

In the Matter of

STUDENT,

Petitioner,

v.

Case No. DPH 1213-13

ALBUQUERQUE PUBLIC SCHOOLS,

Respondent.

**ABSTRACT OF FINAL DECISION OF THE DUE PROCESS HEARING OFFICER
DISMISSING THE DUE PROCESS COMPLAINT**

January 12, 2013

Jane B. Yohalem, Due Process Hearing Officer

In this New Mexico due process proceeding, a 19-year old Student with a disability challenged his graduation in Texas with a regular high school diploma. He claimed he was entitled to full services under the IDEA from the New Mexico school district where he enrolled at the beginning of the school year. Although he had initially challenged the graduation by filing a due process complaint in Texas, that complaint had been voluntarily dismissed without prejudice when Student's family decided to move to New Mexico.

This matter came before the due process hearing officer upon the District's motion to dismiss or for summary judgment. The New Mexico hearing officer held that Student failed to state a claim for violation of the IDEA against his New Mexico school district. The district was bound to give full faith and credit to Student's valid Texas graduation documents.

The hearing officer further held that Student's claim for graduation in violation of IDEA and Texas law lies solely against the Texas school district. A New Mexico hearing officer lacks the authority under both the IDEA and New Mexico's due process regulations, which limit the hearing officer's authority to IDEA claims against New Mexico public agencies, to decide whether a Texas school district has complied with the IDEA. The hearing officer also held that she lacked personal jurisdiction over the Texas district.

The hearing officer found Student ineligible for special education services in New Mexico unless and until the Texas graduation is overturned by a hearing officer or court with authority to do so. Student was entitled to a stay-put placement during the pendency of the due process proceeding and any appeals, but could not to rely on other rights afforded to eligible student's under the IDEA. Finally, the hearing officer denied Student's request for compensatory education based on a delay in instituting the stay-put placement, holding that there was no denial of a free appropriate public education (FAPE) caused by the delay because Student was ineligible for services as a high school graduate and, therefore, that Student was not entitled to compensatory education under Tenth Circuit precedent.