes additional revenue that was **specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.**" [Emphasis added.]

The draft Staff Analysis states that, here, the funding for services for inmates in county jail have been appropriated to school districts because of a prior settlement agreement entered into in the year 2000, as follows:

> The Commission disagrees and finds, as a matter of law, that school districts have been fully funded for the provision of special education services required to be provided to *any* student between the ages of 18 and 22.
>
> Government Code section 17556(e) states that the Commission shall not find costs mandates by the state, as defined in Section 17514, if the Commission finds that "the statute, executive order, or an appropriation in a Budget Act or other bill ... includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."
>
> As indicated in section II. Background of this analysis, Education Code section 56836.156(f) was enacted to fund the Special Education settlement agreement and expressly provides that the funds appropriated shall be "used for costs of *any state-mandated special education services established pursuant to Sections 56000 to 56885, inclusive, and Sections 3000 to 4671, inclusive, of Title 5 of the California Code of Regulations,* as those sections read on or before July 1, 2000." (Emphasis added.) In

addition, Education Code section 56836.156 (f)(6) and (f)(10) state that the settlement funds shall be deemed to fully fund, within the meaning of Government Code section 17556(e), the services provided to the following students: "[m]aximum age limit established pursuant to paragraph (4) of subdivision (c), as this section read on July 1, 2000," and (2) [s]pecial education for pupils ages 3 to 5, inclusive, and 18 to 21, inclusive, established pursuant to Education Code section 56026, as this section read on July 1, 2000."

Although the settlement agreement does not specifically include students who are 22, Education Code section 56026 provides that certain eligible students who become 22 while participating in a special education program continue to be eligible to participate in special education program for a set period of time. As indicated above, the requirement to provide special education services to students between the ages of 18 and 22, and the identity of the responsible district have been contained in Education Code sections 56026 and 56041 since before July 1, 2000 and therefore is not new.

In addition, the funding pursuant to section 56836.156 is appropriated to each district based on the district's average daily attendance of pupils and, in this case, the claimant did not count county jail inmates as part of their ADA before the CDE Compliance Report and OAH decision were issued. However, the plain language of section 56836.156(f) provides funding in an amount sufficient to pay for any state-mandated special education services required by California law that became effective on or before July 1, 2000. Thus, as a matter of law, the Commission finds that Education Code section 56836.156(f) includes additional revenue that was specifically intended to fund the costs of *any* state mandated activity required by the Education Code in an amount sufficient to fund the cost of the state mandate and, thus, there are no increased costs mandated by the state.

As the courts have determined, "Section 6 was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon the State." In this case, these elements have not been met and reimbursement is not required.

[Footnotes omitted; emphasis in original.]

The Commission analysis focuses on a completely separate test claim filed in 1980 by the Santa Barbara School District, relating to the requirement that school districts provide services to students ages 18 to 21, and enrolled in the local district.

The undisputed evidence is that, at no time prior to 2009, was it was even contemplated that special education services would be provided by school districts to county jail inmates.

Even Government Code section 17556(e), upon which the Staff Analysis relies, expressly requires that a subvention be "***specifically intended*** to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate." [Emphasis added.]

There is simply no way that the 2001 subvention in any way covered the provision of services to inmates. Moreover, without knowing of the existence of a possible claim relating to inmates, there is no possible way the State or any local agency could have "specifically intended" that the subvention be in "an amount sufficient to fund the cost of the state mandate."

The people of the State of California amended the constitution to require local agencies to be reimbursed for state mandated costs. The will of the People of the State of California would be thwarted if a prior subvention were allowed to bar reimbursement of a test claim that was never, and could not possibly have been, known or contemplated at the time of the prior subvention.

Conclusion

Based on the foregoing, it is respectfully submitted that the Staff Analysis should be reconsidered and that a revised analysis be issued, recommending a granting of the test claim.

The consideration of the Commission staff in this matter is appreciated.

Very truly yours,

Barrett K. Green
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Attorneys for Claimant LAUSD

BKG
Attachments:
Exhibit A: Excerpt from transcript of April 21, 2010 hearing on motion for class certification
Exhibit B: November 18, 2010 Declaration of Sue Spears

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EXHIBIT A

1 UNITED STATES OF AMERICA

2 UNITED STATES DISTRICT COURT

3 CENTRAL DISTRICT OF CALIFORNIA

4 CENTRAL DIVISION

\- - -

5 HONORABLE VALERIE BAKER FAIRBANK
UNITED STATES DISTRICT JUDGE

6 - - -

7

8 MICHAEL GARCIA,) CERTIFIED COPY
)
9 PLAINTIFF,)
) CR 09-8943-VBF(CTX)
10 VS.)
)
11 LOS ANGELES COUNTY SHERIFF'S,)
DEPARTMENT, ET AL.,)
12)
DEFENDANT.)
13)

14

15

16

HEARING ON MOTION FOR CLASS CERTIFICATION

17

LOS ANGELES, CALIFORNIA

18

WEDNESDAY, APRIL 21, 2010

19

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21

22

23 ROSALYN ADAMS, CSR 11794
OFFICIAL COURT REPORTER
24 100 UNITED STATES COURTHOUSE
312 NORTH SPRING STREET, ROOM 410
25 LOS ANGELES, CALIFORNIA 90012
(213) 894-2665

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1 WOULD BE ELIGIBLE FOR SERVICES EVEN THOUGH HE IS INCAPABLE OF
2 SELF-IDENTIFYING. THOSE ARE THE KINDS OF THINGS WE'RE
3 WORKING ON. IT'S GOING TO BE FAIRLY EASY FOR THE ONES WHO
4 CAN SELF-IDENTIFY AND WE CAN JUST CHECK TO SEE THAT THEY HAD
5 AN I.E.P.; GET THAT I.E.P. BUT IT COMES DOWN TO THE ISSUE AS
6 WHO'S GOING TO PAY FOR IT IN AN INTERIM PERIOD UNTIL WE CAN
7 GET SOMETHING LEGISLATIVE OR SOME CLARIFICATION OF WHO SHOULD
8 BE PAYING FOR THIS. BUT THAT'S THAT INTERIM PERIOD, A
9 SHORTER TERM PERIOD, THAT I STILL THINK WE COULD COME TO SOME
10 SORT OF AGREEMENT FOR THE STUDENTS THERE NOW, GIVEN SOME
11 TIME. AND I KNOW THAT L.A.U.S.D. COUNSEL IS WORKING ON A
12 POLICY OR SOMETHING THAT WOULD SAY WHO'S GOING TO PAY FOR IT
13 AND HOW IT WOULD BE DONE. THE MECHANICS AREN'T AS HARD AS
14 THEY ARE GOING TO BE EXPENSIVE, AND THAT'S NOT GOING TO BE
15 COVERED IN JUST THE SPECIAL EDUCATION FUNDING.
16 AND SO IN THE SHORT TERM, THOUGH, C.D.E. IS WILLING
17 TO TAKE A LOOK AT THAT, PROVIDE A SHORT-TERM FIX UNTIL WE CAN
18 GET SOMETHING MORE PERMANENT DONE. BUT TO TELL YOU THAT WE
19 COULD DO IT IN 30 DAYS, I DON'T KNOW THAT WE CAN; IT MIGHT
20 TAKE LONGER THAN THAT. BUT, AGAIN, IT WOULDN'T BE WITH
21 PREJUDICE TO MR. GARCIA'S CLASS ACTION.
22 THE COURT: I DON'T -- WELL, WOULD DETERMINATION OF
23 THIS MOTION AT ALL IMPAIR THE PROGRESS TOWARDS A --
24 MS. REAGER: WELL, IT SOUNDS LIKE IT WOULD FOR THE
25 JAIL.

1 CALIFORNIA DIDN'T HAVE ONE IN PLACE. IT HAD NO METHOD FOR
2 HIM TO GET RELIEF THROUGH A DUE PROCESS HEARING. THOSE WOULD
3 HAVE BEEN SYSTEMIC FAILURES THAT MR. GARCIA, THEN, COULD HAVE
4 COME DIRECTLY TO FEDERAL COURT. IN THIS CASE THAT DOESN'T
5 EXIST.
6 AND THE CASES THAT WE'RE CITING FOR SYSTEMIC TYPE
7 FAILURES ARE NOT I.D.E.A. CASES. *HAWKINS* IS A -- DOESN'T
8 HAVE THE I.D.E.A. STRUCTURE FOR PROCEDURES AND PROTECTIONS OF
9 THE INDIVIDUAL RIGHTS. *HAWKINS* IS A COUNTY SHERIFF WHO IS
10 SAYING THAT IF, IN THE PAST, YOU BEHAVED BADLY, WE'RE GOING
11 TO PUT THIS STING BELT, OR WHATEVER IT WAS, ON YOU FOR ALL
12 HEARINGS. WELL, THAT WAS BASED ON PAST BEHAVIOR AND THAT'S A
13 SHERIFF'S ORDER. SAME THING WITH *LE DUKE* (PHONETIC). WE'RE
14 TALKING ABOUT BORDER PATROL THAT GOES OUT WITH GUNS,
15 SURROUNDS THE MIGRANT WORKERS CAMPS AND DOES UNWARRANTED --
16 WITHOUT DUE CAUSE OR PROBABLE CAUSE, SEARCHES FOR IMMIGRANTS.
17 BUT THAT'S A POLICY AND A PRACTICE THAT'S IN PLACE THAT WOULD
18 AFFECT EVERYONE IN A CLASS. THAT IS NOT THE SITUATION HERE,
19 AGAIN. THIS -- THE POLICIES AND PROCEDURES ARE IN PLACE.
20 YES, UNFORTUNATELY, NO ONE THOUGHT ABOUT INMATES BEING
21 TRANSFERRED FROM JUVENILE HALL, WHERE THEY GET ALL OF THE
22 BENEFITS, INTO AN ADULT JAIL SETTING WHERE SPECIAL EDUCATION
23 -- THERE IS NO PROVISION FOR IT. BUT AS SOON AS WE HEARD
24 ABOUT IT, WE TOOK ACTION AND WE GOT MR. GARCIA HIS BENEFITS,
25 AND WE ARE WORKING ON THE OTHERS. AND, AGAIN, MR. GARCIA IS

1 NEEDS.

2 THE SYSTEM WORKED. AS SOON AS MR. GARCIA'S COUNSEL

3 LET US KNOW THAT THESE KIDS WERE BEING MISSED UNDER THE

4 AVAILABLE LAW -- THESE KIDS WERE BEING MISSED -- WE TOOK

5 ACTION. MR. GARCIA'S GOT HIS BENEFITS. AND THE PROBLEM IS

6 IDENTIFYING THE INMATES WHO ARE ELIGIBLE, WHO CAN'T

7 SELF-IDENTIFY; IF THEY CAN SELF-IDENTIFY, THAT'S FINE. I'VE

8 ASKED PLAINTIFFS TO HELP US FIGURE OUT IF A STUDENT, AN

9 ELIGIBLE INMATE OR AN INMATE -- BECAUSE "ELIGIBLE" AND

10 "INMATE" ARE NOT THE SAME THING. IF AN INMATE IS NOT CAPABLE

11 OF SAYING, "YES, I HAD AN I.E.P.," WOULD THEY EVEN BE IN THE

12 NORMAL JAIL SETTING OR WOULD THEY BE IN SOME OTHER SETTING IF

13 THEY WERE INCOMPETENT? WOULD THEY HAVE A PARENT ACTING FOR

14 THEM, IF THEY'RE INCOMPETENT, ON THEIR OWN BEHALF?

15 THESE ARE TECHNICAL ISSUES THAT, YES, WE NEED TO

16 LOOK AT AND WE CAN WORK OUT, BUT IT'S NOT A SYSTEMIC FAILURE.

17 THE LAW IS CLEAR. THE INMATES BETWEEN 18 AND 22, WHO HAVE

18 NOT RECEIVED THEIR G.E.D.'S OR HIGH SCHOOL DEGREES, ARE

19 ELIGIBLE FOR BENEFITS. THE LAW IS THERE. AND THIS IS NOT A

20 CASE WHERE L.A.U.S.D. OR THE SHERIFF'S DEPARTMENT OR THE L.A.

21 COUNTY, OFFICE OF EDUCATION, OR C.D.E. IS SAYING, "NO, THAT'S

22 NOT THE CASE AND WE AREN'T GOING TO GIVE THESE BENEFITS."

23 IT'S THAT THE LAW, IN ITSELF, DIDN'T COME DOWN QUITE THIS FAR

24 AND THE I.D.E.A. DIDN'T ANTICIPATE. WE LAWS FOR INMATES OF

25 PRISONS AND THE PRISONS HAVE TO PROVIDE THAT. WE HAVE THEM

1 FOR UNDER 18. THIS NICHE, THE LEGISLATURE DIDN'T SEE, AND
2 WE'RE FIXING IT. BUT TO SAY THAT WE NEED THE COURT TO STEP
3 IN, C.D.E. HAS THE POWER UNDER THE STATUTES TO ENFORCE THE
4 LAW. IF YOU'LL LOOK AT 300.600, YOU'LL SEE THAT THE I.B.E.
5 REGULATIONS SAY, "THE C.D.E. MUST EVEN WITHHOLD MONEY FROM
6 ANY DISTRICT THAT DOESN'T PROVIDE THE SERVICES." BUT WHAT'S
7 HAPPENED HERE IS MICHAEL GARCIA WENT TO THE O.A.H., GOT HIS
8 RULING, GOT HIS BENEFITS, AND DIDN'T GIVE US TIME EVEN TO
9 BROADEN THAT OUT TO EVERYONE. BUT TO SAY THE C.D.E. ISN'T
10 BOUND, MAYBE NOT BY THE O.A.H. DECISION, BUT THERE'S LAW.
11 THERE'S I.D.E.A. AND THERE'S CALIFORNIA LAW, AND WE ARE BOUND
12 AS IS L.A.U.S.D. AND EVERY OTHER ENTITY HERE ON THE DEFENSE
13 SIDE. THANK YOU, YOUR HONOR.
14 THE COURT: IF THERE'S NOTHING IN ADDITION TO
15 ADD -- YES.
16 MR. CLARK: JUST ONE QUICK POINT, YOUR HONOR. THIS
17 IS IN RESPONSE, YOUR HONOR, TO COUNSEL'S ARGUMENT REGARDING
18 THE *GERAGHTY* CASE AND MR. GARCIA'S LACK OF A PERSONAL STAKE
19 IN THE OUTCOME OF THE LITIGATION. *GERAGHTY* DRAWS A VERY
20 NARROW EXCEPTION TO THE STANDING REQUIREMENTS UNDER RULE 23.
21 AND, ESSENTIALLY, IT SAYS THAT BETWEEN THE TIME WHEN A CASE
22 IS FILED AND A LITIGANT MOVES FOR CLASS CERTIFICATION, IF THE
23 DEFENDANT DURING THAT PERIOD OF TIME VOLUNTARILY CEASES THE
24 ALLEGED WRONGFUL CONDUCT, THAT THE NAMED REPRESENTATIVE CAN
25 STILL MAINTAIN A PERSONAL STAKE FOR PURPOSES OF REPRESENTING

1 CERTIFICATE OF REPORTER

2

COUNTY OF LOS ANGELES)
3) SS.
STATE OF CALIFORNIA)
4

5

6 I, ROSALYN ADAMS, OFFICIAL COURT REPORTER, IN AND FOR THE
7 UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
8 CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753,
9 TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND
10 CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED
11 PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE
12 TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS
13 OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.
14
15
16 DATED: APRIL 29, 2010
17
18 ______________/S/______________
19 ROSALYN ADAMS, CSR 11794
OFFICIAL COURT REPORTER
20
21
22
23
24
25

EXHIBIT B

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Attorneys for Defs. LAUSD and RAMON C. CORTINES

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHAEL GARCIA, on behalf of himself and other similarly situated,

Plaintiff,

vs.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, a public entity, et al.,

Defendants.

Case No. CV09-8943 VBF (SHx)

DECLARATION OF SUE SPEARS IN SUPPORT OF LOS ANGELES UNIFIED'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

Judge: Hon. Valerie Baker Fairbank

Date: January 10, 2011
Time: 1:30 p.m.
Court: 9

DECLARATION OF SUE SPEARS

I, SUE SPEARS, declare and state as follows:

1. I am Director, Educational Equity Compliance Office, Office of General Counsel, for the Los Angeles Unified School District ("LAUSD"). Except where otherwise indicated, I have personal knowledge of the facts stated in this declaration and, if called and sworn as a witness, I could and would testify competently thereto.

2. As Director, Educational Equity Compliance Office, I have knowledge and oversight of various complaints received and processed by LAUSD, including complaints relating to LAUSD special education programs and services. I also have access to, and periodically review, District paper and electronic files containing special education records prepared, received, and maintained in the ordinary course of business, at or near the time of the preparation or receipt of the records.

3. In or about February 2009, LAUSD received a letter from legal counsel for Michael Garcia ("Garcia"). A copy of the letter received by LAUSD, which was received and maintained by LAUSD in the ordinary course of business, is attached hereto as Exhibit 1.

4. The February 2009 letter was, to LAUSD's knowledge, the first request LAUSD had ever received from any Los Angeles County Jail ("LACJ") inmate seeking special education services from LAUSD.

5. LAUSD initially declined to provide special education services to Garcia in jail because LAUSD did not believe it was the agency responsible for providing these services.

6. Between February 2009 and March 2010, the District received several other letters from the Los Angeles Sheriff's Department ("LASD") reflecting that several other LACJ inmates were seeking special education services from LAUSD. Because the legal issue regarding responsibility for such services was on appeal and still being adjudicated in the courts, LAUSD took the position that it was not

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1 responsible for such services, assuming for the sake of argument that the inmates in
2 fact were eligible for special education services at all.
3 7. In February 2010, LAUSD began providing special education services to
4 Garcia in the LACJ. LAUSD continued to provide such services to Garcia in LACJ
5 until LAUSD was advised in October 2010 that Garcia was transferred to an adult
6 correctional facility in Chino, California.
7 8. Between April 1, 2010, and November 18, 2010, LAUSD received from
8 the CDE the names of approximately 19 or so inmates in the LACJ who were alleged
9 to be requesting special education services and who apparently believed that LAUSD
10 may be the responsible agency to provide such services. LAUSD did not receive any
11 direct requests for services from LACJ inmates or from the LASD on behalf of the
12 inmates during that time period.
13 9. In each instance (where LAUSD received a name from the CDE or
14 LASD pursuant to Paragraph 8, above), LAUSD promptly reviewed the names of the
15 affected inmates, and searched the LAUSD database to determine if the inmates were
16 former LAUSD students and, if so, whether the inmates had ever received special
17 education services from the LAUSD.
18 10. Of these names, LAUSD determined that there were 6 inmates (in
19 addition to Garcia) who met eligibility requirements for special education services and
20 appeared to reside in LAUSD at the time the students were incarcerated in the LACJ.
21 11. These inmates were: (1) Getz Anderson, (2) Ernesto Flores, (3) Eugene
22 Pimentel, (4) Luis Reyes, (5) Franz Rodriguez, and (6) Martin Soto.
23 I declare under penalty of perjury under the laws of the United States of
24 America that the foregoing is true and correct.
25 Executed this 18th day of November, 2010 at Los Angeles, California.
26
27
28

SUE SPEARS

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EXHIBIT 1

Deborah Dorfman
Deputy Director
Phone: 213-736-1195
E-mail: Deborah.Dorfman@LLS.edu

February 12, 2009

Ramon C. Cortines
Los Angeles Unified School District
333 S. Beaudry Ave.
Los Angeles, CA 90017

***Via* Facsimile and *US* Certified Mail**

Re: Failure to Provide Special Education and Related Services to Michael Garcia and similarly situated students at the Los Angeles County Jail

Dear Superintendent Cortines:

Please be advised that the Disability Rights Legal Center ("DRLC") has been retained to represent the interests of Michael Garcia. We are a non-profit disability rights firm that enforces the civil rights of individuals with disabilities under the Individuals with Disabilities Education Improvement Act ("IDEIA"), the Americans with Disabilities Act ("ADA"), and other similar federal and state non-discriminations statutes and constitutions.

The purpose of this letter is to address the Los Angeles Unified School District's (LAUSD) failure to provide special education and related services to Mr. Garcia while at the Los Angeles County Jail ("LACJ"), in violation of federal and state laws. As described below, Mr. Garcia was and continues to be denied the legally mandated special education and related services to which he is entitled during his detention at the LACJ. By this letter, we provide you with a detailed account of Mr. Garcia's claims and demands. We formally request that you immediately address these concerns.

I. Background

Michael Garcia is an 18-year old student who is eligible for and entitled to receive special education services pursuant to including the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. §§ 1400 *et seq.* and California Education Code § 56000, *et seq.* He is also a qualified individual with a disability as defined by Section 504 and the ADA. Michael has been diagnosed with multiple disabilities, such as visual and auditory processing disorders and significant expressive and receptive language deficits. He has not yet graduated from high school and has not received his GED. He is currently a pretrial detainee at the LACJ where he has been detained since on or about June 19, 2008. Since that time, LAUSD not offered or provided any special education services to Michael.

Prior to his detention at LACJ, Michael was detained in juvenile hall from on or about April 18, 2006, to on or about June 19, 2008. Shortly after his eighteenth birthday Michael was transferred from juvenile hall to Men's Central Jail where he awaits trial. Since moving to Men's Central Jail on or about June 19, 2008, Michael has not received special education or related services. To date, Michael has lost the educational benefit of more than 160 days of instruction. Based on the services in his current IEP, Michael estimates that he has lost approximately 38,400 minutes of special education instruction, 1,4400 minutes of speech and language therapy, and 960 minutes each of counseling and assistance from a behavior management assistant.

Other youth, eligible for special education and detained in the Los Angeles County Jail ("LACJ"), such as Michael Garcia, are not afforded special education and related services to which they are entitled by law. Nor are these youth made aware of their right to receive special education services while incarcerated or provided notice of their procedural rights, such as the right to challenge the denial of special education services through a due process hearing.

On December 23, 2008, Mr. Garcia filed a request for a due process, on behalf of himself and other students similarly situated, against the County of Los Angeles, the County of Los Angeles Sheriff's Department, the County of Los Angeles Sheriff, Leroy Baca, the California Department of Education, the Hacienda La Puente School District, the Puente Hills Special Education Local Plan Area, the Los Angles County Office of Education, and the Southwest Special Education Local Area Plan to obtain an order form the Office of Administrative Hearings ("OAH") compelling the above-named parties to provide special education and related services to Mr. Garcia. On February 9, 2009, the OAH issued an order dismissing all of the above-named respondents from the case. In doing so, OAH held that it is the district of the student's parent's residence that determines which school district is responsible for the provision of FAPE to an eligible student at the LACJ. *See Michael Garcia v. Los Angeles County Sheriff's Department, et al.*, OAH Case No. 2009010064, Order Granting and Denying Motions to Dismiss or Restore Parties and Order Dismissing Complaint at pp. 4-6, attached hereto.

Consistent with OAH's ruling, Mr. Garcia now requests that LAUSD provide him with the special education and related services to which he is legally entitled, as his parents currently reside within the LAUSD boundaries, thus making LAUSD, as set forth by OAH's Order, responsible to provide him with these services. Further, per OAH's Order, LAUSD is responsible for ensuring that students eligible for special education and related services who are detained at the LACJ whose parents are residents within the LAUSD boundaries are provided with such services.

II. LAUSD's Violation of the IDEIA and California Education Code Sections 5600, *et seq.*

Under the IDEIA, students who are eligible to receive special education services have a right to receive a "free and appropriate public education (FAPE)." 20 U.S.C. § 1412

(a)(1)(A); 34 C.F.R. § 300.101; Cal. Educ. Code § 56040(a). Michael, and other similarly situated youth incarcerated at the LACJ, are entitled to receive FAPE if they were identified as eligible for such services or had an individualized education program prior to their incarceration. 20 U.S.C. § 1412 (a)(1)(B)(ii) and Cal. Educ. Code § 56040(b). Despite being entitled to receive such services, neither Michael nor any other student who has an IEP or was identified as being a student with a disability prior to their incarceration at the LACJ is receiving special education instruction, related services, or transition services. Although LAUSD is responsible for providing these services to Michael and those students similarly situated, under Cal. Educ. Code section 56041 and pursuant to the OAH's Order, it has failed to fulfill its legal obligation to ensure that Michael and all similarly situated students receive FAPE while in the custody of LACJ.

LAUSD has also failed to provide the mandated procedural safeguards to Michael as required by the IDEIA and the California Education Code. It is well established that a failure to comply with the procedural requirements of the IDEIA will constitute a denial of a FAPE if such violation deprived the petitioner of an educational opportunity or seriously infringed on his opportunity to participate in the formulation of his individualized education plan. *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201 (1982) (recognizing the importance of adherence to the procedural requirements of the IDEIA as part of the provision of FAPE); *W.G. v. Bd. of Teachers of Target Range Sch. Dist., No.* 23, 960 F.2d 1479, 1484 (9th Cir. 1992).

LAUSD has committed several procedural violations that have denied Michael of his right to a free appropriate public education. Those violations include, but are not limited to: (1) LAUSD has never notified Michael of his procedural rights and responsibilities under federal or state law. *See* Cal. Educ. Code §§ 56500.1, 56301(d)(2); (2) LAUSD failed to adopt or develop an individualized educational program for Michael within 30 days of his transfer from Barry J. Nidorf juvenile court school to LACJ pursuant to California Education Code section 56325. Since Michael's detention on June 19, 2008, LAUSD has neither adopted his previous IEP nor held an IEP team meeting to develop a new educational program. LAUSD has also failed to timely hold an annual IEP team meeting to review Michael's progress, evaluate his need for re-assessment, if any, and revise his educational program if needed pursuant to California Education Code section 56341.1(d). *See also* Cal. Educ. Code §§ 56043(d), 56343(d), 56380. Finally, LAUSD has not provided any written notice to Michael in regards to his right to receive special education services at LACJ or how to appeal a denial of such services. It has also not provided him with written notice explaining why he is not being provides with such services as required by to California Education Code section 56500.4. *See also* 34 C.F.R. §300.503(b), 20 U.S.C. §1415(c).

These serious procedural violations have resulted in significant delay and loss of educational opportunity for Michael. As LAUSD has not implemented a system in the LACJ to provide special education to eligible youth, LAUSD has denied all other similarly situated eligible youth the same procedural safeguards as they have denied Michael.

III. LAUSD's Violation of State and Federal Antidiscrimination Laws

LAUSD has also violated Mr. Garcia's rights under Title of the ADA and its implementing regulations. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130. In providing any aid, benefit, or service, a public entity "may not...[d]eny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit or service," "[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is no equal to that afforded others," "[p]rovide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity...as that provided to others," or "[o]therwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others[.]" 28 C.F.R. § 35.130(b)(1)(i), (ii), (iii), and (vii). Nor may a public entity "impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary[.]" 28 C.F.R. § 35.130(b)(8). Finally, a pubic entity "*shall* make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability[.]" 28 C.F.R. § 35.130(b)(7)(emphasis added).

LAUSD has failed to provide Michael and other similarly situated students with the special education services they are guaranteed by law. Accordingly, LAUSD has violated Title II of the ADA and its regulations by, *inter alia*: (1) denying Michael, and all similarly situated youth, the opportunities and benefits of the programs, services, and activities to which they otherwise might be entitled as part of the provision of a free and appropriate public education; (2) denying Michael, and all similarly situated youth, equal and/or equally effective access to educational, vocational, employment, recreational, and other opportunities, including academic instruction, speech and language services, counseling and guidance, psychological services, transition planning and services, vocational education and career development, recreation services, and other related services, on the basis of their disabilities; (3) utilizing policies and practices that have a disparate impact on, and which screen out or tend to screen out, Michael, and all similarly situated youth, from participation in programs, services, and activities; (4) utilizing methods of administration that have the effect of discriminating against Michael and all similarly situated youth; (5) failing to make reasonable modifications in policies, practices, or procedures when modifications are necessary to avoid discriminating against Michael, and all similarly situated youth; (6) failing to take prompt and equitable steps to remedy their discriminatory conduct; and (7) by otherwise segregating, excluding, and discriminating against Michael, and all similarly situated youth.

Section 504 of the Rehabilitation Act states that "[n]o otherwise qualified individual with a disability...shall, solely by reason of his or her disability, be excluded from the participation

in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Violations of the ADA are, in essence, violations of Section 504, as the two have been interpreted to be parallel in nature as the language adopted in the ADA tracks that of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*. The ADA expressly requires its provisions to be interpreted in a way that "prevents imposition of inconsistent or conflicting standards [of] the same requirements" under the two statutes. 42 U.S.C. § 12117(b). As set forth above, LAUSD has violated Title II of the ADA. Because LAUSD receives federal funding, it is prohibited from discriminating against individuals based upon their disabilities, such as Mr. Garcia, under Section 504 of the Rehabilitation Act.

IV. LAUSD's Violation of the Federal and California State Constitutions

By failing to provide or ensure the provision of mandated special education services to Michael, and other similarly situated youth in the custody of LACJ, LAUSD has violated and continues to violate Petitioners' rights to equal protection of the laws as guaranteed by the United States Constitution.

