

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

FREMONT UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009110466

ORDER GRANTING IN PART AND
DENYING IN PART THE MOTION TO
DISMISS; DENYING REQUEST FOR
SANCTIONS

On November 12, 2009, Student filed a Request for Due Process Hearing (complaint), against the Fremont Unified School District (District). On November 20, 2009, attorney Damara Moore, on behalf of the District filed a Motion to Dismiss, alleging that Student's claims were previously litigated. The District also moved for sanctions against Student for frivolous and bad faith tactics based in filing the complaint because Student knew that the prior decision barred her claims. On November 25, 2009, Student filed an opposition to the District's motion. The same day, Student filed an amended complaint that alleged one additional hearing for issue. On December 1, 2009, the District filed a motion to dismiss the amended complaint and requested sanctions.

APPLICABLE LAW

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.)

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.

An Administrative Law Judge (ALJ) is authorized to issue sanctions to shift the expenses to a party acting in bad faith, or using tactics that are frivolous or solely intended to cause unnecessary delay to the other party and/or their attorneys. (Gov. Code, § 11455.30; Code Civ. Proc., § 128.5.) Sanctions may include reasonable attorneys’ fees and expenses. (*Ibid.*) The authority of an ALJ to shift expenses in special education matters is further supported by the California Code of Regulations, title 5, section 3088. The authority provided to an ALJ in special education hearings is similar to other administrative hearings held pursuant to Government Code section 11455.30.¹

Government Code section 11455.30 references Code of Civil Procedure section 128.5. California cases applying section 128.5 hold that a trial judge must state specific circumstances giving rise to the award of expenses and articulate with particularity the basis for finding the sanctioned party’s conduct reflected tactics or actions that were performed in bad faith, and were frivolous, designed to harass, or designed to cause unnecessary delay. (*Childs v. Painewebber Inc.* (1994) 29 Cal.App.4th 982, 996; *County of Imperial v. Farmer* (1998) 205 Cal.App.3d 479, 486.) The trial judge must provide advanced notice and the opportunity to be heard before sanctions can be imposed. (*Pacific Trends Lamp and Lighting Products, Inc. v. J. White, Inc.*, (1998) 65 Cal.App.4th 1131, 1136.) The purpose of the statute is not only to compensate, but it is also a means of controlling burdensome and unnecessary legal tactics. (*On the Cow Hollow Properties* (1990) 222 Cal.App.3d 1577.)

¹ Section 3088 refers to “presiding hearing officers.” However, the ALJ presiding over the hearing is the presiding officer. Government Code section 11405.80 states: “Presiding officer means the agency head, member of the agency head, administrative law judge, hearing officer, or other person who presides in an adjudicative proceeding.” This section makes clear that an ALJ who presides in an adjudicative proceeding is the “presiding officer,” a point confirmed in *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F. 3d 1026, 1029, where the court stated, “Clearly, § 3088 allows a hearing officer to control the proceedings, similar to a trial judge.”

Bad faith is shown when a party engages in actions or tactics that are without merit, frivolous, or intended to cause unnecessary delay. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.) However, the bad faith requirement does not impose a determination of evil motive, and subjective bad faith may be inferred. (*Id.*, at p. 702.)

A District Court or state court has jurisdiction to award a local education agency attorneys' fees "against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation." or "against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation." (20 U.S.C. § 1415(i)(3)(B)(ii) and (iii); 34 C.F.R. § 300.517(a)(ii) and (iii) (2006).)

DISCUSSION

Motion to Dismiss

Student alleges in the complaint and amended complaint that the District denied her a free appropriate public education (FAPE) by failing to assess her learning difficulties, not assessing her in all areas of suspected disabilities and refusing to consider information from her Parent's at the December 11, 2008 individualized educational program (IEP) meeting. The District asserts that these issues were fully litigated in *Freemont Unified School District v. Student* (March 25, 2009) Cal.Ofc.Admin.Hrngs. Case No. 2009020278, in a decision that upheld the District's psychoeducational assessment, as reported at the December 11, 2008 IEP meeting, and denied Student's request for an independent educational evaluation. Student did not appeal this decision.

Regarding Issues One and Three of the complaint, Student asserts that the District failed to assess her learning disabilities and needed to conduct additional testing as part of the December 2008 psychoeducational assessment. In the amended complaint, Student alleges in the sole issue that the District misinterpreted the test results in the assessment. These issues were addressed in the March 25, 2009 Decision, which held that the District assessed Student in all areas of suspected disabilities and properly interpreted the test results. Therefore, Issues One and Three of the complaint and the amended complaint are dismissed because the adequacy of the District's December 2008 assessment was previously litigated between the parties in favor of the District.

Regarding Issues Two and Four of the complaint, Student alleges that the District failed to consider information presented by her Parents regarding her specific learning disability at the December 11, 2008 IEP meeting, and she would have qualified for special education services if the District considered this information. The issue of whether the District considered information presented by Parents at the December 11, 2008 IEP meeting and Student's eligibility for special education services was not an issue for hearing in the

March 25, 2009 Decision. Therefore, Issues Two and Four of the complaint are not barred by collateral estoppel.

Request for Sanctions

The District contends that Student acted in bad faith and engaged in frivolous tactics in filing the complaint and amended complaint because Student knew that the prior decision resolved Student's claims in the complaint and amended complaint. Because Issues Two and Four of the complaint were not barred by collateral estoppel and therefore not frivolous, the District's motion for sanctions is denied.

ORDER

1. The District's Motion to Dismiss is granted as to Issues One and Three of the complaint and the sole issue in the amended complaint.
2. The District's Motion to Dismiss is denied as to Issues Two and Four of the complaint, and will proceed as scheduled as to those issues.
3. The District's motion for sanctions is denied.

Dated: December 7, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings