BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017060872
v.	ORDER GRANTING IN PART AND DENYING IN PART DISTRICT'S MOTION TO DISMISS ISSUE 10
MENIFEE UNION SCHOOL DISTRICT.	

PROCEDURAL BACKGROUND

Parent on behalf of Student filed a request for due process (complaint) with the Office of Administrative Hearings on June 20, 2017, naming the Menifee Union School District. On June30, 2017, District filed a motion to dismiss Issue 10 of Student's complaint. Student filed an opposition to District's motion on July 6, 2017.

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) 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 to entertain claims based on other federal or state statutes such as Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code (Section 1983), the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.), the state Unruh Civil Rights Act (Civ. Code, § 51)], or the Family Educational Rights and Privacy Act (FERPA).

Issue 10 of Student's complaint states that on May 26, 2017, Parent sent District a written request to inspect, review, and have copies made of all of Student's educational records. Student contends that after reviewing the records on June 5, 2016, Parent believed that the records were incomplete, not original records, were inaccurate, misleading, and violated Student's privacy rights, in violation of FERPA. Student states that she and Parent were prejudiced by the alleged FERPA violations. Student states that on June 9, 2016, she requested that District provide her with a hearing to challenge the validity of her records, pursuant to title 34 of the Code of Federal Regulations.

Student alleges that the issues regarding her educational records violated her rights under FERPA, the Individuals with Disabilities Education Act, and violated her right to a free appropriate public education. Student also alleged a violation of "SELPA," but it is unclear what she means by that contention. As a proposed resolution for these alleged violations, Student requests an order that District be required to comply with a 30-day timeline to hold a hearing to challenge the validity and content of the records.

District contends that Issue 10 should be dismissed because OAH does not have jurisdiction over issues alleging a violation of FERPA. District also contends that Student's issue is moot as it has already scheduled the hearing Student requested for July 6, 2017. It is unknown whether the hearing was held as scheduled.

Student responds that she is not alleging violations of FERPA, but rather, that the records she was provided were in violation of the IDEA. Student further alleges that District failed to comply with the provisions of the Education Code and the Code of Federal Regulations because District did not schedule the hearing to dispute the content of Student's records within 30 days.[1]

---

[1] Student cites to title 34 Code of Federal Regulations part 300.568 in support of her contention that she is entitled to a hearing regarding disputes as to the content of her educational records. Student is citing to the 1999 version of the Code of Regulations, which was superseded by the 2006 version. The section to which Student cites is now section 300.619 of the Regulations. The language of the two sections, however, is almost identical, and requires districts to set a hearing if a student challenges the content of her records. Pursuant to 34 Code of Federal Regulations part 99.22, the district must hold the hearing "within a reasonable amount of time." OAH has jurisdiction over alleged violations of these sections of the Code of Federal Regulations to the extent a student alleges that the violations denied her a FAPE.

Education Code section 49070 follows, to some extent, the requirements of the Code of Federal Regulations relative to a parent's right to inspect his or her child's educational records and to request a meeting to dispute the content of the records. Educational Code section 49070, subdivision (b), states that the meeting must be held within 30 days. Any disputes regarding the decisions on the records may be appealed to a district's governing board. Decisions of the governing board are final. OAH does not have jurisdiction over Education Code section 49070.

The timing of the hearing set by District is not alleged as an issue in Student's complaint, except to the extent that Student has requested a hearing that has already been set. The pertinent issue is whether Student has alleged an issue over which OAH has jurisdiction.

District too narrowly reads Student's Issue 10. Although the issue is not entirely clear, Student does state an allegation that District violated her right to a FAPE because she contends that her records were not accurate. This is an issue over which OAH has jurisdiction. OAH does not have jurisdiction over any allegation that District violated Student's or Parent's rights under FERPA. District's motion to dismiss is therefore GRANTED as to any FERPA allegations or references in Student's Issue 10. Issue 10 shall only go forward as to Student's allegation that District denied her a FAPE because her records were either incomplete, inaccurate, misleading, or violated her privacy rights and, as such, a violation could purportedly infringe on Parent's ability to participate in Student's educational decision making process or deny Student an educational benefit.

It is unknown if the hearing scheduled by District took place. Even if Student's requested remedy was moot, it does not necessarily make Student's FAPE allegation moot. Therefore, District's motion to dismiss Student's entire Issue 10 on the grounds the issue is moot is denied.

IT IS SO ORDERED.

DATE: July 12, 2017

DocuSigned by:
Darrell Lepkowsky
A228F8201132499...

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings