

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO FOSTER CITY SCHOOL
DISTRICT.

OAH Case No. 2016040512

ORDER GRANTING MOTION TO
DISMISS

On April 6, 2016, Student filed a request for due process hearing (Complaint II), naming San Mateo-Foster City School District as respondent.

On May 5, 2015, San Mateo-Foster City filed a motion to dismiss Complaint II. Student filed an opposition to San Mateo-Foster City's motion on May 9, 2016. In her opposition, Student requests San Mateo-Foster City be ordered to offer a resolution session prior to the Office of Administrative Hearing's consideration of San Mateo-Foster City's motion to dismiss, if the motion is not denied.¹

In Complaint II, Student alleges two issues: (1) whether San Mateo-Foster City denied Student a free appropriate public education by failing to adhere to California Education Code § 56344 when it failed to timely assess Student and hold an individualized education program team meeting by September 11, 2015, instead of on October 26, 2015; and (2) whether San Mateo-Foster City denied Student a FAPE by failing to render her eligible for an IEP on October 26, 2015, under the eligibility categories of specific learning disability and other health impairment.

On December 28, 2015, the undersigned Administrative Law Judge issued a decision involving the same parties in OAH Case 2015050320 (December 28, 2015 Decision). The December 28, 2015 Decision resolved several issues raised by Student in a prior complaint (Complaint I), including whether San Mateo-Foster City denied Student a FAPE from April 30, 2013, through November 3, 2015, by failing to find her eligible for special education as a student with a specific learning disability and other health impairment, and offer her an individualized education program. In addition, the December 28, 2015 Decision resolved whether San Mateo-Foster City committed three procedural violations resulting in a denial of

¹ In her opposition, Student represents that San Mateo-Foster City did not offer a resolution session in this matter as required by law.

a FAPE during the same time period. The December 28, 2015 Decision ultimately held Student did not meet her burden of establishing that she was eligible for special education under the eligibility categories of specific learning disability or other health impairment from April 30, 2013, through November 3, 2015. While the ALJ found San Mateo-Foster City committed two of the three procedural violations alleged in Complaint I, those violations did not deprive Student of a FAPE because she was not eligible for special education at the time those procedural violations occurred.

San Mateo-Foster City's motion seeks to dismiss Complaint II based on the doctrines of collateral estoppel and res judicata. As to Issue One, San Mateo-Foster City concedes that the procedural violation alleged in Complaint II is different than the procedural violations alleged in Complaint I. However, San Mateo-Foster City contends that its alleged failure to hold an IEP team meeting prior to October 26, 2015 cannot be deemed a denial of FAPE based upon the December 28, 2015 Decision's holding that Student was ineligible for special education from April 3, 2013, through November 3, 2015.

As to Issue Two, San Mateo-Foster City contends the issue of Student's eligibility for special education under the eligibility categories of specific learning disability and other health impairment on October 26, 2015, was already litigated and decided in the December 28, 2015 Decision, as the ALJ found Student ineligible for special education under both SLD and OHI from April 30, 2013, through November 3, 2015.

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 and 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 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.

DISCUSSION AND ORDER

Issue One of Complaint II alleges a procedural violation that Student claims resulted in a denial of FAPE on October 26, 2015. The procedural violation alleged in Complaint II is different from the procedural violations raised in Complaint I and decided in the December 28, 2015 Decision. However, in the December 28, 2015 Decision, the ALJ held that although San Mateo-Foster City committed procedural violations, those violations did not deprive Student of a FAPE because Student was not eligible for special education at the time those procedural violations occurred. While it is true that the type of procedural violation alleged in Complaint II was not litigated and decided in the December 28, 2015 Decision, the issue of whether Student was denied a FAPE between April 30, 2013 and November 3, 2015 as the result of a procedural violation has been litigated and decided. Since Student has been found to be ineligible for special education between April 30, 2013, and November 3, 2015, the December 28, 2015 Decision makes clear that she could not have been denied a FAPE during that time period as a result of a procedural violation. The fact that Student contends a different type of procedural violation occurred during the same time period does not change the fact that Student's ultimate claim is whether she was denied a FAPE as the result of an alleged procedural violation during a time she was already deemed ineligible for special education. Student has had a full and fair opportunity to litigate whether she was denied a FAPE as a result of a procedural violation during the relevant time period. There was a final judgment on the merits and the parties in Complaint I are the same as the parties in the instant matter. Accordingly, Student is precluded from raising this issue under the doctrines of collateral estoppel and res judicata.

Student asserts her right to file a separate due process complaint alleging issues separate from those raised in Complaint I was preserved in an order, dated October 15,

2015.² Precluding Student from raising Issue One under the doctrines of collateral estoppel and res judicata is consistent with the October 15, 2015 order, because Issue One is not an issue separate from those raised in Complaint I. Student continues to have the right to file a separate due process complaint alleging issues not previously litigated and decided.

In Issue Two, Student claims she was denied a FAPE by San Mateo-Foster City's failure to render her eligible for special education under the eligibility categories of specific learning disability and other health impairment on October 26, 2015. This issue was already litigated and decided in the December 28, 2015 Decision. In the December 28, 2015 Decision, the ALJ determined that Student was not eligible for special education under the eligibility categories of specific learning disability and other health impairment from April 30, 2013, through November 3, 2015. Therefore, Student is also precluded from raising Issue Two under the doctrines of collateral estoppel and res judicata.

A party aggrieved by the findings and decisions in a due process hearing may appeal to a competent court of jurisdiction within 90 days of receipt of the hearing decision. (Ed. Code § 56505, subd. (k).) Student disagrees with the legal conclusions contained in the December 28, 2015 Decision, and has filed an appeal; therefore, she is not without recourse.

Accordingly, San Mateo-Foster City's motion to dismiss is GRANTED. As to Student's request for a resolution session, San Mateo-Foster City was not alleviated from its duty to participate in a resolution session within 15 days of receiving notice of the request for due process hearing absent a written joint agreement to waive the resolution session. (See 34 C.F.R. § 300.510 (2006).) Student, however, provided no legal authority to support her request that San Mateo-Foster City be ordered to offer Student a resolution session prior to a ruling on San Mateo-Foster City's motion to dismiss. The order contained herein dismissing Student's complaint, deems the request that San Mateo-Foster City offer a resolution session moot and is DENIED.

IT IS SO ORDERED.

DATE: May 16, 2016

DocuSigned by:

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DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings

² In the October 15, 2015, Student's request to file a second amended complaint, which would have amended Complaint I to add the same issue as alleged in Issue One in the instant matter, was denied.