

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL  
DISTRICT.

OAH CASE NO. 2012060148

ORDER GRANTING MOTION TO  
DISMISS COMPLAINT

On June 1, 2012, Parents on behalf of Student filed a request for a due process hearing (complaint) in the present case with the Office of Administrative Hearings (OAH) naming the Cupertino Union School District (District).

On June 11, 2012, District filed a motion to dismiss Student's complaint on the grounds that his sole issue for hearing was barred by the "doctrine of res judicata/collateral estoppel" because the same issue was pending in an action between Student and District, *Student v. Cupertino Union School District*, in Office of Administrative Hearings (OAH) Case No. 2012020850 (first case). The first case was heard on May 21 and 22, 2012, before Administrative Law Judge (ALJ) Deidre L. Johnson. On June 20, 2012, OAH issued an order, dated June 19, 2012, denying District's motion without prejudice because the first case was still pending and there was no final judgment yet.

On July 10, 2012, the undersigned ALJ issued a final Decision in the first case. On July 18, 2012, District filed a new motion to dismiss Student's present case on the same grounds as those in the first motion. On July 23, 2012, Student filed an opposition to the motion. On the same date, District filed a reply. On July 24, 2012, both parties filed replies.

APPLICABLE LAW

*Res Judicata and Collateral Estoppel*

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* (1980) 449 U.S. 90, 94, 101 S.Ct. 411; see 7 Witkin, California Procedure (4th Ed.), Judgment § 280 et seq.) Under the related doctrine of 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* (1961) 55 Cal.2d 728, 732, 361 P.2d 712; *People v. Sims* (1982) 32 Cal.3d 468, 479, 651 P.2d 321.)

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 IDEA shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from that in a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.)

### *Finality of Decisions*

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.

### *Procedural Violations*

Procedural flaws do not automatically require a finding of a denial of a free appropriate public education (FAPE). A procedural violation does not constitute a denial of FAPE unless the procedural inadequacy (a) impeded the child's right to a FAPE; (b) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE; or (c) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(i) & (ii); Ed. Code, § 56505, subd. (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.)

### *Ripeness*

A party has the right to present a special education due process 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) [party has a right to present a complaint regarding matters involving a *proposal* or *refusal* to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) There is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution "if it rests upon 'contingent future events that

may not occur as anticipated, or indeed may not occur at all.’” (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted].)

## DISCUSSION

As provided in the Decision filed on July 10, 2012, Student’s second issue for hearing in the first case was:

Did District deny Student a FAPE when it failed to consider the private evaluation report of Dr. Damon Korb in connection with the February 16, 2012 Individualized Education Program (IEP) team meeting?

The above language simplified the complex legal standards applicable to its evaluation. First, the issue described a possible procedural violation of the IDEA. As such, it necessarily implicated the question whether Parents’ opportunity to participate in the IEP decision-making process was significantly impeded by District’s failure to consider Dr. Korb’s report. In addition, the issue implicated the question whether the District predetermined its offer at the February 16, 2012 IEP team meeting without considering the private evaluation report.

The July 2012 Decision determined that the above questions were not and could not be reached in the first case because the undisputed facts established that the District did not make any offer of placement and services at the February 16, 2012 IEP team meeting. Thus, because there was no FAPE offer, there was no ripe or actionable dispute about District’s proposals or refusals for Student’s placement, related services, or provision of a FAPE.

In addition, to the extent that any procedural violation was shown, the Decision found that District immediately cured it by considering Dr. Korb’s report during the team meeting, and continuing the meeting to further consider it before making an offer of placement and services. The evidence established that the continued meeting was not held, Parents declined to attend, and District did not make an offer until March 29, 2012. The Decision also found that District’s March 29, 2012 IEP offer of placement and services was not at issue because it had not even been made when Student filed his complaint on February 22, 2012, and Student declined to move to amend his complaint.

Specifically, Paragraph 21 of the Legal Conclusions in the July 2012 Decision determined as follows:

Because District did not make an offer of placement and services at the February 16, 2012 IEP team meeting, there was no ripe or actionable dispute about District’s proposals or refusals for Student’s placement, related services, or provision of a FAPE. Even if a court could find there was an actionable dispute about the February 16, 2012 IEP team meeting, the evidence established that the District members of the IEP team did not come to that

meeting with a predetermined offer, considered Dr. Korb's report during the meeting, and were willing to continue to consider it at a continued IEP team meeting. Student therefore did not sustain his burden to establish that District denied him a FAPE with respect to draft proposals in the midst of an incomplete IEP process.

Student's present complaint, in OAH Case Number 2012060148, contains the following sole issue for hearing:<sup>1</sup>

Whether the District denied Student a FAPE because the District unilaterally predetermined the February 16, 2012 annual IEP before considering the private evaluation of Dr. Damon Korb available with the School District, and before the IEP team meeting with the parents.

Student's present issue is accompanied by a statement of supporting facts as required by law. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) However, the supporting facts simply refer to the February 16, 2012 IEP meeting and the draft IEP discussed on that date. The facts contain no reference to District's IEP offer as contained in its letter dated March 29, 2012, and the accompanying IEP (that was still dated February 16, 2012.)<sup>2</sup>

Under the doctrine of res judicata, Student is estopped from relitigating the above procedural violation issue in connection with the February 16, 2012 IEP team meeting. The Decision in the first case found that the District did not make any offer of placement and services at that meeting and Student's complaint was premature. Thus, Student's present issue could only be a new and separate issue if it involved a problem about District's actual offer of placement and services. While Student is entitled to label it "the February 16, 2012 IEP" because the date on the IEP documents was not changed, the supporting facts must reference an actual offer in dispute, made after the February 16, 2012 IEP meeting. Accordingly, Student's present complaint still does not involve a ripe or actionable dispute, even though it was filed after District's offer was made, because the issue is poorly worded and Student does describe any IEP offer in the supporting facts.

Based on the foregoing, Student's present complaint is precluded because, on its face, it involves the same procedural issues as those involved in his second issue in the first case. Since the Decision in that case is final, Student may not relitigate the issues in connection with the February 16, 2012 IEP meeting. However, Student is not precluded from filing a new complaint that adequately describes problems about District's actual offer of placement and services, made in March 2012. District's motion is therefore granted.

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<sup>1</sup> Student's present issue has been slightly reworded for consistency and clarity but has not been changed.

<sup>2</sup> See District's Exhibits 22 and 25 in the first case.

ORDER

Student's complaint filed in the present case on June 1, 2012, is dismissed without prejudice.

Dated: July 30, 2012

/s/

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DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings