

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: J. H.

Date of Birth: [redacted]

ODR No. 17636-15-16-KE

OPEN HEARING

Parties to the Hearing:

Representative:

Parent[s]

Pro Se

Commonwealth Connections
Academy Charter School
4050 Crums Mill Road, Su. 303
Harrisburg, PA 17112

Kimberly M. Colonna, Esquire
McNees, Wallace & Nurick, LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166

Date of Hearing:

May 25, 2016

Record Closed:

May 25, 2016

Date of Decision:

June 10, 2016

Hearing Officer:

William F. Culleton, Esq., CHO

INTRODUCTION AND PROCEDURAL HISTORY

The child named in this matter (Student)¹ is an eligible enrollee of the cyber charter school named in this matter (Charter). It is uncontested that Student is identified under the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA), as a child with the disabilities of Other Health Impairment and Specific Learning Disability. The Student's Guardian (Parent) filed the present due process complaint notice (complaint) pursuant to the IDEA and section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (section 504), requesting a hearing and order for the purpose of amending three quarterly progress reports sent to Parent and maintained by the Charter during the 2015-2016 school year.

The Charter moved to dismiss, the motion was held in abeyance, and a hearing was held. During the hearing, Parent discussed the purposes of the request for due process. At that point, the hearing was suspended and Parent, at her request, was given time to respond to the motion. Subsequently, Parent sent an email message stating that she did not intend to file any further response, and agreed that the matter be decided on the present record. I now grant the motion and dismiss this matter; however, I want to make clear that this decision is narrow and does not preclude Parent from seeking relief in other forums.

ISSUE

1. Does the hearing officer have jurisdiction under either the IDEA or section 504 to decide the matters set forth in the complaint and grant all or any of the requested relief?

¹ Student, Parent and the respondent Charter are named in the title page of this decision; personal references to the parties are omitted here in order to guard Student's confidentiality.

FINDINGS OF FACT

1. On April 18, 2016, Parent filed a Complaint Notice pursuant to the IDEA requesting a special education due process hearing. (Complaint, 4-18-16.)
2. The complaint asserts that the Charter issued and maintained as educational records three progress reports during the 2015-2016 school year, and that these reports were inaccurate and were based upon inappropriate goals. (Complaint, 4-18-16; NT 16-21.)
3. The complaint requests orders to amend the referenced progress reports and to report the amendment to Parent and the Department of Education. (Complaint, 4-18-16; NT 16-19.)
4. Prior to filing the complaint in this matter, Parent filed and brought to hearing a separate complaint, ODR No. 17321-1516-KE. This complaint asserts that the goals in the prevailing Individualized Education Program (IEP) are inappropriate and seeks relief on the basis of that assertion. (NT 13-14, 18-21.)

DISCUSSION AND CONCLUSIONS OF LAW

AUTHORITY TO ORDER AMENDMENT OF EDUCATIONAL RECORDS

The IDEA and its regulations² provide parents with a right to a due process hearing “relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE³ to the child” 34 C.F.R. §300.507(a). While this language is broad, it is not unlimited.

The IDEA also sets certain standards for the confidentiality of, and parental access to, educational records. 34 C.F.R. §300.610 et seq., and it requires compliance with the standards for record-keeping set forth in the regulations that implement the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g (FERPA). 34 C.F.R. §300.612, 621. Specifically, the IDEA

² As the IDEA regulations implement the IDEA and have the force of law, further reference to the IDEA will be cited to the pertinent regulations.

³ “FAPE” in the regulation quoted here means “free appropriate public education”. 34 C.F.R. 300.17.

provides for a hearing regarding disputes concerning the amendment of records 34 C.F.R. §300.618-621. The hearing is conducted pursuant to the FERPA, and not pursuant to the IDEA provisions for special education due process hearings, 34 C.F.R. §300.507-514. 34 C.F.R. §300.621.

This specific provision for hearings pursuant to FERPA procedures excludes such claims from the broad class of claims that are appropriate for a special education due process hearing under 34 C.F.R. §300.507-514. Thus, a hearing officer whose jurisdiction is provided pursuant to 34 C.F.R. §300.507-514 does not have jurisdiction of claims assigned to FERPA procedures, such as record amendment claims. Therefore, I do not have jurisdiction to hear or decide a claim regarding amendment of records.

ASSOCIATED CLAIMS REGARDING INAPPROPRIATE GOALS

A parent may bring a due process request to a special education impartial hearing officer such as myself regarding the alleged inappropriateness of goals in a child's IEP, under 34 C.F.R. §300.507(a). However, the parent can seek only one such hearing for the same claim. See 34 C.F.R. §300.513(c). Here, Parent candidly acknowledged that her claim in the present matter was limited to the issue of amending records, NT 16-19; moreover, Parent acknowledged that the reference in her complaint in this matter, regarding the inappropriateness of the Student's IEP goals, referred to claims that are the subject of the parallel proceeding before a different hearing officer in ODR No. 17321-1516-KE. (NT 20.) Therefore, any such claims are not part of this matter, and to the extent that they were, they would be barred under 34 C.F.R. §300.513(c) because they are being adjudicated in the parallel case before a different hearing officer.

CONCLUSION

I have no jurisdiction to decide Parent’s claims regarding amendment of Student’s records; these claims must be brought to a hearing before a different adjudicator pursuant to the FERPA procedures. Any claims regarding the appropriateness of the Student’s IEP are encompassed in the parallel hearing and will be addressed in that proceeding. Therefore, Parent has other avenues of relief for both subjects, and I have no jurisdiction. Accordingly, the present matter will be dismissed.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the captioned matter is **DISMISSED**.

It is **FURTHER ORDERED** that any claims that are encompassed in this captioned matter and not specifically addressed by this decision and order are denied and dismissed.

William F. Culleton, Jr. Esq.

WILLIAM F. CULLETON, JR., ESQ.
HEARING OFFICER

DATED: June 10, 2016