BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020100499

ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING MOTION TO REINSTATE ISSUE

JANUARY 19, 2021

On January 12, 2021, the undersigned Administrative Law Judge issued an order following prehearing conference dismissing Student's Issue 2(f) for lack of jurisdiction. Student's Issue 2(f) alleges that Fremont Unified School District violated Student's confidential information by including a general education teacher on Student's May 4, 2020 individualized education program team, called an IEP team, who had not been involved with Student's education in more than two years. On January 19, 2020, Student filed a motion for reconsideration. The Office of Administrative Hearings did not receive a response from Fremont.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION

Student did not present new or different facts, circumstances, or law justifying reconsideration. Rather, Student cites existing law not previously cited in support of reconsideration. Specifically, education Code, section 56341.1 and sections 300.300.610 to 300.626 of Title 34 of the Code of Federal Regulations. The citation of law, which existed at the time of the undersigned ALJ's order, but was not previously cited by Student, is not typically grounds for reconsideration. However, in an abundance of caution, and in light of Student's pro per status, the motion for reconsideration is granted.

On reconsideration, Student's contention that OAH has jurisdiction to determine Student's privacy rights, as alleged in Issue 2(f), is without merit. Education Code Section 56341.1 provides that audio recordings made by local education agencies, are subject to the federal Family Educational Rights and Privacy Act of 1974, called the FERPA, and are subject to the confidentiality requirements of the regulations under sections 300.610 to 300.626 of Title 34 of the Federal Code of Regulations. Student's Issue 2(f) does not involve audio recordings and therefore the cited legal provision is

not applicable. Even if it was, OAH would not have jurisdiction to determine the alleged violation of Student's privacy. As set forth in the undersigned ALJ's January 12, 2020, order following prehearing conference, a party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist*. (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction regarding alleged violations of privacy pursuant to the FERPA, or federal regulations for its implementation.

ORDER

1. Student's motion for reconsideration is granted.
2. On reconsideration, Student's request to reinstate Issue 2(f) is denied.

3. This matter shall proceed according to the order following prehearing conference.

IT IS SO ORDERED.

Rita Defilippis

Rita Defilippis

Administrative Law Judge

Office of Administrative Hearings