BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT .	OAH Case No. 2019030800 ORDER TO VERIFY COMPLETE PRODUCTION OF EDUCATIONAL RECORDS AND/OR PRODUCE EDUCATIONAL RECORDS

On April 2, 2019, Student filed a Motion for an Order that District Produce Educational records.[1] Long Beach Unified School District did not file a response.

APPLICABLE LAW

Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act (FERPA). (20 U.S.C. § 1232; 34 C.F.R. § 99.3.) Education records include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed. Code, § 49061, subd. (b).) Education records maintained by a school district employee in the performance of his or her duties include those "recorded by handwriting, print, tapes, film, microfilm or other means." (Ed. Code, §§ 49061, 56504.) Pupil or education records do not include "records of instructional, supervisory, and administrative personnel…which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." (20 U.S.C. § 1232g(a)(4)(b)(i); Ed. Code, § 49061, subd. (b); *see Burnett v. San Mateo Foster City School District* (9th Cir. 2018*)* 2018 WL 3120298 [nonpub. opn.].) These records must be produced to a student upon request.

The United States Supreme Court in *Owasso Ind. School Dist. v. Falvo* (2002) 534 U.S. 426 [122 S. Ct. 934, 151 L.Ed.2d 896] (*Falvo*), after conducting an analysis of FERPA provisions related to education records, determined that not every record relating to a student satisfies the FERPA definition of "education records." Specifically, the Supreme Court examined the FERPA provision that requires educational institutions to "maintain a record,

[1] Although the introduction to the motion states that Student is presenting his "Opposition" to a motion to produce records, it is clear from context that Student is moving to require production.

kept with the education records of each student" (*i.e.*, 20 U.S.C. § 1232g(b)(4)(A)), that "list[s] those who have requested access to a student's education records and their reasons for doing so." (*Falvo, supra*, 534 U.S. at p. 434.) The Court concluded that because this single record must be kept with the education records, "Congress contemplated that education records would be kept in one place with a single record of access." (*Id*.) Further, "[b]y describing a 'school official' and 'his assistants' as the personnel responsible for the custody of the records, FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar…" *(Id.* at pp. 434-435.) The Court then found that individual assignments handled by many student graders in their separate classrooms were not student records. (*Id.*)

In *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742 (*BRV*), when determining whether or not an investigative report, which identified students in connection with alleged misconduct by a school district superintendent, was an education record, the Court of Appeal analyzed what constituted an education record. (*Id.* at pp. 751-755.) The Court of Appeal, citing *Falvo*, agreed with the Supreme Court, and stated that "the statute was directed at institutional records maintained in the normal course of business by a single, central custodian of the school. Typical of such records would be registration forms, class schedules, grade transcripts, discipline reports, and the like." (*Id.* at pp. 751-754.) The Court of Appeal then found that the investigative report, "which was not directly related to the private educational interests of the student," was not an educational record, "as the report was not something regularly done in the normal course of business," and "was not the type of report regularly maintained in a central location along with education records…in separate files for each student." (*Id.* at p. 755.)

Case authority has firmly established that educational records are those that are kept in one place by a single central custodian in separate files for each student, which are directly related to the private educational interests of each student.

ANALYSIS

The Request for Records

Student was subjected to school discipline for actions committed on October 18, 2018. He contends that his behavior was a manifestation of a disability, and Long Beach does not agree.

Student requested his educational records from Long Beach on March 21, 2019, the day immediately following his filing of this action. Student received a production of documents, for which the listing runs nearly three pages in Student's motion. Student contends, however, that the production is incomplete, as it does not contain "many of the records of the alleged incident for which [Student] was removed from [his school], any reports by any persons regarding the alleged incident, and any hearings or other matters involving [Student] as a result of that incident."

Discussion

Long Beach has made a production of Student's educational records, so it has not failed to respond to Student's request. As noted above, Student is entitled to all "records, files, documents, and other materials" concerning his discipline by the school for his behavior which have been kept and maintained with his educational record. (Ed. Code, § 56504.)

ORDER

By noon on April 12, 2019, Long Beach shall represent under the penalty of perjury that that it has produced all of Student's educational records. If it has not done so, it shall produce the remainder to Student's counsel at that time.

DATE: April 10, 2019

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings