BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

OAKLEY UNION ELEMENTARY SCHOOL DISTRICT AND WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021030899

ORDER GRANTING MOTION TO COMPEL PRODUCTION OF STUDENT RECORDS

MAY 17, 2021

On May 10, 2021, Student filed a motion to compel West Contra Costa Unified School District to produce Student's educational records. On May 13, 2021, West Contra Costa filed a response to Student's motion.

APPLICABLE LAW

To guarantee parents the ability to make informed decisions about their child's education, the Individuals with Disabilities Education Act grants parents of a child with a disability the right to examine all relevant records in relation to their

child's special education identification, evaluation, educational placement, and receipt of a free appropriate public education. (20 U.S.C. §1415(b)(1); 34 C.F.R. § 300.501(a) (2006)1; Ed. Code, §§ 56501(b)(3) & 56504.) The district must comply with a request to review records without unnecessary delay and before any meeting regarding an individualized education program, any due process hearing, or resolution session, and in no case more than 45 days after the request has been made. (34 C.F.R. § 300.613 (a).) Under California law, the parent shall have the right and opportunity to examine all school records of her child and to receive copies within five business days after the request is made by the parent, either orally or in writing. (Ed. Code, §§ 56043, subd. (n), 56501, subd. (b)(3), 56504.)

Parents' due process hearing rights include the right to examine the student's education records. (20 U.S.C. § 1415(b)(1); Ed. Code, § 56501(b)(3).) This access is a hallmark of the procedural protections afforded under the IDEA and a prerequisite to a full and fair administrative hearing. The IDEA does not have a separate definition of educational records, and adopts the Family Educational Rights and Privacy Act definition of education records by reference. (34 C.F.R. § 300.611 (b).) In general, educational records are defined as those records which are personally identifiable to the student and maintained by an educational agency. (20 U.S.C § 1232g(a)(4)(A); 34 C.F.R. §§ 99.3; Ed. Code, § 49061, subd. (b) [similarly defines pupil record].)

DISCUSSION

Student's motion to compel alleges that Student made a request to West Contra Costa for educational records on March 24, 2021, but does not include a copy of the request. Student's motion alternately refers to the records sought as "educational records," "all student records," and "all school records." The motion

also alleges that West Contra Costa has failed to produce educational records as of May 10, 2021, but does not include an affidavit attesting to that fact.

In its response, West Contra Costa does not argue that it is not obligated to comply with Student's documents request. Rather, West Contra Costa contends that it has made efforts to comply, but that it does not have Student's records. To support its contention, West Contra Costa attached to its motion email threads between West Contra Costa staff, suggesting that Student's records may have been moved to a warehouse or may have been forwarded to Student's new school. West Contra Costa has not provided any affidavit, made under penalty of perjury, by any custodian of records or other person most knowledgeable attesting to these facts or usual business practices regarding the retention of student records. West Contra Costa has not provided any competent evidence demonstrating that the specific records Student seeks had been diligently searched for and a reasonable inquiry had been made and either had in fact been produced or could not be produced.

West Contra Costa is ordered to make a diligent search and reasonable inquiry to locate Student's "educational records" as defined above. West Contra Costa is ordered to provide a declaration under penalty of perjury signed by a West Contra Costa employee attesting to the fact that West Contra Costa made a diligent search and reasonable inquiry to locate the specific items requested in Student's motion. The declaration must state either that the items have been provided to Student's attorney or that West Contra Costa is unable to provide the document and the reason West Contra Costa cannot provide the document, e.g., the document never existed; or has been lost or stolen; or has been destroyed; or is not in the possession, custody or control of West Contra Costa. If the requested documents

are no longer in the custody or control of West Contra Costa, the declaration must state the name and address of anyone believed to have the document. Further production of Student's records and the declaration of a West Contra Costa employee must be served on Student and OAH no later than the date and time set for commencement of hearing.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings