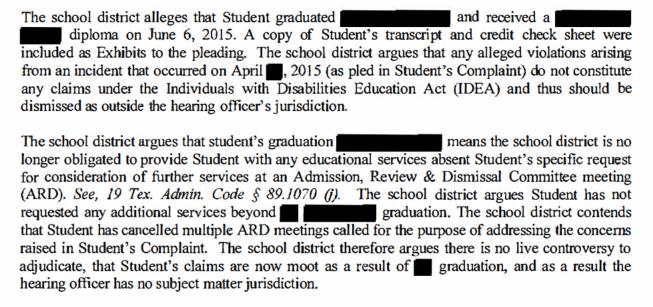
BEFORE A SPECIAL EDUCATION HEARING OFFICER STATE OF TEXAS

31	ALE OF LEAR	.5
v. GRAND PRAIRIE INDEPENDENT SCHOOL DISTRICT, Respondent.	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	DOCKET NO. 257-SE-0515
ORDER ON RESPONDENT'S SECOND PLEA TO THE JURISDICTION and MOTION FOR SUMMARY JUDGMENT		
<u>P1</u>	rocedural History	
Petitioner Complaint) under the Individuals with I Grand Prairie Independent School District May 15, 2015 the school district filed is Insufficient Pleading and 10-Day Responsible Insufficiency was denied as an operation of and at the time of the filing was still in mother as Student's next friend, was dismights to Student upon reaching the age of a On June 3, 2015 Respondent's Plea was deplea to the Jurisdiction and Motion for Supending at this time. The initial prehearing Petitioner was given permission to amend relief that were omitted from the Complain writing to the school district's second Plea 2015 identifying items of requested relief district's second plea and MSJ.	Disabilities Educe t (the school districts Plea to the June to Complaint of law on May 20 A pre- nissed for lack of majority. Lenied. On June to majority.	ict or Respondent) on May 6, 2015. On prisdiction and Alternatively, Notice of part. (Respondent's Plea). The Notice of part. (Respondent's Fatanding request, filed by Student's Fatanding due to the transfer of parental part. (Respondent of parental Respondent (Respondent of parental Respondent of parental Respondent of Plea and MSJ) which remains ference was conducted on June 8, 2015. In order to identify items of requested a also given an opportunity to respond in titioner submitted an email on June 15,
<u>Studer</u>	nt's Requested Re	<u>elief</u>
In email Student requested the following	ng items of relief:	
 Grade change in class Assign a teacher in the class Three teachers, identified by name, Another teacher "stop harassing me 		nd IEP; and,
Student also complains that when	class placeme	nt 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.

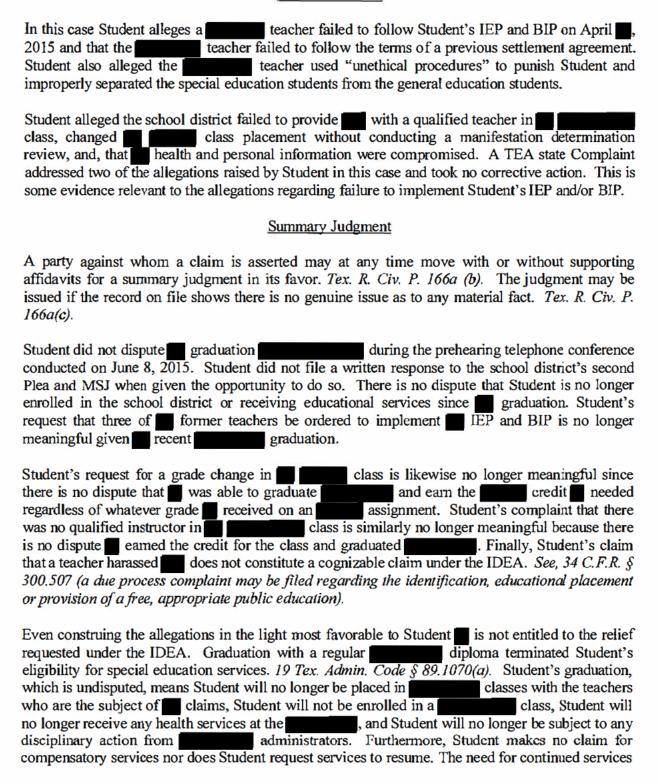
School District's Second Plea to the Jurisdiction and Motion for Summary Judgment



The school district 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 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



would nevertheless still be determined by an ARD Committee. 19 Tex. Admin. Code § 89.1070(j). 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 and will no longer receive services from the school district by virtue of graduation. Even if Student requested continued services beyond graduation (which 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 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