

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012020424

ORDER GRANTING MOTION TO
DISMISS

On February 10, 2012, Tanya L. Whiteleather, attorney for Student, filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint), naming the Garden Grove Unified School District (District). On February 21, 2012, S. Daniel Harbottle, attorney for the District, filed a Motion to Dismiss, alleging that Student's complaint was barred by res judicata and collateral estoppel because the parties had already litigated the adequacy of the District's June 3, and June 21, 2010 Individualized Education Program (IEP), in which the District prevailed. (*Garden Grove Unified School District v. Student* (2011) Cal.Ofc.Admin.Hrngs. Case No. 2010120784.) Student did not file a response.

APPLICABLE LAW

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.)

The Individuals with Disabilities Education Act (IDEA) provides that a decision made in an impartial due process hearing “shall be final.” (20 U.S.C. § 1415(i)(1)(A).) However, the IDEA affords parties the right to appeal, either to the state education agency (if the particular state has chosen to have initial due process hearing conducted by employees of the state or local education agencies), or by filing a civil action in state or federal court (if the hearing was conducted by an agency or entity other than the state or local education agency). (20 U.S.C. § 1415(f)(1)(A), (g), (i)(1)(B) & (i)(2).)

The 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.

Consistent with the IDEA, Education Code section 56505, subdivision (h) provides: “The hearing conducted pursuant to this section shall be the final administrative determination binding on all parties.” California has chosen to have its IDEA due process hearings conducted by a contracted entity other than the state or local education agency. (Ed. Code, § 56504.5, subd. (a).) Consistent with title 20 United States Code section 1415(i)(2), California law provides that parties aggrieved by an administrative decision have a right to either “appeal the decision to a state court of competent jurisdiction within 90 days of receipt of the hearing decision” or “exercise the right to bring a civil action in a district court of the United States.” (Ed. Code, § 56505, subd. (k).) If a civil action is brought to challenge the decision in an impartial due process hearing, the IDEA requires the reviewing court to: 1) receive the records of the administrative proceeding; 2) hear additional evidence at the request of a party; and 3) grant such relief as the court deems appropriate based on the preponderance of the evidence. (20 U.S.C. § 1415(i)(2)(C).)

Thus, a federal court reviewing an IDEA due process hearing decision is required to make an independent decision by a preponderance of the evidence that gives “due weight” to the findings at the administrative hearing. (*Ojai Unified School District v. Jackson* (9th Cir. 1993) 4 F.3d 1467, 1471-1472.) This procedure, in which administrative determinations are subject to review in federal and state courts, is consistent with the state common law rule that administrative determinations are not “final” until the time to appeal has lapsed or all appeals have been exhausted. (See *People v. Garcia, supra*, 39 Cal.4th at p. 1078; *Long Beach*

Unified School District v. State of California, supra, 225 Cal.App.3d at p. 169.) However, just because IDEA due process hearing decisions are not “final” until appeals are exhausted for purposes of precluding issues or facts from being relitigated in other forums, does not mean that a petitioner is entitled to multiple IDEA due process hearings on the same issues.

The Ninth Circuit Court of Appeals addressed the issue of whether an IDEA state-level hearing officer had jurisdiction to hear a new due process hearing request regarding compliance with a prior due process hearing order. (*Wyner v. Manhattan Beach Unified School District* (9th Cir. 2000) 223 F.3d 1026, 1027 (*Wyner*).) In *Wyner*, a due process hearing was conducted that resulted in an order that a school district comply with a settlement agreement by providing services to a student. Two years later, the student filed a due process hearing request seeking to enforce the prior order that the school district provide services. The due process hearing officer found that there was no jurisdiction to hear and decide issues related to enforcement of the prior due process hearing order because it was “final” under Education Code section 56505, and the student could seek enforcement of the due process hearing order through a complaint process established by the state department of education. (*Id.* at p. 1028.) The Ninth Circuit Court of Appeals held that the decision of the hearing officer to decline jurisdiction was proper because the due process hearing order to comply with the settlement agreement was “the final administrative determination binding on all parties” and “once a decision is rendered [at an IDEA due process hearing], that decision is final and the same issue may not be revisited.” (*Id.* at p. 1030 [quoting with approval the hearing officer decision in *Jonathan Andrew Wyner v. Manhattan Beach Unified School District*, Case No. SN 629-97, Memorandum of Order at 2.].)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.).

DISCUSSION

Student’s contends in Issue 1 that the District’s June 3, and June 21, 2010 IEP did not provide him with a free appropriate public education (FAPE) and requests compensatory education and that the District reimburse Guardian for privately obtained education expenses. In Issue 2, Student contends that the District’s conduct violated Section 504.

At the previous hearing, the sole issue in the District’s complaint was “[w]hether District provided Student with a free and appropriate public education (FAPE) in his June 3, and June 21, 2010 Individualized Education Program (IEP).” (*Garden Grove Unified School District v. Student* (2011) Cal.Ofc.Admin.Hrngs. Case No. 2010120784, p. 1.) Student contended that the District’s IEP did not provide Student with a FAPE because:

it committed numerous procedural violations at the IEP, including: (1) failing to write goals in the areas of social skills, speech and language, math, reading comprehension, vocabulary, and anxiety; (2) denying meaningful participation in the IEP because there was no discussion of Student’s placement; (3) predetermining an offer of SLDC; (4) changing the IEP without parental

involvement; (5) failing to address all Student's unique needs in the area of anxiety; (6) failing to assess Student for anxiety; (7) failing to include an anxiety goal in his IEP; and (8) failing to discuss and offer the least restrictive environment (LRE), a comprehensive high school, instead of SLDC. (*Garden Grove Unified School District v. Student* (2011) Cal.Ofc.Admin.Hrngs. Case No. 2010120784, page 12.)

The District appropriately notes that the adequacy of its June 3, and June 21, 2010 IEP was determined in the prior administrative hearing between the parties in the District's favor, and that Student is attempting to relitigate this issue. In fact, Student's complaint seeks reimbursement for Guardian's education expenses due to the District's failure to offer a FAPE as "the District failed to prove its case at hearing and that, at the federal level, the District's failure to carry its burden will result in a reversal of the due process Decision."

However, because the prior decision is on appeal before the United States District Court, *res judicata* and collateral estoppel do not apply because there is no final judgment. However, Student's complaint seeks that OAH overturn its prior decision that the District's June 3, and June 21, 2010 IEP provided Student with a FAPE. Because OAH has already issued a final decision on the adequacy of the District's June 3, and June 21, 2010 IEP, and Student challenged all aspects as to the IEP's adequacy, OAH lacks the jurisdiction to hear Student's case while this issue is on appeal.

Further, as to Issue 2, Student contended that the District violated Section 504, which OAH does not have jurisdiction to hear. Therefore, since OAH no longer has jurisdiction to determine the adequacy of the District's June 3, and June 21, 2010 IEP, and authority to hear Section 504 claims, this matter is dismissed.

ORDER

The District's Motion to Dismiss is granted. The matter is dismissed.

Dated: March 2, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings