

J.B., on behalf of R.B., :
 :
 PETITIONER, :
 :
 V. :
 : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE :
 TOWN OF WESTFIELD, UNION : DECISION
 COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioning parent, on behalf of R.B., an adult student classified eligible for special education and related services, alleged the District's high school transcript form impermissibly identifies the student as disabled, through annotation to the effect that all courses ere "transfer credits from other public or private schools." Petitioner sought emergent relief to declare that the policy violated R.B.'s privacy rights pursuant to the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973.

The ALJ concluded that R.B. was not harmed by the District's transcript policy. The ALJ noted that if the parents wanted more information in the record, they might request to have additional information and/or reasonable comments as to the meaning or accuracy of the record inserted and maintained as part of the record. (*N.J.A.C.* 6:3-6.7(e)) Petition was dismissed.

The Commissioner found that a request for relief, such as petitioner's, which was based upon claimed violations of rights guaranteed pursuant to the IDEA and/or Section 504, falls outside the Commissioner's general jurisdiction to decide controversies and disputes under school laws. The Commissioner, therefore, cannot consider petitioner's claim that the Board violated R.B's right to privacy and confidentiality. Petition was dismissed.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions were submitted in accordance with *N.J.A.C. 1:1-18.4*.

Petitioner’s exceptions maintain that the Board’s transcript annotation, although facially neutral, effectively identifies R.B. as a student with a disability by indicating that all of her credits have been earned out of district, reasoning that college admissions personnel understand that a student who is placed out of district for her entire high school career is so placed for purposes of special education. (Petitioner’s Exceptions at 3, 4) Petitioner also asserts that by disclosing R.B.’s status as a student with a disability, the Board’s transcript annotation violates Section 504. (*Id.* at 4) Here, petitioner cites to federal regulations, and guidance relative thereto, arguing that “transcript language which discloses a student’s disabled status to a college considering the student for admission *** is enough to constitute a violation of Section 504.” (*Id.* at 5) Finally, petitioner asserts that the Board’s annotation is neither educationally relevant nor required by State regulation.

Upon careful and independent review of the record in this matter, the Commissioner first notes its unusual procedural history. Petitioner initially filed a request for emergent relief on October 29, 2002 before the Office of Special Education. Following its transmittal to the OAL, on December 9, 2002, Administrative Law Judge (ALJ) Bari-Brown dismissed the matter for lack of jurisdiction. The ALJ therein noted that due process hearings were limited to those subject matters expressly enumerated within the provisions of federal and State regulations and that “challenges to the contents of pupil records are not the type of subject matter contemplated by these regulations.” (*J.B. on behalf of R.B. v. Westfield Board of Education*, OAL Dkt. No. EDS 9535-02, slip op. at 2-3, *citing to R.S. v. Hillsborough Board of Education*, OAL Dkt. NO. EDS 2168-00 (2000 WL 558892)). The ALJ, therefore, concluded that because petitioner does not challenge issues arising under IDEA and State special education regulations, but, rather, challenges the Board’s policy and practice regarding the form of high school transcripts used for all students, disabled and non-disabled, petitioner’s dispute was governed by general education rules, rather than the IDEA. (*J.B. , supra* at 3) There is no indication in this record whether the ALJ’s determination was appealed.

Thereafter, on December 13, 2002, petitioner filed a Petition of Appeal and request for emergent relief before the Commissioner alleging that “[t]he Board’s transcript annotation effectively identifies R.B. as a special education student, thereby violating her right to privacy and confidentiality.” (Petition at 1, paragraph 4) By way of relief, petitioner requests “that the Board be directed to immediately remove the aforesaid annotation from R.B.’s official high school transcript.” (*Id.* at 2) The matter was transmitted to the OAL for hearing, whereupon ALJ Bari-Brown concluded that petitioner failed to demonstrate that the Board’s transcript policy violates R.B.’s privacy rights pursuant to IDEA and Section 504 of the

Rehabilitation Act of 1973. (Initial Decision at 5) The ALJ also determined that the Board's policy did not violate State regulations.

The Commissioner recognizes that “[p]upil records are subject to challenge by parents and adult pupils on grounds of inaccuracy, irrelevancy, impermissive disclosure, inclusion of improper information or denial of access to organizations, agencies and persons.”¹ *N.J.A.C. 6:3-6.7(a)*. Notably, however, State regulation specifically provides that “[a]ppeals relating to the pupil records of educationally handicapped pupils shall be processed in accordance with the requirements of *N.J.A.C. 6A:14*.” (emphasis added) (*N.J.A.C. 6:3-6.7(c)*) Moreover, quite apart from this directive, the Commissioner finds that although the transcript annotation at issue *is* facially neutral and applied to all students, *this matter* is grounded in R.B.’s status as a special education student and, as such, petitioner *clearly* seeks to invoke the protections of federal law and regulation. A request for relief, such as petitioner’s, which is based upon claimed violations of rights guaranteed pursuant to the IDEA and/or Section 504, falls outside the Commissioner’s general jurisdiction to decide controversies and disputes under school laws. *I.D. and M.D. on Behalf of C.D. v. Board of Education of the Township of Hazlet, Monmouth County*, State Board Decision April 2, 1997; *see also, East Brunswick Board of Education v. New Jersey State Board of Education*, EHLR DEC. 554:122 (DCNJ 1982); *A.N. v. Clark Bd. of Ed.*, 6 *N.J.A.R.* 360 (1983). The Commissioner cannot, therefore, consider petitioner’s claim that the Board is violating R.B.’s right to privacy and confidentiality.²

¹ Pursuant to such an appeal, a “parent or adult pupil may seek to: 1. Expunge inaccurate, irrelevant or otherwise improper information from the pupil record; 2. Insert additional data as well as reasonable comments as to the meaning and/or accuracy of the records; and/or 3. Request an immediate stay of disclosure pending final determination of the challenge procedure as described in [applicable regulations.]” *N.J.A.C. 6:3-6.7(a)*.

² To the extent petitioner contends that the transcript annotation either violates administrative code or is not required thereunder, the Commissioner finds that petitioner has not satisfied his burden of proof.

Accordingly, the within Petition of Appeal is dismissed.³

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: March 5, 2003

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³ The parties agree that no other issues remain once the emergent matter is resolved. (Initial Decision at 2)

⁴ This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*