

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EAST WHITTIER CITY SCHOOL
DISTRICT.

OAH CASE NO. 2010050196

ORDER DENYING MOTION TO
DISMISS

OAH recently issued a decision against Student and in favor of the East Whittier City School District (District) in OAH Case Number 2010010568. OAH Case Number 2010010568 was filed on January 12, 2010, and raised one issue, “Did District deny Student a [FAPE] for the 2009-2010 school year by denying Student a central auditory processing disorder (CAPD) assessment, as requested by Parent.” In that case, Student had the burden of proving that the alleged procedural violation resulted in a denial of FAPE, a loss of educational benefit, or impeded parent’s opportunity to participate in the decisionmaking process. (See 20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subs. (f) & (j).) The Decision in OAH Case Number 2010010568 included a conclusion of law that Student received a FAPE during the relevant time period because all measures of academic progress showed that she was successful in the classroom and Parent’s evidence to the contrary was not persuasive.

In the instant case, Student filed an Amended Request for Due Process Hearing on May 26, 2010, which alleged the following issues: “Whether Student was denied a free appropriate public education (FAPE) during the 2009-2010 school year because District did not: a) assess Student in the areas of assistive technology, social/emotional needs, or scotopic sensitivity/dyslexia; b) provide prior written notice in September and October of 2009 regarding a scotopic sensitivity assessment; c) assess Student within 60 days of a March 1, 2010 parental consent for assessment; d) provide Student with appropriate resource specialist (RSP), behavior intervention, assistive technology (AT) and counseling services.”

On July 30, 2010, East Whittier City School District (District) filed a Motion to Dismiss Student’s Due Process Hearing Request (Motion to Dismiss) under the doctrines of res judicata/collateral estoppel. District contends that the issues in the instant case are barred because the decision in OAH Case Number 2010010568 reached legal conclusions that Student made educational progress and was not denied a FAPE. Specifically, District contends that the issue of whether Student was denied a FAPE is one issue for purposes of res judicata/collateral estoppel, regardless of the specific factual allegations of how a FAPE was allegedly denied. Student filed an Opposition on August 2, 2010. Student contends that the Motion to Dismiss should be denied because the issues raised in the instant case are not

the same as the sole issue in OAH Case Number 2010010568. As discussed below, the motion must be denied.

Applicable Law and Analysis

Federal and state courts have traditionally adhered to the related doctrines of res judicata and collateral estoppel. (*Allen v. McCurry* (1980) 449 U.S. 90, 94 [101 S.Ct. 411, 66 L.Ed.2d 308]; *Levy v. Cohen* (1977) 19 Cal.3d 165, 171 [collateral estoppel requires that the issue presented for adjudication be the same one that was decided in the prior action, that there be a final judgment on the merits in the prior action, and that the party against whom the plea is asserted was a party to the prior action]; see 7 Witkin, California Procedure (4th Ed.), Judgment § 280 et seq.) Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties or their agents from relitigating issues that were or could have been raised in that action. (*Allen, supra*, 449 U.S. at p. 94.) Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. (*Ibid.*; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341; see also *Migra v. Warren City School Dist. Bd. of Ed.* (1984) 465 U.S. 75, 77, n. 1 [104 S.Ct. 892, 79 L.Ed.2d 56] [federal courts use the term “issue preclusion” to describe the doctrine of collateral estoppel].)

The doctrines of res judicata and collateral estoppel serve many purposes, including relieving parties of the cost and vexation of multiple lawsuits, conserving judicial resources, and, by preventing inconsistent decisions, encouraging reliance on adjudication. (*Allen, supra*, 449 U.S. at p. 94; see *University of Tennessee v. Elliott* (1986) 478 U.S. 788, 798 [106 S.Ct. 3220, 92 L.Ed.2d 635].) While collateral estoppel and res judicata are judicial doctrines, they are also applied to determinations made in administrative settings. (See *Pacific Lumber Co. v. State Resources Control Board* (2006) 37 Cal.4th 921, 944, citing *People v. Sims* (1982) 32 Cal.3d 468, 479; *Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control* (1961) 55 Cal.2d 728, 732.)

However, the Individuals with Disabilities Education Act (IDEA) contains a section that modifies the general analysis with regard to res judicata and collateral estoppel. The IDEA specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Therefore, although parties are precluded from relitigating issues already heard in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and heard in the first case, but were not.

Here, while some of the legal conclusions in OAH Case Number 2010010568 suggest that the ALJ reached the general issue of whether Student was denied a FAPE for purposes of res judicata/collateral estoppel, the legal conclusions cannot be separated from the narrow issue presented. The issue in OAH Case Number 2010010568 was limited to the District’s failure to perform a very specific parent-requested assessment. District’s argument that

Student cannot “split” different FAPE issues is contradicted by the language of title 20, United States Code, section 1415(o) and Education Code section 56509, which specifically allow separate due process hearings on separate issues, even if they could have been brought at the same time. Because the issue in OAH Case Number 2010010568 was so narrowly focused, the decision in that case cannot bar Student from filing the instant due process hearing request, which contains factually different allegations that Student was denied a FAPE during the same time period. Thus, District’s Motion to Dismiss must be denied.

ORDER

District’s Motion to Dismiss is denied.

Dated: August 03, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings