

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012100242

ORDER DENYING MOTION TO
DISMISS

BACKGROUND INFORMATION

Student filed a request for due process (complaint) on October 3, 2012, naming the Fresno Unified School District (District). Student's complaint raises a number of issues. Generally, she alleges that the District substantively denied her a free appropriate public education (FAPE) for school years 2010-2011, 2011-2012, and 2012-2013, for numerous reasons. Student also contends that the District procedurally denied her a FAPE for the 2012-2012 school year.

On October 12, 2012, the District filed a response to Student's complaint. The District simultaneously filed a motion to dismiss the complaint. Student filed an opposition to the District's motion on October 17, 2012.

The District contends that Student's issues regarding the 2010-2011 school year are moot because the District acceded to Parent's requests regarding Student's individualized education program (IEP) for that school year. The District therefore contends that Student may not challenge her educational program for school year 2010-2011. With regard to the 2011-2012 school year, the District contends Student's complaint is moot and barred by the doctrine of res judicata because the Office of Administrative Hearings (OAH) has already addressed issues relating to that school year in its decision in *Student v. Fresno Unified School District* (Aug. 3, 2012) Cal.Offc.Admin.Hrngs., Case No. 2012010705. Finally, the District contends that issues pertaining to Student's placement and services for the 2012-2013 school year are premature (or "unripe"), are barred by the Student's "unclean hands," and that the remedies requested are beyond the District's jurisdiction.

DISCUSSION

Motions for Summary Judgment

As an initial observation, although the District entitles its motion as one to dismiss, it is, in reality, a motion for summary judgment. The District's bases for its motion are all

contingent on factual information, most of which is provided by the District either by exhibits attached its motion or by declarations submitted in support of the motion.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure. Here, the District's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, based upon factual information outside the information provided in Student's complaint. This basis alone is grounds to deny the District's motion.

Mootness, Res Judicata and Unclean Hands

The District contends that Student's allegations concerning school year 2010-2011 are moot because the District honored the request made by Student's parent that Student be placed for a fifth year at Duncan Polytechnic High School in Student's June 2010 IEP. The District appears to argue that because Student's parent agreed to Student's IEP at the time it was developed, Student is foreclosed from challenging the adequacy of the IEP for the 2010-2011 school year. The District offers no statutory or case law authority in support of this novel contention and this Administrative Law Judge is not aware of any.

The District then contends that Student's issues as to school year 2011-2012 are precluded under the doctrine of res judicata by the decision of OAH in Case number 2012010705, filed by Student in January 2012. In that case, Student alleged the following:

1. Did the District predetermine Student's placement prior to the December 12, 2011 individualized education program (IEP) team meeting?
2. Did the District prevent Mother from actively participating in the IEP process by not considering parental input in the following areas:
 - a. Student's placement;
 - b. Student's academic and social progress;
 - c. Student's goals and objectives; and
 - d. By failing to provide Mother with necessary information?

In its August 3, 2012 Decision, OAH found in favor of Student on all issues. As a remedy for the procedural violations found, OAH ordered the District to provide Student with a comprehensive independent educational evaluation. OAH also ordered Student's mother to make Student reasonably available for the assessments.

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.)

Here, Student is alleging a substantive denial of FAPE for the 2011-2012 school year. The issues she raised in Case Number 2012010705 were all procedural violations during the IEP process. She did not challenge the substance of the IEP's offered by the District during that school year. Since Student never raised those issues in any previous complaints, and was not required to do so under the IDEA, she is not precluded from raising them now in a new proceeding.

The District also alleges that Student's issues as to school year 2011-2012 should be dismissed based upon the doctrine of "unclean hands." The District argues that the Student has not permitted it to assess her and has not complied with the OAH order in Case Number 2012010705. The District therefore contends that Student should not be permitted to challenge her educational program during the 2011-2012 school year. However, the doctrine of unclean hands is an affirmative defense based upon facts presently in dispute. Determining whether Student engaged in the conduct alleged requires a review of facts outside the four corners of Student's complaint. Although the District has entitled the instant motion a motion to dismiss, its inclusion of extrinsic evidence demonstrates that it is actually a motion for summary judgment. As stated above, OAH will not consider motions for summary judgment.

Premature or "Unripe" Allegations

The District moves to dismiss Student's allegations as to the 2012-2013 school year as premature because Student has not permitted the District to assess her. The District appears to be arguing that Student cannot bring a due process claim before the District has

had an opportunity to complete its assessment. The District's argument actually conflates two contentions: that Student's allegations for school year 2012-2013 are premature, and that the allegations should not be permitted to proceed because of Student's unclean hands in not permitting the assessment. As stated above, any allegation of unclean hands is an affirmative defense which must be raised and proven by evidence at hearing.

With regard to the District's allegations that Student's complaint as to the 2012-2013 school year are premature, the District's arguments are equally unpersuasive. Generally, 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].) The basic rationale of the ripeness doctrine is "to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

This concept of ripeness, however, must be analyzed within the context of the purposes of the IDEA (20 U.S.C. § 1400 et. seq.), which is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving 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].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Based upon the language of the IDEA and California's parallel statutes concerning special education, a party may present a claim based upon a *proposal or refusal* to initiate or change a child's educational placement. Here, Student contends that the present educational program developed by the District for the 2012-2013 school year was both procedurally and substantively inappropriate. The fact that the District has not had an opportunity to assess Student may be an affirmative defense to Student's allegations, but that fact does not preclude Student's allegations. Nor does the fact that an assessment may alter any future IEP's affect the validity of the program that was already offered.

Student's allegations against the District for the 2012-2012 school year are therefore ripe for adjudication.

Finally, the District contends that Student's proposed remedy of ordering the District to place her at a community college is not within the District's jurisdiction to accomplish. Again, whether the District is capable of complying with the remedy should Student prevail at hearing is a question of fact that must be addressed at hearing.

ORDER

The District's motion to dismiss Student's complaint is denied. The matter shall proceed as scheduled.

Dated: October 22, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings