

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

SANTA ROSA CITY SCHOOLS.

OAH CASE NO. 2011070502

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On July 14, 2011, Student filed a due process request (complaint) with the Office of Administrative Hearings (OAH) naming the Santa Rosa Schools (District) as the respondent. On July 26, 2011, the District filed a motion to dismiss Student's complaint. Student filed an opposition to the District's motion on July 29, to which the District filed a reply on August 2, 2011. For the following reasons, the District's motion is denied.

BACKGROUND

Student is an 18-year-old young man who recently graduated from a high school located within the District's boundaries. The District awarded him a regular diploma. While in school, Student received special education and related services under the eligibility category of specific learning disability. In spite of his disability, Student was able, after a few unsuccessful attempts, to pass the California High School Exit Exam. In spite of his graduation, Student has filed a complaint against the District alleging that it denied him a free appropriate education (FAPE) while he was in school. Student contends that the District failed to provide him with legally adequate transition planning, failed to offer him an individualized education program (IEP) that was designed to meet his unique needs, failed to assess him in all areas of suspected disability, and committed procedural violations of the reauthorized Individuals with Disabilities Education Act (IDEA). As a remedy for these alleged violations, Student, inter alia, requests an order from OAH that the District provide him with compensatory education and reimbursement for independent assessments.

The District moves to dismiss Student's complaint on three main grounds. First, it contends that Student does not have standing under Education Code section 56501, subdivision (a), to file a due process complaint because he is no longer a "pupil" by virtue of his graduation from high school. The District's interpretation would foreclose any individual no longer attending a District school for whatever reason, such as an 18-year-old student who did not graduate but rather decided to drop out from school, from challenging prior educational decisions of a school district. The District offers no authority for its interpretation of the Education Code. Because there is no authority that would justify

limiting standing to individuals presently enrolled in a District school, the District's motion to dismiss Student's complaint based upon lack of standing is denied.

The District also moves to dismiss Student's complaint under Education Code section 56501, subdivision (a) (1)-(4), which states that a due process proceeding may be initiated under any of 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.

The District contends that since Student has graduated, his due process request does not fall under any of these circumstances. Therefore, Student's complaint fails to state any viable cause of action. In essence, the District is alleging that Student's claims are moot based upon his graduation. Although at first blush the District's arguments are compelling, a thorough review of what little case law exists on this issue leads to the conclusion that at least in the context of a motion to dismiss, the District's motion must be denied.

DISCUSSION

First, the District contends that Student is not challenging a proposal to initiate or change his placement, or any disagreement with the availability of a program for him since Student only challenges a program offered in the past. The District offers no authority for its argument that Education Code section 56501, subdivision (a), forecloses attacks on prior education programs offered to a student by a district. Student's complaint, in fact, raises a disagreement by Student with the District, alleging that the educational program it previously offered him was not appropriate, falling squarely within the language of Education Code section 56501, subdivision (a)(4).

Additionally, the language of the IDEA itself provides that a party may 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).) Student's complaint specifically contests his prior educational placement and disputes that he was provided with a FAPE. Even assuming that the District's interpretation of the Education Code is correct, and that Student does not state a cause of action under section 56501, Student's complaint would be appropriate under the IDEA. Where there is a conflict between state law and the IDEA, the language of the IDEA prevails under the Supremacy Clause of the United States Constitution (U.S. Const., art. VI, cl. 2; see also, *County of Los Angeles v. Smith* (1999) 74 Cal.App.4th 500, 518-519.)

The District's motion, however, raises a broader question of whether Student's complaint is moot by virtue of his graduation. The District cites to the case of *Student v. Newport-Mesa Unified School District* (2010) Cal.Offc.Admin.Hrngs., Case No. 2010060770 (*Newport-Mesa*), as support for its contention that graduation with a diploma moots an attack on a previous IEP. The District's reliance on this case is misplaced. The issue in *Newport-Mesa* was whether that school district appropriately graduated the petitioning student or whether the graduation was inappropriate. The OAH decision in favor of the school district was made only after a full evidentiary hearing and a determination that the Student met appropriate graduation standards. The case did not address, and therefore did not decide, the issue the District raised in the instant motion of whether graduation with a regular diploma moots any attacks on the student's prior educational program.

A review of case authority demonstrates that other administrative bodies and courts are not in agreement on whether graduation with a regular diploma makes moot attacks on a prior educational program. The Seventh and Tenth Circuit Courts of Appeal have both found that if a student graduates from high school *and does not contest his or her graduation*, the case is moot. Citing to *Board of Educ. v. Nathan R.*, (7th Cir. 2000) 199 F.3d 377, 381 (*Nathan R.*), the Tenth Circuit, in *T.S. v. Independent Sch. Dist. No. 54* (10th Cir. 2001) 265 F.3d 1090, found that once a student has graduated, he or she is no longer entitled to a FAPE. Therefore, any claim that a FAPE was deficient becomes moot upon a valid graduation. However, the court qualified its finding by stating that the rule only applies where a student does not contest his graduation. (*Ibid.*) The Tenth Circuit reiterated its conclusion that a valid graduation moots a FAPE challenge in *Moseley v. Board of Education of Albuquerque Public Schools, et. al.* (10th Cir. 2007) 483 F.3d 689. Additionally, the student in the *Nathan R.* case asked for only injunctive relief. Since he was no longer attending school, any request for injunctive relief was moot. In the instant case, Student asks for reimbursement and compensatory education and does not request injunctive or prospective relief.

Moreover, other circuits and other administrative bodies have come to a different conclusion regarding whether graduation moots a due process claim filed after graduation. In *Pihl v. Massachusetts Dept. of Education* (1st Cir.1993) 9 F.3d 184,189, cited by Student, the court found that "a student who was deprived of services to which he was entitled under the IDEA has a right to a remedy in the form of compensatory education, regardless of his eligibility for current or future services under the Act." (accord, *Brett v. Goshen Comm. School Corp.* (N.D. Ind. 2001) 161 F. Supp.2d 930; *Maryland County Public Schools* (Maryland State Ed. Agency 2003) 40 IDELR 149, 103 LRP 53827.)

The District points out that Student in the instant case does not assert that his graduation is invalid. However, while Student may not explicitly state that he is attacking his receipt of a diploma, he has implicitly attacked his graduation by contending that his diploma is, in fact, “a worthless piece of paper.” This implicit attack on the validity of Student’s graduation raises numerous factual disputes which can only be resolved through the hearing process since OAH procedures do not include deciding matters on motions for summary judgment.

CONCLUSION

Given the ambiguous state of the law regarding whether graduation with a diploma moots a due process claim, and the fact that no court in California appears to have addressed the issue, it would be unwise to dismiss Student’s due process complaint without a complete record. Therefore, the District’s motion to dismiss Student’s complaint is denied. The District will not be precluded from addressing the issue at a later time in the proceedings, either by means of an affirmative defense to Student’s complaint, or by other appropriate means.

IT IS SO ORDERED.

Dated: August 5, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings