

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013010033

ORDER GRANTING IN PART AND
DENYING IN PART DISTRICT'S
MOTION TO DISMISS AND STRIKE
PORTIONS OF STUDENT'S
COMPLAINT

On January 2, 2013, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Fresno Unified School District (District) as the respondent.

On January 7, 2012, the District filed a pleading moving to dismiss and/or strike portions of Student's complaint (motion). The District's motion asserts that Student's complaint contains allegations which are beyond the applicable two-year statute of limitations for issues brought under the Individuals with Disabilities Education Act (IDEA). The District also contends that Student's proposed resolution for attorneys' fees is subject to dismissal because OAH does not have jurisdiction to award attorneys' fees in special education cases. Finally, the District seeks to dismiss or strike claims pertaining to a January 19, 2011 Individualized Education Program (IEP), which the District alleges was already adjudicated by OAH. Student timely filed a response to the District's motion.

Claims beyond the Two-Year Statute of Limitations

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two-years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

In support of its motion to dismiss Student's issue one, subparts three and four, the District states that Student failed to allege an exception to the statute of limitations and therefore claims relating to a January 2010 IEP and an April 2010 IEP are precluded by the applicable two-year statute of limitations. However, in his response, Student states that the District withheld required information, including educational documents pertaining to the 2009-2010 school year, for several months, thereby tolling the two-year statute of limitations.

Whether an exception to the two-year statute of limitations exists is a question of fact. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.), special education law does not provide for a summary judgment procedure. Here, the District's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits regarding whether the facts of this matter support an exception to the two-year statute of limitations. Whether the District improperly withheld documentation pertaining to Student's educational program prior to 2011 can only be determined through evidence presented at hearing. It will be Student's burden to prove whether the statutory exceptions to the statute of limitations apply to the facts of this case. The District's motion to dismiss Student's issue one, subparts three and four, as it relates to the statute of limitations is therefore denied.

Claim for Attorney's Fees

An award of reasonable attorney's fees to the prevailing parent, guardian, or pupil may only be made either with the agreement of the parties following the conclusion of the administrative hearing process or by a court of competent jurisdiction. (*See* 20 U.S.C. 1415(i)(3); Ed. Code, §56507, subd. (b).) OAH is not a court of competent jurisdiction within the meaning of Education Code section 56507, subdivision (b).

Consequently, Student's proposed resolution for reimbursement of attorneys' fees is subject to dismissal because OAH does not have jurisdiction to award attorneys' fees in special education cases.

Claims Pertaining to the January 2011 IEP

The District asserts that OAH does not have jurisdiction over Student's issue one, subparts one and two, which relate to a January 19, 2011 IEP, because OAH has adjudicated this particular issue in a June 22, 2012 Decision for OAH Case Number 2012020842, which involved the identical parties.

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 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, Student’s issue one, subparts one and two, narrowly relate to procedural violations regarding a January 2011 IEP meeting. The issues adjudicated in OAH Case Number 2012020842 were limited to the Student’s contentions that (a) after the District suspended him on May 9, 2011, the District failed to provide him with any special education services through October 5, 2011, and (b) the District should have offered a functional behavior analysis and behavior support plan at a May 13, 2011 manifestation determination review meeting. Because the issues in OAH Case Number 2012020842 were 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 free appropriate public education during a preceding time period. Thus, District’s motion to dismiss claims pertaining to the January 2011 IEP must be denied.

ORDER

1. The District's motion to dismiss issue one, subparts three and four, is denied.
2. The District's motion to dismiss Student's claim for attorneys' fees is granted without prejudice. If applicable, Student may seek those fees in a court with jurisdiction to grant such fees.
3. The District's motion to dismiss issue one, subparts one and two, is denied

IT IS SO ORDERED.

Dated: January 14, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings