

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

vs.

EL SEGUNDO UNIFIED SCHOOL
DISTRICT,

Respondent.

OAH No. N2006050113

**ORDER DENYING MOTION
TO DISMISS**

On October 20, 2005, the Office of Administrative Hearings, Special Education Division (OAHSED) received from attorney Andrea M. Tytell on behalf of Petitioner Student (Petitioner), a due process hearing complaint (2005 Complaint) naming El Segundo Unified School District (District) as the respondent. OAHSED identified that case as OAH No. 2005100674. On November 7, 2005, Administrative Law Judge (ALJ) Deidre L. Johnson issued an order determining that the 2005 Complaint was insufficient, and further ordered that Petitioner had 14 days to file an amended complaint.

On November 21, 2005, Petitioner timely filed an amended due process hearing complaint (Amended 2005 Complaint). On December 6, 2005, ALJ Johnson determined that the Amended 2005 Complaint was insufficient. The order allowed Petitioner 14 days to file a second amended complaint, and specified that “if Student fails to file an amended due process complaint within 14 days from the date of this order, the complaint shall be dismissed, and the case will be closed.” OAHSED did not receive a second amended complaint from Petitioner, and instead received Petitioner’s request for an extension of time to file the second amended complaint. In an order dated January 4, 2006, ALJ William O. Hoover denied Petitioner’s request for an extension, and ordered that “given the denial of Petitioner’s request for additional time, the matter is hereby dismissed.”

On May 2, 2006, OAHSED received another due process hearing complaint (2006 Complaint) from Ms. Tytell on behalf of Petitioner, again naming the District as the respondent. OAHSED identified this case as OAH No. 2006050113. On May 12, 2006, ALJ John A. Thawley issued an order determining that the 2006 Complaint was insufficient, and further ordered that Petitioner had 14 days to file an amended complaint. On May 17, 2006,

OAHSED received Petitioner's amended due process hearing complaint (Amended 2006 Complaint). On May 22, 2006, OAHSED received from attorney Karen E. Gilyard the District's motion to dismiss the Amended 2006 Complaint due to both insufficiency and to the doctrines of res judicata and collateral estoppel. On May 25, 2006, OAHSED received Petitioner's opposition to the District's motion to dismiss. Also on May 25, ALJ Trevor Skarda issued an order determining that the 2006 Amended Complaint was sufficient.

APPLICABLE LAW

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 v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411 (1980); see 7 Witkin, California Procedure (4th Ed.), Judgment § 280 et seq.) 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. (*Id.*) 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. (*Id.*) While collateral estoppel and res judicata are judicial doctrines, they are frequently applied to determinations made in the administrative settings. (See *Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control*, 55 Cal.2d 728, 732, 361 P.2d 712 (1961); *People v. Sims*, 32 Cal.3d 468, 479, 651 P.2d 321 (1982).)

California Education Code section 56505, subdivision (h), provides that a decision rendered in a due process hearing constitutes a final administrative determination and is binding on the parties.

In general, a judgment of dismissal due to a delay in prosecution does not constitute a judgment on the merits of the action, and is not res judicata. (*O'Keefe v. Aptos Land & Water Co.* (1955) 134 Cal.App.2d 772, 780, 286 P.2d 417, 423.)

DISCUSSION

In the present case, OAH dismissed OAH No. 2005100674 solely due to a failure to file a timely amended complaint. The dismissal order did not specifically dismiss the case with prejudice. The dismissal did not involve the merits of the issues, and was not a decision rendered in a due process hearing. Hence, similar to a dismissal due to a delay in prosecution, the dismissal of the 2005 Amended Complaint does not constitute a judgment on the merits of the action, and is not res judicata.

The District argues that Petitioner's refile of the same issues and proposed resolutions should be precluded because failure to do so would permit a petitioner to "always fail to amend pursuant to an OAH order, have her case dismissed, and simply refile at a later date. The order of dismissal would essentially have no binding effect." Contrary to this contention, even when a party is permitted to refile following a dismissal, the dismissal still

impacts that party's rights regarding the statute of limitations and potential recovery for attorney fees incurred pursuant to the dismissed case. Moreover, had Petitioner's 2006 Complaint been essentially identical to the 2005 Amended Complaint, OAH would dismiss such a complaint because the determination regarding sufficiency of the 2005 Amended Complaint has already been made. Instead, Petitioner's 2006 Complaint and 2006 Amended Complaint each contain revisions reflecting attempts to address the areas of insufficiency identified in OAH's Determination of Sufficiency orders dated December 6, 2005, and May 12, 2006.

ORDER

The District's motion to dismiss is denied.

Dated: June 8, 2006

SUZANNE B. BROWN
Administrative Law Judge
Special Education Division
Office of Administrative Hearings