

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR VALLEY UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2012070653

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On July 23, 2012, Student's Parent filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH) on behalf of Student, naming the Victor Valley Union High School District (District). On August 7, 2012, the District filed a motion to dismiss the case due to Student's parent's failure to serve District with a copy of the complaint. On August 15, 2012, OAH served its Order Denying Motion to Dismiss, and extended the procedural timelines and reset the scheduled dates. Student was ordered to serve District with the complaint within two days. On August 20, 2012, District renewed its motion on the grounds that Student had not served the complaint. On August 23, 2012, Student filed an amended objection, claiming she had just served the parties with the complaint. On August 24, 2012, OAH issued an order that reset the procedural timelines to August 22, 2012.

On September 5, 2012, the District filed a Motion to Dismiss Issues 1A, part of 1B, part of 1BBBB, 1C and 2 in Student's complaint as being barred by res judicata pursuant to the decision in *Student v. Victor Valley Union High School District* (March 12, 2012) Cal.Ofc.Admin.Hrngs. Case Nos. 2011080031 and 2011080382 (March 12, 2012 Decision). On September 6, 2012, Student filed an opposition.

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 a prior administrative hearing. The District asserts that the March 12, 2012 Decision bars Student from raising any claim that the District denied him a free appropriate public education (FAPE), either substantively or procedurally, through July 29, 2011, in Issues 1A, part of 1B, part of 1BBBB, 1C and 2. Student contends that these claims are not precluded by the March 12, 2012 Decision because Student did not allege the purported violations of FAPE against the District. Neither party appealed the March 12, 2012 Decision, so it is a final decision.

Regarding Issue 1A, Student alleges that the District denied him a FAPE by failing to conduct an individualized education program (IEP) team meeting to discuss his need for tutoring. Student's issues for hearing in the March 12, 2012 Decision do not allege any denial of FAPE by the District in October 2010 or that the District denied him a FAPE during the times relevant in the March 12, 2012 Decision by not discussing or providing Student with tutoring services. Factual Findings in the March 12, 2012 Decision regarding educational therapy and education supports are not presumptively equivalent of whether the District needed to convene an IEP in October 2010 to discuss tutoring. Therefore, Issue 1A is not barred by res judicata.

As to Issue 1B that occurred on or before July 29, 2011, Student alleges that the District denied him a FAPE from October 2010 through July 29, 2011, by not using response to intervention (RTI) for English, science, math, history and social studies to examine his educational needs and deficits. The March 12, 2012 Decision contains no discussion about RTI and whether the District assessed Student in all areas of suspected disability. Therefore, Issue 1B that occurred on or before July 29, 2011 is not barred by res judicata.

As to Issue 1BBBB that occurred on or before July 29, 2011, Student alleges that the District denied him a FAPE by failing to offer him college preparatory classes. While March 12, 2012 Decision does not discuss specifically whether the District should have offered Student college preparatory classes, the decision does discuss in great depth whether

the District should have modified Student's curriculum as an issue for hearing. (Student's Issue 2i in the March 12, 2012 Decision.) Student could have raised his need for college preparatory classes in the prior hearing as to his challenge to the District's curriculum. Accordingly, Student's claims in Issue 1BBBB that occurred on or before July 29, 2011 are barred by res judicata.

Regarding Issue 1C, Student alleges that the District denied him a FAPE by failing to conduct the career assessment pursuant to the April 18, 2011 assessment plan. While Student litigated in the prior hearing whether the District failed to conduct the functional analysis assessment in the April 18, 2011 assessment plan, Student did not litigate the career assessment agreed to in the same assessment plan. Student's proposed resolution does not seek any finding that the District's subsequent June 2, 2011 IEP denied him a FAPE due to the District's purported failure to conduct this assessment. Instead, Student seeks an order that the District fund an independent career assessment. Therefore, Issue 1C is not barred by res judicata.

Finally as to Issue 2, Student alleges that the District denied him a FAPE by failing to conduct an educational academic assessment before the June 2, 2011 IEP team meeting. Student could have raised this argument in the prior hearing as to the District's issue for hearing whether its June 2, 2011 IEP offer provided Student with a FAPE and Student's challenge of the District's June 2, 2011 placement offer. A ruling in Student's favor as to Issue 2 would necessitate a finding that the District's June 2, 2011 IEP denied Student a FAPE, which would be contrary to the March 12, 2012 Decision finding that the District's June 2, 2011 IEP provided Student with a FAPE, as specified in the decision. Therefore, Issue 2 is barred by res judicata.

ORDER

1. The District's motion to dismiss is granted in part as to Issue 1BBBB that occurred on or before July 29, 2011, and Issue 2 as being barred by res judicata
2. The District's motion to dismiss is denied as to Issues 1A, part of 1B, and 1C.

Dated: September 10, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings