

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SACRAMENTO COUNTY OFFICE OF
EDUCATION & SACRAMENTO
COUNTY MENTAL HEALTH SERVICES.

OAH CASE NO. 2010020022

ORDER GRANTING MOTION TO
DISMISS SACRAMENTO COUNTY
OFFICE OF EDUCATION AS A
PARTY

On January 28, 2010, Student filed a due process hearing request naming Sacramento County Office of Education (SCOE) and Sacramento County Mental Health Services (CMH) as respondents. Student alleged denials of his right to a free appropriate public education (FAPE) on four theories: 1) failure to timely implement mental health services; 2) failure to timely reassess; 3) failure to timely hold an IEP team meeting; and 4) failure to offer an appropriate placement and related services. The proposed resolution seeks reimbursement of various costs of parent's unilateral placements of Student.

Student had previously filed a request for due process hearing in OAH case number 2009110076 (Prior Case) naming the Galt Joint Union School District (District) and CMH as respondents. In the prior case, Student's factual allegations were nearly identical to the instant case, and he alleged denials of FAPE based on: 1) failure to timely implement mental health services; and 2) failure to offer an appropriate placement and related services. The proposed resolutions in the prior case were verbatim to those sought in the instant case. Student entered a settlement agreement with District releasing District of liability for all known or unknown claims of any type. OAH dismissed the Prior Case in an order that does not identify whether the dismissal was "with prejudice."

On February 23, 2010, SCOE filed a motion to be dismissed from this matter (Motion) on the following grounds: 1) Student's settlement with District bars the instant case against SCOE because District was responsible for providing FAPE to Student and SCOE merely provided services to Student under a contract with District; 2) the instant case is barred by collateral estoppel because under the settlement agreement, Student agreed to dismiss his claims against District with prejudice; and 3) as a matter of law, SCOE is not the local educational agency responsible to provide Student with a FAPE.

Student opposed the Motion on the grounds that: 1) SCOE had a separate duty than District to provide FAPE to Student; 2) because SCOE had a separate FAPE obligation, collateral estoppel does not apply; and 3) even though Student acknowledges that District had the primary responsibility for providing FAPE, SCOE can still be named in the instant case under a theory that it failed to timely report relevant information about Student to District.

As discussed below, SCOE has demonstrated that dismissal is warranted on its first and third grounds, i.e., that the District settlement bars a due process hearing naming SCOE as a respondent and that SCOE is not responsible to provide a FAPE to Student as a matter of law.

As a Matter of Law, SCOE Did Not Owe Student a FAPE and the Settlement Agreement Bars the Instant Action

SCOE's first contention is that it is a third party beneficiary of the settlement agreement in the Prior Case because it operated District's SDC under a service agreement. In particular, SCOE contends that it was merely an "agent" of District, and as such fell within a clause releasing District and "its ... employees, agents, or representatives, individually or collectively . . ." SCOE's third contention is that it never had a duty independent from that of District to provide Student with a FAPE. Student disagrees, contending that SCOE is not an "agent" because SCOE has an independent duty to provide FAPE under Education Code section 56140, subdivision (a), and, alternatively, that whether SCOE is an agent is a factual question that cannot be resolved prior to hearing.

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) "Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties' expressed objective intent, not their unexpressed subjective intent, governs." (*Id.* at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.)

Here, the settlement agreement in the Prior Case is unambiguous. Under the terms of the agreement, Student released the District, and its "employees, agents, or representatives" of all liability of any kind, known or unknown, through the date of the agreement. Both parties expressly promised that even if they learned of different facts, the agreement would remain in effect. The parties also expressly acknowledged that the terms of the agreement should be read in their ordinary sense unless otherwise defined. The term, "employees, agents, or representatives" was not expressly defined.

SCOE produced evidence that during the time period at issue in the due process hearing request, SCOE operated a special day class for emotionally disturbed children at a District high school. SCOE operated the emotionally disturbed class under a Memorandum of Agreement (Memorandum). Under the terms of the Memorandum, District paid SCOE a fixed sum per enrolled student. Under the Memorandum, if a student needed additional aide support, it was the sole responsibility of the District. The Memorandum further clarified that the district of residence for each individual student was solely responsible for any services agreed to, or awarded, as a result of a due process hearing request being filed.

In light of the Memorandum, SCOE falls within the meaning of the term “employees, agents, or representatives” given that it ran the emotionally disturbed classes solely on a fee basis and the District was responsible for all IDEA liability that arose from the filing of a due process hearing request. Even if Student is contending that he was unaware of the details of the relationship between the District and SCOE at the time of the settlement agreement, the express language of the settlement agreement provides that the agreement remains in force. To the extent Student contends that dismissal should not be granted because there is an issue of fact, Student is incorrect. The only issue of fact required to resolve SCOE’s contentions is the authenticity of the settlement agreement and the Memorandum. Because there is no reason to doubt the authenticity of such documents, and Student could have easily presented evidence refuting their authenticity, but did not, an evidentiary hearing is not required. In sum, SCOE has demonstrated that the instant case is barred by the express terms of the settlement agreement.

However, as discussed below, even if the settlement agreement did not expressly bar the instant case against SCOE, SCOE had no duty to provide Student with a FAPE as a matter of law. Student contends that SCOE has an independent duty to provide a FAPE, in particular under Education Code, section 56140, subdivision (a). Education Code section 56140 provides, in its entirety:

County offices shall do all of the following:

(a) Initiate and submit to the superintendent a countywide plan for special education which demonstrates the coordination of all local plans submitted pursuant to Section 56205 and which ensures that all individuals with exceptional needs residing within the county, including those enrolled in alternative education programs, including, but not limited to, alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools, will have access to appropriate special education programs and related services. However, a county office shall not be required to submit a countywide plan when all the districts within the county elect to submit a single local plan.

(b) Within 45 days, approve or disapprove any proposed local plan submitted by a district or group of districts within the county or counties. Approval shall be based on the capacity of the district or districts to ensure that special education programs and services are provided to all individuals with exceptional needs.

(1) If approved, the county office shall submit the plan with comments and recommendations to the superintendent.

(2) If disapproved, the county office shall return the plan with comments and recommendations to the district. This district may immediately appeal to the superintendent to overrule the county office's disapproval. The superintendent shall make a decision on an appeal within 30 days of receipt of the appeal.

(3) A local plan may not be implemented without approval of the plan by the county office or a decision by the superintendent to overrule the disapproval of the county office.

(c) Participate in the state onsite review of the district's implementation of an approved local plan.

(d) Join with districts in the county which elect to submit a plan or plans pursuant to subdivision (c) of Section 56195.1. Any plan may include more than one county, and districts located in more than one county. Nothing in this subdivision shall be construed to limit the authority of a county office to enter into other agreements with these districts and other districts to provide services relating to the education of individuals with exceptional needs.

(e) For each special education local plan area located within the jurisdiction of the county office of education that has submitted a revised local plan pursuant to Section 56836.03, the county office shall comply with Section 48850, as it relates to individuals with exceptional needs, by making available to agencies that place children in licensed children's institutions a copy of the annual service plan adopted pursuant to paragraph (2) of subdivision (b) of Section 56205.

Words of a statute should be construed in light of the statutory purpose and should also, to the extent possible, be interpreted in a way that is consistent with other statutes relating to the same subject. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, *supra*, 117 Cal.App.4th at p. 54, citing *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.) The Education Code and California Code of Regulations expressly state the principles of statutory construction that “the definitions prescribed by this article apply unless the context otherwise requires,” and, “words shall have their usual meaning unless the context or a definition of a word or phrase indicates a different meaning.” (Ed. Code, § 56020; Cal. Code. Regs., tit. 2, § 60010, subd. (a).)

Here, nothing in Education Code section 56140, subdivision (a), or any other subdivision of the statute, renders a county office of education individually responsible to provide FAPE to, or make education decisions about, a particular

student. To the contrary, subdivision (a) merely recites that county offices of education have a responsibility to coordinate special education local plan areas (SELPA) within a county to ensure that students have access to the programs. In sum, the duty to coordinate SELPA is not a duty to provide FAPE to individual students.

Because Education Code section 56140, subdivision (a) does not render county offices of education responsible for providing FAPE to individual students, analysis of other statutes is required. In general, IDEA due process hearing procedures extend to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

In California, the determination of which agency is responsible to provide education to a particular child is controlled by residency as set forth in sections 48200 and 48204. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57 (interpreting Ed. Code, §§ 48200 and 48204 as allowing enrollment of children in school district where only part of a residence was located).) Under Education Code section 48200, children between the ages of 6 and 18 must attend school in the district “in which the residency of either the parent or legal guardian is located.” (Ed. Code, § 48200.)

As part of California’s general statutory scheme of determining which school district is responsible for education based on parental residency, Education Code section 48204 includes exceptions for situations other than a child living with a “parent or legal guardian.” (See *Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, *supra*, 117 Cal.App.4th at pp. 57-58.) Education Code section 48204, provides that agencies other than the school district where the “parent or legal guardian” resides were responsible to provide education under the following circumstances: 1) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home; 2) A pupil for whom interdistrict attendance has been approved; 3) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation; 4) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district; and 5) A pupil residing in a state hospital located within the boundaries of that school district. (Ed. Code, § 48204.)

Here, in his opposition, Student concedes, as he must, that he was a resident of District during the relevant times alleged in the due process hearing request. SCOE has established, and Student does not dispute, that Student attended a classroom program run by SCOE on a District high school campus. Student was not placed in a licensed children’s institution or any other placement that would render the SCOE

directly responsible for providing Student a FAPE based on residency. Because Education Code section 56140 does not establish that SCOE had an independent duty to provide a FAPE to Student, and at all times Student was a resident of District, SCOE had no independent duty to provide Student with a FAPE as a matter of law. Thus, SCOE is entitled to dismissal on this basis alone, even if the instant case was not otherwise barred by the settlement agreement.

Collateral Estoppel Does Not Apply

Finally, SCOE contends that because the settlement agreement in the Prior Case contained a recitation that Student would ask for a dismissal with prejudice, collateral estoppel bars the instant action. Student disagrees, and contends he is alleging new theories against a new party, such that collateral estoppel does not apply. However, because there was no final judgment on the merits, the doctrine of collateral estoppel does not apply.

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 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].) A dismissal on grounds other than the merits is not final judgment for purposes of collateral estoppel. (See *O’Keefe v. Aptos Land & Water Co.* (1955) 134 Cal.App.2d 772, 780 [dismissal due to a delay in prosecution did not constitute a judgment on the merits].)

Here, because there never was a final judgment on the merits in the Prior Case, and instead there was only an undefined “dismissal,” collateral estoppel would not apply.

ORDER

1. The Sacramento County Office of Education is dismissed as a party.
2. All dates remain on calendar as to Sacramento County Mental Health.

Dated: March 1, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings