

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ATASCADERO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009020179

ORDER GRANTING MOTION TO  
DISMISS ISSUE THREE

On February 04, 2009, Student filed a Request for Due Process Hearing (complaint). On February 10, 2009, the Atascadero Unified School District (District) filed a motion to dismiss Issue Three set forth in Student's complaint. On February 13, 2009, Student filed an opposition to District's motion.

Student is an eight-year-old child who is eligible for special education under the category of emotionally disturbed. Issue Three of Student's complaint alleges that the District violated Student's confidentiality rights under IDEA, as well as under the Family Educational Rights to Privacy Act (FERPA), and the Health Insurance Portability and Accountability Act (HIPPA), by allegedly videotaping and photographing Student without parental consent. Student's complaint also alleges that the District further violated Student's right to confidentiality by improperly disclosing to Student's 19 year-old sister information concerning Student's record. Consequently, Student alleges "the District committed substantive and procedural violations of the IDEA and thereby denied a FAPE to [Student] during the 2008-2009 school year."

The District contends that Issue Three of Student's complaint is outside of the jurisdiction of the OAH, as none of the alleged actions falls within the permissible circumstances upon which a parent may initiate the due process hearing procedures. Specifically, the District argues that the Student's allegations do not come within the purview of Education Code § 56501, subdivision (a), which provides that a parent and the public agency involved may initiate the due process procedures under the following circumstances:

- (1) There is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education to the child.
- (2) There is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education to the child.

- (3) The parent or guardian refuses to consent to an assessment of the child.
- (4) There is a disagreement between a parent or guardian and a local educational agency regarding the availability of a program appropriate for the child, including the question of financial responsibility, as specified in Section 300.148 of Title 34 of the Code of Federal Regulations.

Student contends that the allegations set forth in Issue Three do, in fact, fall within the permissible circumstances outlined in Education Code § 56501, subdivision (a), as “the provision of a free and appropriate public education includes Student’s right to confidentiality.” The Student’s position is not correct.

The purpose of the Individuals with Disabilities Education Act (IDEA) (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].) Pursuant to Education Code § 56501, subdivision (a), the Office of Administrative Hearings (OAH) is limited in its jurisdiction to these matters. (See *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

In the instant matter, Student’s allegations set forth in Issue Three do not relate to the permissible circumstances enumerated under Education Code § 56501, subdivision (a). Specifically, the allegations do not challenge the individual identification, evaluation, or educational placement of the Student. They also do not demonstrate how confidentiality concerning the issue of videotaping, photographing, or disclosing student record information relates in any way to the goals, services, placement, or implementation of any IEP, or otherwise relate to the provision of a FAPE to the Student. Because the allegations set forth in Issue Three do not fall within the purview of Education Code § 56501, subdivision (a), OAH lacks jurisdiction to hear it. Accordingly, the District’s motion to dismiss Issue Three is granted.

#### ORDER

Issue Three is dismissed. This matter shall proceed on Issues One and Two only.

Dated: February 23, 2009

/s/

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CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings