

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICTS.

OAH CASE NO. 2011020840

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On February 24, 2011, Parent filed a Due Process Hearing Request (complaint) naming Twin Rivers Unified School District (District). On March 8, 2011, District filed a Notice of Insufficiency (NOI) as to the complaint. On March 11, 2011, the Office of Administrative Hearings (OAH) granted the District's NOI as to 35 out of the 36 numbered issues stated in the complaint, and gave Student 14 days to file an amended complaint, or those issues deemed insufficient would be dismissed. On April 12, 2011, Student filed an amended complaint stating 33 numbered issues. On April 25, 2011, District filed an NOI as to 27 of the issues in Student's amended complaint, and a motion to dismiss allegations outside the statute of limitations. On April 28, 2011, OAH granted District's NOI and motion to dismiss as to Issues 1, 2, 5, 6, 7, 11, 12, part of issue 13, 14, 15, 18, 20, 21, 22, 24, 26, 27, 29, 30, 31, and 32 in the amended complaint. OAH allowed issues 3, 4, 8, 9, 10, part of 13, 16, 17, 19, 25, and 28¹ of Student's amended complaint to stand as sufficient, however all allegations in Student's amended complaint raising issues that occurred prior to April 12, 2009, were dismissed without prejudice.²

On August 22, 2011, the District filed a Motion to Dismiss all of Student's claims as being barred by res judicata or collateral estoppel pursuant to the decisions in *Student v. Twin Rivers Unified School District* (2009) Cal.Ofc.Admin.Hrngs. Case No. 2008110275 (*Twin Rivers I*) and *Twin Rivers Unified School District v. Student* (2011) Cal.Ofc.Admin.Hrngs. Case No. 2011020609 (*Twin Rivers III*), and the parties' March 17, 2010 Settlement

¹ The April 28, 2011 order did not address Issue 23, as noted in the District's August 16, 2011 Prehearing Conference statement, which requested a ruling on this issue. The August 18, 2011 Prehearing Conference Order found Issue 23 to be sufficient and included this issue as an issue for hearing.

² Student attempted to file a second amended complaint, which request was denied by OAH on June 7, 2011.

Agreement in *Student v. Twin Rivers Unified School District* (2009) Cal.Ofc.Admin.Hrngs. Case No. 2009110205 (*Twin Rivers II*). On August 29, 2011, Student submitted a response. The same day, the District objected to Student's response for not being timely. However, Student's response is timely pursuant to the August 26, 2011 order regarding Student's motion for reconsideration.

APPLICABLE LAW

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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 Individuals with Disabilities Education Act (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.

In *Nev. v. United States* (1983) 463 U.S. 110 [103 S.Ct. 2906, 77 L.Ed.2d 509], the United States Supreme Court stated that “the doctrine of res judicata [claim preclusion or issue preclusion] provides that when a final judgment has been entered on the merits of a case, ‘[it] is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.’” (*Id.* at pp. 129-130 [citation omitted].) In other words, res judicata and collateral estoppel also preclude the use of evidence that was admitted, or could have been offered, at a prior proceeding.

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).)

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.) Even if a contract appears to be unambiguous on its face, a party may offer relevant extrinsic evidence to demonstrate that the contract contains a latent ambiguity; however, to demonstrate an ambiguity, the contract must be “reasonably susceptible” to the interpretation offered by the party introducing extrinsic evidence. (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391, 393.)

DISCUSSION

The parties have already participated in two prior administrative hearings and settled another matter pursuant to a settlement agreement. The District asserts that the decision in *Twin Rivers I* bars Student from raising any claims that the District denied him a free appropriate public education (FAPE), either substantively or procedurally, through the conclusion of the hearing, August 31, 2009. As to *Twin Rivers II*, the District contends that Student waived all claims through March 17, 2010, related to the issues in that complaint. Finally, as to *Twin Rivers III*, the District concedes that the decision found that it did not offer Student a FAPE in its January 28, 2011 individualized education program (IEP), but

that the decision also made other findings of facts that resolve issues raised in this present matter.

Twin Rivers I

The issues for hearing in *Twin Rivers I* were from December 2006 through the dates of that hearing, did the District deny Student a FAPE by failing to implement his IEPs as to speech and language therapy, and failure to provide appropriate transportation. Additionally, Student contended for the 2007-2008 and 2008-2009 school years (SYs) that the District failed to ensure his safety on the school bus, and during SY 2008-2009 violated Parent's procedural rights to participate in the IEP process. The District prevailed on all issues, and the decision is final as Student did not present evidence that the matter is on appeal.

In the present matter, Student alleges in Issue 3 that the District violated Parent's procedural rights by not permitting her to participate in the development of the June 2009 IEP team meeting. In Issue 4, Student alleges that the District did not provide an interpreter from April 12, 2009 through the June 10, 2010 at IEP team meetings. In Issue 28, Student contends that the District denied Parent's procedural rights by not considering her input at IEP team meetings from April 12, 2009 through January 2011. The Decision found that the District did not deny Parent's procedural rights during SY 2008-2009, including the June 2009 IEP team meeting and that she participated fully in the IEP team meetings. (*Twin Rivers I*, Legal Conclusions 14 – 20, pp. 19 – 21.) Therefore, Issue 3, and Issues 4 and 28 through the end SY 2008-2009, are dismissed as being barred by res judicata.

Twin Rivers II

In *Twin Rivers II*, Student filed his complaint on November 9, 2009, which alleged six issues for hearing concerning the District's proposed IEP failing to provide Student with a FAPE, failing to assess Student in all areas of suspected disability, request for an independent education evaluation (IEE) and various procedural violations regarding how the District conducted IEP team meetings. The parties resolved *Twin Rivers II* on March 17, 2010, through a settlement agreement. Student subsequently moved to set aside the Settlement Agreement and reopen the matter, which OAH denied on April 1, 2011. Student filed a writ of mandate to set aside OAH's order, which is still pending on appeal.

The Settlement Agreement states that the parties waive all claims related to *Twin Rivers II* regarding purported actions or inactions of the District. As to Issues 4 and 28, the Settlement Agreement bars any claims that the District violated Parent's procedural rights through March 17, 2010, based on allegations in the complaint that the District violated her procedural rights. Therefore, as Student has not obtained any relief to set aside the Settlement Agreement because the matter is still on appeal, Issues 4 and 28 through March 17, 2010, are barred by the terms of the Settlement Agreement.

Twin Rivers III

In *Twin Rivers III*, the District's complaint requested an order that its January 28, 2011 IEP provided Student with FAPE and it could implement this IEP over Parent's objection. The June 28, 2011 decision found against the District, holding that the District violated Parent's procedural rights in the development of the IEP because the District predetermined its IEP offer, did not consider information presented by Parent, IEP team meeting was not properly noticed, and the District misled Parent regarding whether it was continuing the January 28, 2011 IEP team meeting. (*Twin Rivers III*, Legal Conclusions 11, 12 and 14, p. 16.)³ The decision rejected Student's contention that the January 28, 2011 IEP denied him a FAPE because the District considered the psychoeducational IEE conducted by Dr. Stephen Brock in developing its IEP offer. The decision found the District had timely given Parent a copy of Dr. Brock's report, reviewed it at an IEP team meeting and that the psychoeducational assessment was properly conducted and contained accurate information about Student. (*Twin Rivers III*, Legal Conclusion 13, p. 16.)

As to Student's contention in Issue 4 that the District failed to provide her with an interpreter at IEP team meetings, the Decision did not address this issue. Therefore, Student may raise whether the District violated her procedural rights in Issue 4 from March 18, 2010 through June 2010.

In Issue 8, Student alleges that the District denied him a FAPE by failing to provide him with home hospital instruction from January 2011 through the present. Whether the District was required to provide Student with home hospital instruction as stay put as of January 2011, OAH denied Student's stay put request on March 15, 2011, because home hospital instruction was not Student's last agreed-upon and implemented educational program. Student did not appeal the denial of stay put for home hospital instruction. If Student contends that the District denied him a FAPE because the January 28, 2011 IEP did not offer him hospital instruction, the *Twin Rivers III* decision made no factual findings as to the appropriateness of the District's placement offer. Therefore, Issue 8 is limited to the substantive issue as to whether Student required home hospital instruction after January 2011 to receive a FAPE.

As to Issues 9 and 10, the decision did not decide the factual issue whether the District failed to properly deliver home hospital instruction to Student. As to Issue 13, the decision made findings that the District violated Parent's procedural rights by failing to convene a continuation of the January 28, 2011 IEP team meeting after her request. Therefore, the only issue at hearing on Issue 13 shall be the remedy for the District's violation.

³ The District's motion to dismiss concedes as to the findings of fact in the *Twin Rivers III* decision, therefore the issue whether the decision is final is not relevant to the District's motion to limit issues for hearing.

Issues 16 and 17 regard Parent's request for a speech and language and psychoeducational IEE and whether Student is entitled to an IEE based on the District's purported failure to timely respond to Parent's requests. These issues were not decided in the decision and therefore not dismissed.

In Issue 19, Student alleges that the District violated Parent's procedural rights by refusing to permit her to tape record the August 2010 IEP team meeting. The decision made no findings as to this issue, and therefore it is not dismissed. Regarding Issue 23, the decision made no finding regarding the scheduling of the June 2010 IEP team meeting, and therefore this issue is not dismissed.

In Issue 25, Student objects to the inclusion of Dr. Brock's assessment in the IEP development process. Because the time for appeal has not lapsed and Student does not concede this issue, Issue 25 is not dismissed.

Finally as to Issue 28, the decision found that the District violated Parent's procedural rights at the January 28, 2011 IEP team meeting by not considering her input. While the decision discussed other IEPs, the only relevant finding was made regarding the January 28, 2011 IEP team meeting as to the consideration of parental input. Therefore, Student's contentions regarding IEP team meetings from March 18, 2010 through January 27, 2011 are at issue, and the only issue at hearing on Issue 28 as to the January 28, 2011 IEP team meeting shall be the remedy for the District's violation.

ORDER

1. District's motion to dismiss is granted in part as Issue 3, and Issues 4 and 28 through the end SY 2008-2009, are dismissed as being barred by res judicata
2. District's motion to dismiss is granted in part as Issues 4 and 28 through March 17, 2010, are barred by the terms of the Settlement Agreement. Issue 4 is limited to purported violations from March 18, 2010 through June 2010.
3. District's motion to dismiss is granted in part as Issue 8 is limited to the substantive issue of whether Student required home hospital instruction after January 2011 to receive a FAPE.
4. District's motion to dismiss is denied as to Issues 9 and 10.
5. District's motion to dismiss is granted in part as the only issue at hearing on Issue 13 shall be the remedy for the District's violation.
6. District's motion to dismiss is denied as to Issues 16, 17, 19, 23 and 25.

7. District's motion to dismiss is granted in part as the only issue at hearing on Issue 28 as to the January 28, 2011 IEP team meeting shall be the remedy for the District's violation.

Dated: August 29, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings