

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:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

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;<sup>1</sup>

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<sup>1</sup>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.