

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015110902

ORDER DENYING DISTRICT'S  
MOTION TO DISMISS

On November 18, 2015, Student filed a due process hearing request (complaint, with the Office of Administrative Hearings, naming Folsom Cordova Unified School District.

On December 10, 2015, District filed a motion to dismiss on the grounds that Student's claim (1) was decided in a prior decision and is therefore barred by res judicata and collateral estoppel, and (2) is barred by the two-year statute of limitations.

On December 14, 2015, Student filed an opposition. On December 15, 2014, District filed a reply.

APPLICABLE LAW

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, such as civil rights claims, special education law does not provide for a summary judgment procedure. A motion to dismiss will be denied if it requires a ruling on the merits, including factual findings on disputed evidence and legal conclusions.

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (1), establish exceptions to the statute of limitations in cases in which (i) the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or (ii) the local educational agency's withholding of information from the parent that was required to be provided to the parent.

Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action. 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. These doctrines 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 v. McCurry* (1980) 449 U.S. 90, 94 [66 L.Ed.2d 308]; see, 7 Witkin, Cal. Procedure (4th ed. 1997) Judgments, § 280 et seq.) More modern and precise terms for res judicata and collateral estoppel are claim preclusion and issue preclusion. (See, 7 Witkin, Cal. Procedure (4th ed. 1997) Judgments, § 282, p. 822.)

In California, issue preclusion applies to a decision reached in a quasi-judicial administrative proceeding. (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 944; *People v. Sims* (1982) 32 Cal.3d 468, 479-84; see also, *Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control* (1961) 55 Cal.2d 728, 732 [res judicata].) Accordingly, issue preclusion applies to special education due process hearings in California (see, e.g., *Student v. San Diego Unified School Dist.* (Aug. 1, 2005) SEHO No. SN 2005-1018.)

However, the Individuals with Disabilities Education Act contains a section that modifies the general analysis with regard to claim preclusion and issue preclusion. 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 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.

Issues are identical for the purposes of issue preclusion if identical factual allegations are at stake. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342.) An issue in an IDEA due process hearing may be identical to that in a previous hearing, even though the second hearing involves a different school year. (*Frutinger v. Hamilton Central School Dist.* (App.Div. 1996) 644 N.Y.S.2d 582, 584)[“The mere fact that a subsequent [IDEA] action involves different years does not render the doctrine of res judicata inapplicable .... [T]he gravamen of the wrong is the same ... .”].)

## DISCUSSION

In 2015, Student and District filed due process hearing requests and went to hearing on multiple issues, including whether District had denied Student a free appropriate public education for the 2012-2013 school year by failing to provide Student with independent psychoeducational and academic evaluations. OAH issued its decision on July 21, 2015. (*Student v. Folsom Cordova Unified Sch. Dist. and Folsom Cordova Unified Sch. Dist. v. Student*, Cal.Ofc.Admin.Hrngs. Consolidated Case Nos. 2015010431 and 2014121009.) The decision in those consolidated cases found that District had agreed to fund an independent psychoeducational evaluation; that Student did not prove that District failed to provide the independent evaluation as agreed; and that Student was not entitled to reimbursement for a private assessment Parent had obtained and funded.

In the instant matter, Student's complaint alleges that Student was denied a free appropriate public education during the 2015-2016 school year on the following facts: Parents disagreed with District assessments; Parents requested independent educational evaluations in January and February 2013 to which District did not respond; Parents obtained a private neuropsychological evaluation in March 2014 when no response was received; on May 1, 2014, District responded that it would not reimburse Parents for the private neuropsychological evaluation, but would fund an independent educational evaluation. The instant complaint does not mention the intervening hearing nor the July 21, 2015 decision. It proceeds to allege that (after the decision was issued) when Parents requested a list of approved independent evaluators on September 27, 2015, District responded on October 15, 2015 that it would not fund an independent psychoeducational evaluation.

District argues that it had agreed to fund the independent evaluation in May 2013, outside the statute of limitations, and that the June 2015 OAH decision conclusively found that Student did not prove that District had failed to fund an independent evaluation. Student's opposition contends that the current complaint is based upon District's May 2014 agreement to fund an independent evaluation and its subsequent October 2015 refusal to do so, both of which are District actions well within two years of the filing of Student's complaint and not previously adjudicated. District's response asserts that District's agreement to fund an independent evaluation was embodied in a letter dated May 29, 2012, outside the statute of limitations, and that the letter dated May 1, 2014 merely referenced and attached that prior letter, and did not constitute a new agreement to fund an evaluation.

Student's claim suggests that the claim or issue decided in the prior case may be different from that presented in Student's current complaint, and did not require the factual inquiry necessary here. Whether the prior decision's holding that Student did not prove that District failed to fund an independent evaluation absolved District of any obligation to fund such an assessment, and supported District's October 2015 refusal to fund, are issues of fact and law to be decided upon the evidence and factual findings. These issues of fact and law are central to Student's complaint, as well as District's affirmative defenses, and cannot be decided in a summary procedure by way of motion to dismiss.

Student has alleged an agreement by District to fund an independent evaluation within two years of filing the complaint, and the circumstances surrounding District's response are disputed and may not have been considered in the prior decision between the parties.

Accordingly, District's motion to dismiss on the grounds that Student's claim is beyond the statute of limitations, or barred by res judicata, is denied in its entirety.

IT IS SO ORDERED.

DATE: December 21, 2015

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings