

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT & LOS ANGELES COUNTY
DEPARTMENT OF MENTAL HEALTH.

OAH CASE NO. 2010091072

ORDER ON MOTIONS TO DISMISS

On September 28, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Los Angeles Unified School District (District) and Los Angeles County Department of Mental Health (DMH) as respondents. Issue One alleges as to District only that Student was denied a FAPE because District did not “adopt and offer the placement and services recommended by DMH” in February of 2010. Issue Two alleges as to DMH only that it “failed to take steps to offer [Student] AB 3632 services at an IEP” as contemplated by a juvenile court minute order dated March 16, 2010. Issue Three alleges as to both District and DMH that an IDEA procedural violation occurred because respondents did not offer Student AB 3632 services as contemplated by a juvenile court minute order dated March 16, 2010. Issue Four (erroneously identified by Student as a second “Issue No. 3.”) alleges as to both District and DMH that Student’s rights under section 504 of the Rehabilitation Act and ADA were violated by the alleged denials of FAPE. As to Issue Four, Student acknowledged that OAH does not have jurisdiction to adjudicate claims under civil rights statutes.

On October 7, 2010, DMH filed a “Motion for Dismissal Under Doctrine of Collateral Estoppel and Motion to File Notice of Insufficiency.” OAH separately ruled on the “Notice of Insufficiency.” As to dismissal, DMH contends that Issue Two, Three and Four alleged against it are barred by the doctrine of collateral estoppel.

On October 14, 2010, District also filed a “Motion to Dismiss.” District contends that all issues alleged against it are barred by the doctrine of collateral estoppel because they were all addressed by the decision in OAH case number 2010050752, from which Student has a right to seek review in a court of competent jurisdiction if he disagrees with the result. District also contends that Issue Four should be dismissed because adjudication of civil rights claims is outside OAH jurisdiction.

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

On October 18, 2010, Student filed an opposition to the DMH and District motions to dismiss. Student contends that the motions should be denied because: 1) the prior decision in OAH case number 2010050752 did not address the issue of District's duty under state law to adopt the recommendations of a county mental health agency regarding mental health services; 2) the prior decision in OAH case number 2010050752 was erroneous in law and in its findings about the testimony of Kathryn Stroup from DMH; 3) issues after the May 20, 2010 filing date were not considered in the prior decision; and 4) DMH was never named as a party in OAH case number 201005072.

As discussed below, as currently alleged Issues One, Two, and Three are barred by the final decision in OAH case number 2010050752. Further, Issue Four (identified as "Issue No. 3" in the complaint) regarding civil rights claims must be dismissed as to both DMH and District because it is outside OAH jurisdiction.

Issues One, Two, and Three – Collateral Estoppel

As to Issues One, Two, and Three, both DMH and the District contend that the common law doctrine of collateral estoppel bars litigation of the issues set forth in the complaint because they were previously addressed by the hearing and decision in OAH case number 2010050752. Neither respondent addresses the statutory language of the IDEA and the corresponding state statutes in its contention. As discussed below, the common law rules regarding the collateral estoppel effect of administrative decisions do not apply to answer the question of whether a subsequent administrative hearing may be sought on the same issues. Instead, the statutory language of the IDEA controls to limit the issues in the complaint to issues that were not previously raised in OAH case number 201005072.

Federal and state courts have traditionally adhered to the related common law doctrines of res judicata and collateral estoppel. (See *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; see also 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].)

Collateral estoppel and res judicata apply to determinations made in quasi-judicial 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.) Under California

law, unless finality of an administrative decision is established by statute, administrative decisions are not final until the “deadline . . . to seek rehearing passes, or upon the finality of any appeals of the administrative hearing decision.”² (*People v. Garcia* (2006) 39 Cal.4th 1070, 1078; see also *Smith v. Selma* (2008) 164 Cal.App.4th 1478, 1506 (no collateral estoppel effect given to an administrative decision if an appeal has been taken or if the time for such appeal has not lapsed); *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 169 (no collateral estoppel effect to administrative decision if on appeal or if the time for such appeal has not lapsed).) The above case authorities involve the situation in which an administrative hearing has been held and then subsequent legal proceedings are initiated in another legal forum. However, these cases do not address whether a party to an IDEA hearing is entitled to relitigate the same claims in consecutive IDEA hearings. For that, we look to the express language of the IDEA.

The 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).)

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” 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

² With respect to the finality of state administrative decisions, Federal courts apply state law. (See *University of Tennessee v. Elliot* (1986) 478 U.S. 788, 799 [106 S.Ct. 3220, 92 L.Ed.2d 635]; *Wehrli v. County of Orange* (9th Cir. 1999) 175 F.3d 692, 695.)

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 has 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 had been 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 due process hearing 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.].)

In sum, whether Student is entitled to a due process hearing on the issues alleged in the new complaint is not governed by the common law doctrines of res judicata / collateral estoppel, but instead is governed by the express language of the IDEA as interpreted in *Wyner*. Thus, because the decision in OAH case number 2010050752 is the “final administrative determination binding on all parties,” such that a due process hearing is barred on the same issues, determination of the merits of the motions to dismiss requires comparison of the issues adjudicated in that case to the allegations in the instant case. If the issues are the same, then DMH and District are correct that relitigation of the issues before OAH is barred, and Student is limited to his appeal of that decision.

However, if comparison of the decision in OAH case number 2010050752 to the allegations in the instant complaint shows that Student is alleging new issues, Student may be entitled to proceed on those claims if they are otherwise within OAH jurisdiction. The IDEA specifically states that nothing in it 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 filed his prior case on May 20, 2010 (OAH case number 2010050752), which alleged two issues within OAH jurisdiction: 1) “Whether [District] has timely held a thirty-day IEP for [Student]”; and 2) “Whether [District] has taken appropriate steps to provide [Student] with a FAPE, i.e., placement in the Residential Treatment Center, agreed to at his IEP.” The gist of the complaint was that after Student was placed in a District school on March 23, 2010, District should have implemented the residential treatment center recommendation made by DMH at an IEP held on March 15, 2010, at a time when Student was enrolled in a different local education agency, although DMH’s recommendation was preconditioned upon an event (release from probation) that had not occurred. Student’s exact issues were addressed at a hearing, which resulted in findings of fact and conclusions of law.³

The decision in the prior case (OAH case number 2010050752) made findings of fact on the question of how Student came to be enrolled in District as of March 23, 2010 and why DMH’s February of 2010 conditional recommendations were not implemented. In particular, evidence was presented and findings were made regarding Student’s juvenile hall residency status prior to coming to District, the results of the DMH assessment and recommendations that were made prior to Student’s placement in District, and IEP team meetings held prior to Student’s placement in the District. The prior decision also made findings about the meaning of a March 16, 2010 order of the Los Angeles County Juvenile Court (Juvenile Court) that placed Student in the custody of the Probation Department for “suitable placement.” The prior decision made findings about how the March 16, 2010 “suitable placement” order allowed the Probation Department to determine Student’s placement. The prior decision also made factual findings, based on testimony from DMH, about how DMH acted given the language of the Juvenile Court order. The factual findings also described IEP meetings convened by District for Student in June and July of 2010. The findings and legal conclusions addressed whether Student should have been provided an out of state residential treatment center placement, including state laws regarding how DMH recommendations are to be treated by an IEP team, and coordination of placement decisions between courts and education agencies. The prior decision resolved that Student was placed in District by the Probation Department, who, under the March 16, 2010 Juvenile Court order had discretion to place Student in a “suitable placement.” The prior decision also resolved

³ In the instant complaint, Student appears to be alleging that his second issue was never properly heard in the prior case because the ALJ who conducted the preliminary hearing changed the wording of the issue from “Whether [District] has taken appropriate steps to provide [Student] with a FAPE, i.e., placement in the Residential Treatment Center, agreed to at his IEP” to “did District deny Student a FAPE by failing to implement placement of Student at a residential treatment center.” Replacing “taken appropriate steps” with “implement” is not a substantive difference, particularly when a review of the decision in OAH case number 2010050752 shows that it fully addressed all of Student’s contentions.

that the placement in District by the Probation Department, and the program he received there, did not deprive Student of a FAPE within the meaning of IDEA

The gist of the instant complaint is: “[Student] contends that Respondents have a duty to make an IEP offer of a specific AB 3632 residential placement and services, as identified by DMH, to [Student] but that they have failed to do so.” Like the prior case, the instant complaint argues for implementation of the conditional recommendations made by DMH pursuant to a February of 2010 assessment, and further hinges on interpretation of the March 16, 2010 Juvenile Court order. In essence, Student’s first three issues in the instant complaint all seek the same thing as he was seeking in the prior case, i.e., an order that despite Student being placed in the District under the custody of the Probation Department, District and DMH must implement a placement at an out of state residential treatment center.

Based on the analysis above, District and DMH are correct that the prior case fully addressed the issue of whether Student was denied a FAPE when residential treatment center placement was not implemented, upon Student’s enrollment in the District by the Probation Department from March 23, 2010, through May 20, 2010 (the date the prior case was filed). DMH did not need to be named as a respondent in the prior case in order for the decision to bar new allegations against DMH for the same issues. DMH is not a local education agency with a duty to provide Student a FAPE, but instead is designated by state law as the provider of mental health services that are required as a related service. (See Gov. Code, §§ 7572 & 7576.) Thus, if a particular student was found to have been provided with a FAPE by the local education agency, that finding includes a determination that all related services were properly provided. Here, DMH can only have breached a duty to Student if District did. However, following the testimony of DMH and District, the decision in the prior case found that Student was not deprived of a FAPE while enrolled in the District between March 23, 2010 and May 20, 2010. In particular, the decision in the prior case found that Student was provided with all appropriate treatment and made educational progress. In light of the prior decision, Student cannot now raise a separate claim against DMH for the same time period. Moreover, contrary to Student’s contention, the prior decision fully addressed the issue of District’s duty to adopt the recommendations of a county mental health agency, and found that District acted appropriately during the time period at issue.

Student further argues that he is not barred from a new hearing because the prior decision in OAH case number 2010050752 was erroneous in law and in its findings about the testimony of Kathryn Stroup from DMH. However, this argument does not address that even if Student disagrees with the decision in the prior case, that decision is the final administrative decision. (See Ed. Code, § 56505, subd. (h), *Wyner, supra*, 223 F.3d at p. 1030.) There is no exception to finality based on a party disagreeing with the results. Instead of a new hearing on the same issues for the same time period, Student has the remedy of appealing to a state or federal court of competent jurisdiction. (See Ed. Code, § 56505, subd. (k).)

Finally, Student opposes dismissal on the ground that issues after the May 20, 2010 filing date of the prior case were not addressed by the final decision in that matter. The

instant complaint includes factual allegations that after the prior complaint was filed, DMH should have been involved in IEP meetings in June and July and that DMH should have identified a residential treatment center placement for Student at that time. The instant complaint also includes a factual allegation that some time after the decision was issued in the prior case, Student had inappropriate sexual contact “with a resident at the Juvenile Hall,” which has not been addressed by District.⁴ There is some merit to this argument.

The decision in the prior case did not extend to whether Student was provided a FAPE after May 20, 2010, the date the complaint was filed. In addition, although the June and July District IEP team meetings were mentioned in the factual findings of the prior decision, they were addressed in the context of Student’s contention that an IEP should have been held by District within 30 days of March 23, 2010. Thus, in principle, Student may be able to allege claims that are not barred by the decision in the prior case.

However, as pleaded in the instant complaint, Student’s “new” allegations are inextricably entwined with a repetition of the allegations of the prior case and allegations that the decision in the prior case was incorrect in fact and law. Under the “Issue” headings, the new inappropriate sexual contact is mentioned only as the result of the alleged failure to implement the residential placement Student sought in the prior case. Thus, as pleaded, it cannot be determined from the instant complaint the exact legal theory under which Student is contending he was denied a FAPE after the May 20, 2010 filing date of the complaint in the prior case. Accordingly, the instant complaint will be dismissed as to Issues One, Two, and Three, without prejudice to Student filing a new complaint that sets forth his contentions regarding the time period after May 20, 2010.⁵

Issue Four – Section 504 and ADA claim

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.) or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.). Student acknowledges in the complaint that Issue Four was alleged for purposes of the federal court exhaustion requirement and that OAH lacks jurisdiction to make determinations under the cited civil rights statutes. Student’s acknowledgement is correct. The IDEA due process hearings conducted by OAH are limited in scope to whether a Student was provided with a FAPE within the meaning of title 20

⁴ It is not apparent from the complaint what Student means by “at the Juvenile Hall,” because the prior case established that Student was placed by the Probation Department at Rancho San Antonio, a private, non-profit group home that provides residential, therapeutic treatment for delinquent offenders.

⁵ However, if Student raises issues for the time period after May 20, 2010, to the extent his issues concern the facts found and legal conclusions adjudicated in the final administrative decision in OAH case number 2010050752, those findings of fact and legal conclusions will be binding on both parties.

United States Code et seq. and do not include issues of discrimination or compliance with the ADA. Accordingly, Issue Four (called “Issue No. 3” in the complaint) must be dismissed for lack of jurisdiction.

ORDER

1. Issues One, Two, and Three in the complaint in OAH case number 2010091072 are barred by the final decision in OAH case number 2010050752. Accordingly, the DMH and District motions to dismiss these issues are granted.

2. Issue Four (called “Issue No. 3” in the complaint) regarding section 504 and the ADA is outside OAH jurisdiction. Accordingly, the DMH and District motion to dismiss this issue is granted.

3. Dismissal of Issue One, Two, Three, and Four disposes of all issues, such that the entire complaint in OAH case number 2010091072 is dismissed. Dismissal of the complaint is without prejudice to Student filing a new complaint under a new case number that, consistent with this Order, addresses issues that arose after May 20, 2010.

4. The factual findings and legal conclusions in the final decision in OAH case number 2010050752 are binding on all parties should Student file a new complaint that alleges the same issues during a different time period.

Dated: October 28, 2010

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings