

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF EDUCATION

S.S. (Parent), on behalf of P.S. (Student),
vs.

**ORDER ON SCHOOL DISTRICT'S
MOTION FOR SUMMARY
DETERMINATION**

Independent School District No. 833,
South Washington County Public Schools
(School District).

On February 10, 2015, the Minnesota Department of Education (Department) received a request for a special education due process hearing involving the Student and School District identified above. On February 11, 2015, Administrative Law Judge Jim Mortenson (ALJ) was appointed as the independent hearing officer. A prehearing conference was held by telephone on February 17, 2015.

At the February 17, 2015 prehearing conference, a schedule was set based on the School District's request for permission to file a dispositive motion. The School District's Motion to Dismiss was filed February 24, 2015. Parent filed a response to the motion on March 3, 2015. The record in this matter closed on March 3, 2015.

Parent appeared on behalf of Student and without counsel. Mick Waldspurger and Kelly Burns, Rupp, Anderson, Squires & Waldspurger, P.A., appeared on behalf of the School District.

ISSUE

Did the School District deny Student a free appropriate public education (FAPE) by refusing to include in Student's individualized education program (IEP) that Student's diploma would be dated spring 2015 rather than the date on which the diploma is actually conferred?

SUMMARY OF DETERMINATION

The School District may not create inaccurate data in the Student's education records and, therefore, did not deny Student a FAPE by its refusal of Parent's request to

include in the IEP that Student's diploma be dated spring 2015 rather than the date on which it may be actually conferred.

IT IS HEREBY ORDERED:

1. The Student's Due Process Hearing Complaint is **DISMISSED WITH PREJUDICE**.

Dated: March 6, 2015

s/Jim Mortenson

JIM MORTENSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 125A.091, subd. 24; 34 C.F.R. § 300.516 (2014), a party may seek review of this decision in the Minnesota Court of Appeals or in United States District Court, consistent with federal law. A party must appeal to the Minnesota Court of Appeals within 60 days of receiving the hearing officer's decision.

MEMORANDUM

Facts

Student is enrolled in the 12th grade at his local public high school.¹ Student receives special education services under the IDEA. Student's IEP team has determined that Student will continue in school district programming after 12th grade in a secondary-transition program. Student will graduate upon the IEP team's determination that Student has reached certain goals in the IEP, or in the spring of the year he turns 21 years of age, whichever comes first.²

The IEP team has determined that Student will be permitted to participate in the 2015 graduation ceremony, even though Student will not yet be graduating.³

¹ Due Process Hearing Request (Request) at 1.

² *Id.* at 2; District's Memorandum of Law in Support of its Motion to Dismiss (District Memorandum) at 2; Student's Rebuttal (Rebuttal) at 2.

³ District Memorandum at 2; Rebuttal at 2.

Parent seeks to have the IEP include the supplementary aid or service of having Student's diploma, when it is issued, be dated spring of 2015, regardless of when it is issued.⁴ Parent alleges School District staff advised him that Student's transcript will not include data following the spring of 2015, even though Student will still be attending district programming through the transition program. Parent argues that the diploma and transcript must "match" in order to avoid appearing "different" from his peers graduating in the spring of 2015.⁵

The School District has refused to accommodate Parent's request because it would be creating a false record.⁶ The School District denies Student's transcript will not include data following the spring of 2015 if Student remains enrolled in the School District.

Legal Authority for Summary Disposition

"A hearing officer must establish and maintain control and manage the hearing."⁷ A hearing officer must "eliminate claims and complaints that are frivolous or beyond a statute of limitations period."⁸ A hearing officer must also "determine if the hearing may be disposed of without an evidentiary hearing and set the schedule and procedure accordingly. The hearing officer may dispose of any issue without an evidentiary hearing if there are no material facts in dispute."⁹

"The hearing officer has the authority to take any actions necessary to ensure compliance with all requirements of law and may dismiss the matter, with or without prejudice, if the party requesting the hearing fails to provide information required or ordered by the hearing officer."¹⁰ These statutory and regulatory provisions provide the basis for this review and order.

Summary disposition is the administrative law equivalent to summary judgment.¹¹ Summary disposition is appropriate when there are no genuine issues of material fact and where a determination of the applicable law will resolve the controversy.¹² The Office of Administrative Hearings has generally followed the summary judgment standards developed in the district courts in considering motions for summary

⁴ *Id.*; Request at 2.

⁵ Rebuttal at 3.

⁶ Response to Complaint.

⁷ Minn. Stat. § 125A.091, subd. 18(b) (2014).

⁸ Minn. R. 3525.4110, subp. 2(B) (2013).

⁹ Minn. R. 3525.4110, subp. 2(D) (2013).

¹⁰ Minn. R. 3525.4110, subp. 3 (2013).

¹¹ *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004).

¹² See *Gaspord v. Washington Cnty. Planning Comm'n*, 252 N.W.2d 590, 590-591 (Minn. 1977); *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985); Minn. R. 1400.5500(K) (2013); Minn. R. Civ. P. 56.03.

disposition of contested case matters, and those rules are adopted by analogy in this case.¹³

The Administrative Law Judge's function on a motion for summary disposition, like the district court's function on a motion for summary judgment, is not to decide issues of fact, but solely to determine whether genuine factual issues exist.¹⁴ The judge does not weigh the evidence on a motion for summary judgment.¹⁵

In deciding a motion for summary disposition, the judge must view the evidence in the light most favorable to the non-moving party.¹⁶ All doubts and factual inferences must be resolved against the moving party.¹⁷

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact.¹⁸ A material fact is one whose resolution will affect the result or outcome of the case.¹⁹ If the moving party is successful, the non-moving party then has the burden of proof to show the existence of material facts that are genuinely disputed and can affect the outcome of the case.²⁰ A genuine issue is one that is not a sham or frivolous. It is not sufficient for the non-moving party to rely on allegations or denials; it must present specific facts demonstrating a genuine issue for trial.²¹

While the purpose and useful function of summary judgment is to secure a just, speedy, and inexpensive determination of an action, summary disposition cannot be used as a substitute for a hearing where any genuine issue of material fact exists.²² Accordingly, summary disposition is only proper where there is no fact issue to be decided.²³

Analysis

"A parent or a district is entitled to an impartial due process hearing conducted by the state when a dispute arises over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability."²⁴

¹³ See Minn. R. 1400.6600 (2013).

¹⁴ See *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).

¹⁵ *Id.*

¹⁶ *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).

¹⁷ *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

¹⁸ *Id.*

¹⁹ *Zappa v. Fahey*, 245 N.W.2d 258, 259-260 (Minn. 1976); see also *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

²⁰ *Highland Chateau, Inc. v. Minn. Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), review denied (Minn. Feb. 6, 1985).

²¹ Minn. R. Civ. P. 56.05.

²² *Sauter*, 70 N.W.2d at 353.

²³ *Id.*

²⁴ Minn. Stat. § 125A.091, subd. 12 (2014).

In this case there is a dispute over the provision of a FAPE. Parent asserts Student is being denied a FAPE because the School District refuses to agree to include in Student's IEP that Student's potential future diploma will be dated spring of 2015.

Parent is concerned that a diploma with an accurate date of graduation will not match Student's transcript from the local high school. This is based on the incorrect assumption or incorrect information provided to Parent from a school district staff person that the transcript will not reflect Student's involvement, progress, and completion of the School District's transition program.²⁵

The parties have made the determination to accommodate the Student by permitting him to participate in the graduation ceremony of his peers in the spring of 2015, despite the fact he will not yet be graduating from secondary school. The Student will continue with secondary school in a transition program for an uncertain amount of time. Student's participation and progress in that transition program will necessarily be recorded on his transcript, including the date of his graduation or completion of that program. Thus, when he graduates, both his transcript and diploma will reflect the same completion date, negating Parent's fears. If the transcript and diploma do not match, Student may have a viable discrimination claim or a claim under the Family Educational Rights and Privacy Act (FERPA) (34 C.F.R. 99 (2014)).

An IEP must include a:

statement of the special education and related services and supplementary aids and services . . . to be provided to the child, or on behalf of the child, and a statement of the program modifications . . . that will be provided to enable the child

- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum . . . and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children²⁶

It is not clear how placing an inaccurate date on Student's diploma would meet the requirements for providing a FAPE, consistent with the IEP requirements above. What is clear is that the law prohibits creating inaccurate educational data. Minn. Stat. § 125A.04 (2014) provides: "Upon completion of secondary school or the equivalent, a pupil with a disability who satisfactorily attains the objectives in the pupil's individualized education program must be granted a high school diploma that is identical to the diploma granted to a pupil without a disability." The statute, on its face, provides that the diploma is to be provided "upon completion" of secondary school or equivalent. Minn.

²⁵ Whether a school staff person told Parent this or it is an assumption on Parent's part is not material to the outcome. What is material, and undisputed, is that this is Parent's understanding.

²⁶ 34 C.F.R. § 300.320(a)(4) (2006); see also Minn. R. 3525.2810, subp. 1(A)(3) (2013).

Stat. § 123B.06 (2014) requires that “[e]ach district shall keep accurate and complete individual, permanent, cumulative personal records for all pupils.” Thus, it would violate state law to falsify a diploma with an inaccurate date, or a transcript noting a student completed programming when he had not.

There are no material facts in dispute. Because the School District may not, as a matter of law, record inaccurate data in Student’s education records, including a false date on his diploma, its refusal to do so does not deny Student a FAPE. Student’s education records must reflect if and when Student does graduate, regardless of the accommodation of permitting the Student to participate in 2015 graduation ceremonies. Student’s transcript and his diploma must include accurate data about his involvement and progress in secondary school, including his completion date.²⁷

J.R.M.

²⁷ Parent also raises concerns in the Rebuttal about Student’s completion date being known to anyone who views his transcript or diploma. Parent surmises that someone may conclude Student is a person with a disability as a result of comparing his age and secondary school completion date. There are many reasons a person may not graduate when he or she is 18 years old and none of them justify falsifying records.