

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

January 2010 Compliance Report from the California Department of Education; November 2009 Decision by the Office of Administrative Hearings; Education Code Section 56041, as enacted by Statutes 1992, Chapter 1360 (AB 2773)¹

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 March 28, 2014)

(Served April 4, 2014)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on March 28, 2014. Mr. Barrett Green represented claimant, Los Angeles Unified School District. Ms. Kathleen Lynch and Ms. Lisa Mierczynski appeared on behalf of the Department of Finance (Finance).

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 the proposed statement of decision to deny the test claim at the hearing by a vote of 7-0.

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.

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

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| 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. |
| 11/27/2013 | Commission staff issued the draft staff analysis and proposed statement of decision. |

12/10/2013 Claimant requested an extension of time to file comments on the draft staff analysis and postponement of the hearing, which were granted for good cause.

01/17/2014 Claimant comments on the draft staff analysis and proposed statement of decision.

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. Federal and State Special Education Requirements

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.² 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.³ IDEA requires that if a child between the ages 18 and 22 received special education services in the child's last educational placement prior to being incarcerated in an adult correctional facility, that child is entitled to services while incarcerated.⁴

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.⁵ States are generally responsible for ensuring IDEA's requirements are met.⁶

² Title 20 United States Codes section 1400 et seq.

³ 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.

⁴ Title 20 United States Codes section 1412(a)(1)(B)(ii); Title 34 Code of Federal Regulations section 300.102(a)(2)(ii).

⁵ See Title 20 United States Codes section 1412(a).

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.⁷ Apart from a state's supervisory responsibilities, a state can be required to provide direct services to a child if the responsible LEA is unable or unwilling to provide those services.⁸ 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.⁹ 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.¹⁰ 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."¹¹ Section 48200 "embodies the general rule that parental residence dictates a pupil's proper school district."¹² There are exceptions to this rule,¹³ 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."¹⁴ An "individual with exceptional needs" is defined by Education Code section 56026 in order to determine which pupils are eligible for

⁶ *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).

⁷ See *Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525–27.

⁸ Title 20 United States Codes section 1413(g).

⁹ *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1052-53.

¹⁰ See *Orange County Department of Education. v. A.S.* (C.D.Cal.2008) 567 F.Supp.2d 1165, 1167.

¹¹ Education Code section 48200.

¹² *Katz v. Los Gatos–Saratoga Joint Union High School District* (2004) 117 Cal.App.4th 47, 53.

¹³ Education Code section 48204.

¹⁴ 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.

special education services.¹⁵ 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 graduated from high school with a regular high school diploma.¹⁶ 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.

¹⁵ Education Code section 56026, as last amended by Statutes 2007, chapter 56.

¹⁶ Education Code section 56026(c).

- (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 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.¹⁷

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.¹⁸ 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.¹⁹ The CDE may apply sanctions if corrective actions are not taken by the responsible school district or other public agency providing special education services.²⁰

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.²¹

¹⁷ 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.]

¹⁸ 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.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ 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.²² 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.²³ 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.²⁴

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.²⁵ 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 to be eligible for those services from age 3 until they reach the age of 22 (*EC*

²² Department of General Services, Office of Administrative Hearings, Understanding Special Education Due Process Hearings Provided By The Office of Administrative Hearings (2009), p. VI.

²³ Exhibit A, 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."

²⁴ *Ibid.*

²⁵ *Id.* at p. 91-10, citing Government Code sections 26600 and 26605 and California Code of Regulations, Title 15, section 1061.

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))²⁶

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.

²⁶ *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 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 begin served.²⁷

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 Mr. Garcia was eligible to receive special education services.²⁸ 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

²⁷ *Id.* at pp. 18-19, "Required Corrective Actions."

²⁸ *Id.* at pp. 7-8.

to Mr. Garcia's complaint.²⁹ 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.³⁰

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.³¹

ii. Claimant Litigated the Interpretation of 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..."³²

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 incarcerated 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.³³ On March 28, 2012, the California Supreme Court granted the Ninth Circuit's request. This matter was argued and submitted to the California Supreme Court on October 10, 2013. On December 12, 2013, the California Supreme Court ruled that where eligible individuals between the ages of 18 and 22 are incarcerated in county jail, "the entity responsible for providing special education services to an eligible young adult pupil while he or she is incarcerated in county jail is properly determined by the terms of section 56041."³⁴

²⁹ *Id.* at pp. 8-12.

³⁰ *Id.* at p. 17.

³¹ *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.

³² Exhibit A, 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)).

³³ *Los Angeles Unified School District v. Garcia* (9th Cir. 2012) 669 F.3d 956, 963.

³⁴ *Los Angeles Unified School District v. Garcia* (2013) 58 Cal 4th 175, 188-189.

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.³⁵ 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.³⁶ 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.”

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:

³⁵ 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.

³⁶ Senate Bill 982, approved by Governor August 12, 2001 (2001-2002 Regular Session).

...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.³⁷

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.³⁸ Claimant estimates that it will incur approximately \$100,000 in costs during fiscal year 2010-2011 and in each year going forward.³⁹ 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.⁴⁰

In comments submitted in response to the draft staff analysis, claimant disagreed with the conclusion that the 2010 CDE Compliance Report, OAH Decision, and Education Code section 56041 do not impose any state-mandated activities upon school districts. Claimant's comments argue that federal law leaves it to the states to decide which state entity must provide special education services to inmates in county jails and that the legislature assigned this requirement to school districts by enacting Education Code section 56041.⁴¹ Claimant further argues that the special education funding provided pursuant to section 56836.156 could not have been specifically intended to fund special education for inmates because claimant had never received a request by an inmate for special education services prior to February 2009 and, therefore, the Legislature could not have intended that section 56836.156 would fund special education for inmates. As such, claimant contends that the draft staff analysis incorrectly concludes that Government Code section 17556(e) is applicable in this matter

³⁷ Exhibit A, test claim, dated November 3, 2010, section 5 (WRITTEN NARRATIVE), p. 2.

³⁸ *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.

³⁹ *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.

⁴⁰ *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.

⁴¹ Exhibit C, Claimant comments on draft proposed statement of decision, pp. 2-4.

because there is no evidence that section 56836.156 was intended to fund the provision of special education services to inmates.⁴²

State Agency Position

No state agency filed written comments on this test claim. At the hearing, the Department of Finance agreed with the proposed statement of decision.

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.”⁴³ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁴⁴

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.⁴⁵
2. The mandated activity either:

⁴² *Id.* at pp. 4-6.

⁴³ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁴⁴ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁴⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

- 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.⁴⁶
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.⁴⁷
 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.⁴⁸

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁴⁹ 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 6.⁵⁰ 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.”⁵¹

A. 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.

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. Claimant further argues that federal law leaves it to the states to decide which state entity must provide special education services to

⁴⁶ *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56.)

⁴⁷ *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.

⁴⁸ *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.

⁴⁹ *County of San Diego, supra*, 15 Cal.4th 68, 109.

⁵⁰ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

⁵¹ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose, supra*].

inmates in county jails and that the legislature assigned this requirement to school districts by enacting Education Code section 56041.⁵² 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 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 law⁵³ and Education Code section 56026, a state statute originally enacted in 1980 and last amended in 2007. The enactment of section 56041 in 1992 did nothing to change these requirements and simply provided a means to determine which entity must provide special education services to inmates between the ages of 18 and 22 who are incarcerated in county jail. No new mandated duties are required of the claimant.

⁵² Exhibit C, Claimant comments on draft proposed statement of decision, pp. 2-4.

⁵³ Title 20 United States Code section 1400 et seq.

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 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.⁵⁴ 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.

Claimant, in comments on the draft proposed statement of decision, argues that the special education funding provided pursuant to section 56836.156 could not have been specifically intended to fund special education for inmates because claimant had never received a request by an inmate for special education services prior to February 2009. Therefore the Legislature could not have intended that section 56836.156 would fund special education for inmates. However, although claimant may not have received a request by an inmate for special education services prior to February 2009, the plain language of section 56836.156(f) provides funding in an amount sufficient to pay for “...*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.) Thus, regardless of whether section 56836.156(f) refers to special education services for “inmates” or any other specific group of eligible individuals, it is clear from the plain language of section 56836.156(f) that it was intended to fund special

⁵⁴ 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.”

education services provide to all eligible individuals between the ages of 3 and 22, including eligible inmates.

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.”⁵⁵ In this case, these elements have not been met and reimbursement is not required.

V. Conclusion

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.

⁵⁵ *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 April 4, 2014, I served the:

Statement of Decision

Special Education Services for Adult Students in County Jail, 10-TC-04
January 2010 Compliance Report from the California Department of Education
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 April 4, 2014 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
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(916) 323-3562