

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

██████████,
Petitioner,

v.

**GRAND PRAIRIE INDEPENDENT
SCHOOL DISTRICT,
Respondent.**

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DOCKET NO. 257-SE-0515

**ORDER ON RESPONDENT'S SECOND PLEA TO THE JURISDICTION
and MOTION FOR SUMMARY JUDGMENT**

Procedural History

Petitioner ██████████ (Student or Petitioner) filed ██████ request for a due process hearing (the Complaint) under the Individuals with Disabilities Education Act (IDEA) against Respondent Grand Prairie Independent School District (the school district or Respondent) on May 6, 2015. On May 15, 2015 the school district filed its Plea to the Jurisdiction and Alternatively, Notice of Insufficient Pleading and 10-Day Response to Complaint. (Respondent's Plea). The Notice of Insufficiency was denied as an operation of law on May 20, 2015. Student is a pro se adult student and at the time of the filing was still in ██████████. A previous hearing request, filed by Student's mother as Student's next friend, was dismissed for lack of standing due to the transfer of parental rights to Student upon reaching the age of majority.

On June 3, 2015 Respondent's Plea was denied. On June 8, 2015 the school district filed a second Plea to the Jurisdiction and Motion for Summary Judgment (second Plea and MSJ) which remains pending at this time. The initial prehearing telephone conference was conducted on June 8, 2015. Petitioner was given permission to amend ██████ Complaint in order to identify items of requested relief that were omitted from the Complaint. Petitioner was also given an opportunity to respond in writing to the school district's second Plea and MSJ. Petitioner submitted an email on June 15, 2015 identifying items of requested relief but did not submit a written response to the school district's second plea and MSJ.

Student's Requested Relief

In ██████ email Student requested the following items of relief:

1. Grade change in ██████ class
2. Assign a teacher in the ██████ class
3. Three teachers, identified by name, follow ██████ BIP and IEP; and,
4. Another teacher "stop harassing me."

Student also complains that when ██████ ██████ class placement was changed "it messed up my whole

grades in my other class” but Student makes no other specific request for relief with regard to other classes. Student does not seek compensatory services either.

School District’s Second Plea to the Jurisdiction and Motion for Summary Judgment

The school district alleges that Student graduated [REDACTED] and received a [REDACTED] diploma on June 6, 2015. A copy of Student’s transcript and credit check sheet were included as Exhibits to the pleading. The school district argues that any alleged violations arising from an incident that occurred on April [REDACTED], 2015 (as pled in Student’s Complaint) do not constitute any claims under the Individuals with Disabilities Education Act (IDEA) and thus should be dismissed as outside the hearing officer’s jurisdiction.

The school district argues that student’s graduation [REDACTED] means the school district is no longer obligated to provide Student with any educational services absent Student’s specific request for consideration of further services at an Admission, Review & Dismissal Committee meeting (ARD). *See, 19 Tex. Admin. Code § 89.1070 (j)*. The school district argues Student has not requested any additional services beyond [REDACTED] graduation. The school district contends that Student has cancelled multiple ARD meetings called for the purpose of addressing the concerns raised in Student’s Complaint. The school district therefore argues there is no live controversy to adjudicate, that Student’s claims are now moot as a result of [REDACTED] graduation, and as a result the hearing officer has no subject matter jurisdiction.

The school district argues Student’s personal interest must continue not merely at the time the legal action is initiated but also continue throughout the existence of the litigation. The school district contends Student’s claims are moot because the issues are no longer live or in controversy and Student lacks a legally cognizable claim in the outcome. The school district argues that Student seeks merely an opinion from the hearing officer but doing so does not establish a real controversy – if this were enough to keep a case alive an advisory opinion would be its own justification. The school district points out that a number of courts have dismissed IDEA claims based on a student’s graduation.

The school district further contends that Student has not requested additional services beyond graduation. In the absence of such a request the school district has no further obligation under the IDEA to educate Student. The school district further argues that Student’s claims regarding the alleged failure to implement certain provisions of Student’s IEP and/or BIP are insufficient to show a denial of a free, appropriate public education – that at most such claims are de minimis and Student cannot show a substantive as opposed to merely a procedural violation of the IDEA. The school district reasons that Student’s graduation [REDACTED] conclusively establishes no substantive educational harm even if the school district failed to implement Student’s IEP and/or BIP that failure did not result in a denial of a free, appropriate public education

Student's Claims

In this case Student alleges a [REDACTED] teacher failed to follow Student's IEP and BIP on April [REDACTED], 2015 and that the [REDACTED] teacher failed to follow the terms of a previous settlement agreement. Student also alleged the [REDACTED] teacher used "unethical procedures" to punish Student and improperly separated the special education students from the general education students.

Student alleged the school district failed to provide [REDACTED] with a qualified teacher in [REDACTED] class, changed [REDACTED] class placement without conducting a manifestation determination review, and, that [REDACTED] health and personal information were compromised. A TEA state Complaint addressed two of the allegations raised by Student in this case and took no corrective action. This is some evidence relevant to the allegations regarding failure to implement Student's IEP and/or BIP.

Summary Judgment

A party against whom a claim is asserted may at any time move with or without supporting affidavits for a summary judgment in its favor. *Tex. R. Civ. P. 166a (b)*. The judgment may be issued if the record on file shows there is no genuine issue as to any material fact. *Tex. R. Civ. P. 166a(c)*.