The LAUSD has also denied Michael's the due process rights guaranteed to them by the United States Constitution. The LASUD denies Michael and other similarly situated youth access to educational services while they are detained in LACJ facilities. The LAUSD has failed to notify Michael and others similarly situated of the mechanisms in place to make and resolve complaints about the lack of equal access to the general education programs in the LACJ. Similarly, Michael and other similarly situated youth have not been afforded a hearing or a right to challenge the denial of education and special education services in direct contravention of the United States Constitution and California law. *See* Cal. Educ. Code §§ 56500.1, 56325, 56301(d)(2); *see also* 20 U.S.C. § 1415(c) and (d).

Finally, by failing to provide special educational services to Mr. Garcia and similarly situated students, all eligible 18-22 year old youth in the custody of LACJ whose parents are residents within the LAUSD school district, LAUSD has deprived Michael, and other similarly situated students, of mandated special education services—a state-created property right—without due process of law under the California state constitution.

V. Demand

In order to resolve this matter, it is essential that LAUSD immediately agree to stipulate to a settlement agreement that shall take the form of a court order that encompasses all of the following:

1. Immediately provide Michael with interim education services that comport with his most recent IEP, including tutoring; speech and language therapy, counselling, and behavioral management therapy. Evaluate Michael's needs and develop an IEP for him, working with the LA County Sheriff's Department to ensure access to provide these services to Michael while he is detained in the LACJ.

2. Adopt a system to provide a free and appropriate public education consistent with the requirements of the IDEIA and California Education Code §5600, *et seq.*, and the regulations promulgated thereunder to Michael Garcia, and all other similarly situated youth who are eligible for special education and are currently detained in LACJ facilities or will be detained there in the future. As required by relevant special education laws, this free and appropriate public education must include, but is not limited to, special education instruction, related services, and transition services.

3. Adopt a mechanism to identify, prior to individuals' transfer into the LACJ facility, those detainees that are eligible to receive special education.

4. Adopt a process to determine what compensatory education services are required to make up for the education that Michael Garcia and all other similarly situated youth who have gone without special education during the time that they have been incarcerated in the LACJ and provide such compensatory education services that are owed.

5. Adopt the foregoing systems, processes, and mechanisms in consultation with an expert in correctional education and special education who has been mutually agreed upon by the parties and bear all the reasonable fees and costs of said mutually agreed upon expert.

6. Retain a mutually agreed upon expert in the area of correctional education and special education to monitor the implementation of the items 1-3 in this Section, described above and adopt a mechanism to provide regular reporting of progress to Petitioner's counsel.

7. Reimburse Petitioner's counsel for accrued fees and costs as appropriate and permitted by law.

We are hopeful that we will be able to work with you to ensure that Michael and other similarly situated students at the LACJ the special education, related and transition services to which they are entitled without the necessity of litigation. Please provide us with written notice as to whether LAUSD will agree to the forgoing terms by the close of business on Friday, February 21, 2009. If LAUSD does not agree to these terms by that date, we will have no choice but to proceed with legal action against the District.

We look forward to your response.

Sincerely,

DISABILITY RIGHTS LEGAL CENTER

Deborah A. Dorfman, Esq.
Deputy Director

Enclosure

Cc: Diane Pappas, General Counsel, Los Angeles Unified School District
Linda Dakin-Grimm, Milbank Tweed Hadley and McCloy, LLP
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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

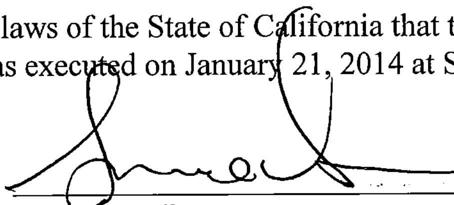
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 21, 2014, I served the:

> **Claimant Comments**
> *Special Education Services for Adult Students in County Jail*, 10-TC-04
> January 2010 Compliance Report from the California Department of Education,
> November 16, 2009 Decision of the California Office of Administrative Hearings,
> and California Education Code Section 56041
> Los Angeles Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 21, 2014 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/31/13

Claim Number: 10-TC-04

Matter: Special Education Services for Adult Students in County Jail

Claimant: Los Angeles Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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