

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO**

**MINUTE ORDER**

DATE: 04/08/2019

TIME: 11:21:00 AM

DEPT:

JUDICIAL OFFICER PRESIDING: Earl H. Maas, III  
CLERK: Noreen McKinley  
REPORTER/ERM: Not Reported  
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2017-00029559-CU-WM-NC** CASE INIT.DATE: 08/11/2017

CASE TITLE: **Escondido Union School District vs California Department of Education [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

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**APPEARANCES**

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The Court, having carefully considered the oral and written arguments of the parties and having taken the matter under submission, hereby rules as follows:

The first amended petition/complaint filed August 11, 2017 alleged two causes of action for writ of mandate and declaratory relief arising out of the California Department of Education's ("CDE") decision finding that the Escondido Union School District ("District") violated Education Code § 56362. An employee, Alison Owen, who was employed by the District as a Specialized Academic Instruction ("SAI") teacher, filed a complaint with the CDE alleging that the District violated § 56362 by assigning her a caseload of more than 28 students. The complaint was brought pursuant to 34 CFR 300.153(b)(1). The CDE concluded that the District was utilizing the SAI teacher as a Resource Specialist Program ("RSP") specialist and therefore, the District was required to adhere to the requirements of § 56362(a).

The petition seeks issuance of a writ of mandate pursuant to CCP § 1085, arguing that Respondent abused its discretion in finding that Petitioner violated § 56362. Petitioner alleges that Respondent's finding imposes statutory requirements that are specific to a Resource Specialist on the District in relation to an employee who is not a Resource Specialist and who does not hold the legal qualifications to be a Resource Specialist. Petitioner requests that a writ issue commanding Respondent to reverse its findings and withdraw its corrective action.

Section 56362 provides:

"Each special education local plan area shall ensure that a continuum of program options is available to meet the needs of individuals with exceptional needs for special education and related services, as required by the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) [IDEA] and federal regulations relating thereto."

Education Code § 56361 provides in part:

"The continuum of program options shall include, but not necessarily be limited to, all of the following or any combination of the following..."

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"(b) A resource specialist program pursuant to Section 56362."

On February 1, 2019, Petitioner filed the instant motion for judgment. CCP § 1094. If a petition filed under CCP § 1088.5 presents no triable issue of fact or is based solely on an administrative record, any party may make a noticed motion for "a judgment on the peremptory writ".

The motion for judgment on the petition for writ of mandate is denied. CCP § 1094.

The joinder of Alison Owen ("Owen") in the opposition is denied to the extent that she requests that the court consider her verified response to the petition filed November 6, 2017. Owen's response has no application to the legal issue presented by this motion and is not a true joinder in the opposition.

All requests for judicial notice are granted.

Petitioner's objections to the declaration of Kishaun Thortona is overruled.

Petitioner's objection 7 to the declaration of Alison Owen is sustained for lack of personal knowledge and foundation. The remaining objections are overruled.

Respondent's objections 4 and 5 to the declaration of Kelly Prins are sustained as lacking personal knowledge and foundation. Respondent's objection 8 as to the phrase "which would qualify her to work as a Resource Specialist in accordance with Education Code § 56362.5 and 5 CCR 80070.1-80070.6" is sustained as a legal conclusion. The remaining objections are overruled.

The standard of review of the petition is abuse of discretion. Abuse of discretion is established if Respondent has not proceeded in the manner required by law, its decision is unsupported by the findings or the findings are not supported by substantial evidence. Mateel Environmental Justice Foundation v. Office of Environmental Health Hazard Assessment (2018) 24 Cal. App. 5th 220, 229. In its moving and reply briefs, Petitioner failed to specifically address such issues and rather, focused solely on the legal interpretation of Education Code § 56362.

For the first time at oral argument, Petitioner raised the argument that Respondent failed to proceed in the manner required by law in that it failed to comply with 5 CCR § § 4640 and 4650(a)(7). Section 4640 provides that if a complaint is erroneously filed with the CDE without first being filed with and investigated by the local educational agency ("LEA"), the CDE shall immediately forward the complaint to the LEA for processing "unless extraordinary circumstances exist necessitating direct state intervention as described in section 4650". Section 4650(a)(7), in turn, states that for complaints relating to special education, the CDE shall directly intervene without waiting for the local educational agency ("LEA") investigation only if certain circumstances exist, including where the complaint "involves a violation of federal law governing special education, 20 U.S.C. section 1400 et seq. [Individuals with Disabilities Education Act – "IDEA"], or its implementing regulations". It would appear that the complaint was filed based on this subsection in that it cites to 34 CFR 300.153(b)(1) [a public agency has violated a requirement of IDEA]. However, this issue was not briefed and the court declines to address its merits.

### **1. Substantial evidence supports Respondent's findings.**

Substantial evidence supports the findings that Owen was performing the duties of a Resource Specialist and was qualified as a Resource Specialist. Declarations of Alison Owen, Tammy Duggan and



Kishaun Thornton.

**2. The decision is supported by the findings.**

At oral argument, Petitioner also raised a new argument, not briefed, that the findings were insufficient in that they failed to include findings as to the difference between RSP teachers and SAI teachers and whether any students had needs identified in their individualized education programs ("IEP") requiring RSP services.

The CDE found (1) the District had ceased operating RSP programs and was using the RSP designation for either a special education teacher or special education program, (2) the District's job description for a SAI teacher matched the mandated duties of a RSP teacher, (3) the students assigned to the SAI teacher are in the regular classroom for the majority of the school day as evidenced by the students' IEPs and (4) the District's SAI teacher maintained a caseload of approximately 34 to 43 students. The decision is supported by the findings.

**3. Respondent proceeded in the manner required by law.**

Respondent proceeded in the manner required by law in its application of Education Code § 56360. Each special education local plan area shall ensure that a "continuum of program options" is available and such "continuum of options" shall include "all of the following or by combination of the following...(b) a resource specialist program pursuant to § 56362". Education Code § 56361.

The North County Special Education Local Plan Area ("SELPA") of which Petitioner is a part, has in effect "ensured" that RSP services are provided by delegating this responsibility as to the availability of a "continuum of program options" to Petitioner. The North County SELPA operates under a 2015 SELPA Local Plan which assigns responsibility to each LEA for "operating all special education programs and services in accordance with state and federal laws and regulations". Declaration of Rebecca Feil, Exhibit W, p. 16. The Local Plan requires the governing board of each LEA to approve and comply with the Local Plan, which Petitioner's board has done. *Id.*, p. 32.

The reference to a "combination of the following" in § 56361 does not mean that RSP services are not required to be offered. While all of the programs listed in this section may not be required for a particular student, all program options must be available. Petitioner's interpretation of this provision is not persuasive.

Although the motion is only directed to the petition, the cause of action for declaratory relief is moot in light of this ruling. This ruling is dispositive of the entire action. All future dates are vacated.

This shall serve as the Court's initial statement of decision and shall become final in 15 days if not modified by objection or other modification.



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Judge Earl H. Maas, III

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

North County  
325 S. Melrose  
Vista, CA 92081

**SHORT TITLE:** Escondido Union School District vs California Department of Education [IMAGED]

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**  
**37-2017-00029559-CU-WM-NC**

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Vista, California, on 04/08/2019.

Clerk of the Court, by:

  
N. McKinley

, Deputy

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