Student did not dispute [REDACTED] graduation [REDACTED] during the prehearing telephone conference conducted on June 8, 2015. Student did not file a written response to the school district's second Plea and MSJ when given the opportunity to do so. There is no dispute that Student is no longer enrolled in the school district or receiving educational services since [REDACTED] graduation. Student's request that three of [REDACTED] former teachers be ordered to implement [REDACTED] IEP and BIP is no longer meaningful given [REDACTED] recent [REDACTED] graduation.

Student's request for a grade change in [REDACTED] class is likewise no longer meaningful since there is no dispute that [REDACTED] was able to graduate [REDACTED] and earn the [REDACTED] credit [REDACTED] needed regardless of whatever grade [REDACTED] received on an [REDACTED] assignment. Student's complaint that there was no qualified instructor in [REDACTED] class is similarly no longer meaningful because there is no dispute [REDACTED] earned the credit for the class and graduated [REDACTED]. Finally, Student's claim that a teacher harassed [REDACTED] does not constitute a cognizable claim under the IDEA. *See, 34 C.F.R. § 300.507 (a due process complaint may be filed regarding the identification, educational placement or provision of a free, appropriate public education)*.

Even construing the allegations in the light most favorable to Student [REDACTED] is not entitled to the relief requested under the IDEA. Graduation with a regular [REDACTED] diploma terminated Student's eligibility for special education services. *19 Tex. Admin. Code § 89.1070(a)*. Student's graduation, which is undisputed, means Student will no longer be placed in [REDACTED] classes with the teachers who are the subject of [REDACTED] claims, Student will not be enrolled in a [REDACTED] class, Student will no longer receive any health services at the [REDACTED], and Student will no longer be subject to any disciplinary action from [REDACTED] administrators. Furthermore, Student makes no claim for compensatory services nor does Student request services to resume. The need for continued services

would nevertheless still be determined by an ARD Committee. *19 Tex. Admin. Code § 89.1070(f)*. Therefore with no dispute of a genuine issue of material fact the school district is entitled to judgment as a matter of law on the issues raised in this case.

Mootness

The dispute between the parties must at all stages be “real and live” and not merely “academic” or it is moot. *Lillbask v. State of Conn. Dept. of Educ.*, 397 F. 3d 77, 84 (2d Cir. 2005)(*Student’s challenge to an IEP moot where school district did not intend to follow through on IEP recommendation for private placement where student did well in public school setting during five years of litigation*). A claim may not be moot if the conduct complained of is “capable of repetition yet evading review”. Controversies are “capable of repetition” when there is “a reasonable expectation” that the same complaining party would be subjected to the same action again. *Lillbask*, 397 F. 3d at 86; *New York City Dept. of Educ.*, 107 LRP 53519 (SEA N.Y. 2007)(*parent’s challenge to IEP moot where student received all the relief requested*).

To create a “reasonable expectation of recurrence” repetition must be more than theoretically possible. Mere speculation that the parties will be involved in a dispute over the same issues does not rise to the level of a reasonable expectation or demonstrate the probability of a recurrence. *Lillbask, supra*. Furthermore when there is no relief that can be awarded the case is considered moot. *Dept. of Educ. v. Rodarte*, 127 F. Supp. 2d 1103, 1110, 1112-1113(D.C. Hawaii 2000)(*student’s claim for attorney’s fees moot where student graduated high school and received three months of compensatory education*).

The case law generally supports the conclusion that IDEA claims are moot once a student has graduated. *Moseley v. Albuquerque Pub. Schs.*, 483 F. 3d 689, 692-693 (10th Cir. 2007)(*student’s request for injunctive relief moot where student graduated high school*); *T.S. v. Independent Sch. Dist. No. 54*, 265 F. 3d, 1090, 1092-1093 (10th Cir. 2001), cert. denied, 535 U.S. 927 (2002)(*student who did not contest his graduation no longer entitled to a FAPE – FAPE claims and request for prospective relief moot upon graduation*). See, also, *Bd. of Educ. of Oak Park v. Nathan R.*, 199 F. 3d 377, 381 (7th Cir. 2000)(*issue of whether school district required to provide special education services during student’s expulsion senior year moot because student graduated from high school*).

In this case Student graduated [REDACTED] and will no longer receive services from the school district by virtue of [REDACTED] graduation. Even if Student requested continued services beyond graduation (which [REDACTED] has not) an ARD Committee must first meet to determine whether Student needs such services. Therefore, any claim based on the need for continued services is merely speculative and as such does not constitute a live controversy. *Lillbask, supra*. This means there is no reasonable expectation of recurrence of Student’s claims. Furthermore, as identified in Student’s amendment to [REDACTED] Complaint, there is no meaningful relief that can be awarded. *Bd of Educ. of Oak Park v. Nathan R.* 199 F. 2d at 381(*student’s graduation in 1988 from high school meant appellate court could take no action that would affect the rights of the parties in 2000*).

ORDERS

Based on the foregoing, the record on file, and in accordance with the Individuals with Disabilities Education Act, it is therefore **ORDERED** that Respondent's Plea to the Jurisdiction is hereby **SUSTAINED** and Respondent's Motion for Summary Judgment is hereby **GRANTED**. It is further **ORDERED** that this cause is therefore **DISMISSED FOR MOOTNESS**.

SIGNED the 16th day of June 2015.


Ann Vevier Lockwood
Special Education Hearing Officer