

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA BARBARA SCHOOL DISTRICT.

OAH CASE NO. 2012110048

ORDER DENYING MOTION TO
DISMISS

On January 9, 2013, Mary L. Kellogg, attorney for the Santa Barbara Unified School District (District) filed a Motion to Dismiss Student's request for due process hearing (complaint), filed with the Office of Administrative Hearings (OAH) on October 31, 2012. On January 14, 2013, OAH received Student's opposition filed by attorney Andrea Marcus. On January 15, 2013, OAH received Student's First Amended Opposition.

The District provides two arguments in support of its request to dismiss Student's complaint. First, the District contends that Student's complaint is barred by the doctrine of res judicata because OAH has already addressed the issue of a denial of a free appropriate public education (FAPE) relating to the August 2012 individualized education program (IEP) in its decision in *Parent on Behalf of Student v. Santa Barbara Unified School District* (January 4, 2013) Cal.Offc.Admin.Hrgs., Case No. 2012080468. Second, the District contends that Student's complaint should be dismissed as moot because the convening of a subsequent IEP team meeting, with a new offer of placement and services to which the parent consented, extinguished any existing case or controversy.

Student argues that his prior complaint filed with OAH did not address his pending claim of a substantive denial of a FAPE by way of the District's August 2012 IEP, and therefore, his current claim is not barred. Furthermore, regardless of the convening of the November 2012 IEP and subsequent offer, the issue of a substantive denial of FAPE by way of the August 2012 IEP remains a live issue.

APPLICABLE LAW

Res Judicata

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, 66 L.Ed.2d

308]; 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.*; *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.

However, the Individuals with Disabilities Education Act (IDEA) includes 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.

Mootness

Under the doctrine of mootness, a court may refuse to hear a case because it does not present an existing controversy by the time of decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.) However, mootness is not a jurisdictional defect. (*Plymouth v. Superior Court* (1970) 8 Cal.App.3d 454, 460.) A case may be moot when the court cannot provide the parties with effectual relief. (*MHC Operating Ltd.*

Partnership v. City of San Jose (2003) 106 Cal.App.4th 201, 214.) An exception to the mootness doctrine is made if a case presents a potentially recurring issue of public importance. (*DiGiorgio Fruit Corp. v. Dept. of Employment* (1961) 56 Cal.2d 54, 58.)

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.

DISCUSSION

The District maintains that the sole issue to be determined, whether the District's IEP offer dated August 14, 2012, denied Student a FAPE by failing to address his mental health and related truancy needs, has already been decided by Administrative Law Judge (ALJ) Rebecca Freie in her Decision in OAH Case No.2012080468, issued January 4, 2013. The District is not correct.

Here, Student is alleging a substantive denial of a FAPE pursuant to the August 2012 IEP offer. Student's first complaint addressed whether the District committed a *procedural* violation resulting in a denial of a FAPE by predetermining the outcome of the August 2012 IEP team meeting. Student correctly identifies that ALJ Freie very specifically stated in her decision in footnote 39, "It should be noted, however, that this is not a determination that the District made an offer of a FAPE, since this is not an issue to be decided in this case." (*Parent on Behalf of Student v. Santa Barbara Unified School District* (January 4, 2013) Cal.Offc.Admin.Hrgs., Case No. 2012080468.) In this matter, Student has raised a separate issue for hearing, namely, whether the District's August 2012 IEP offer *substantively* denied him a FAPE. Since Student did not raise this issue in his previous complaint, and was not required to do so under the IDEA at that time, he is not precluded from raising this issue now in a new proceeding.

The District next contends that Student's allegation concerning the August 2012 IEP offer is moot because the District subsequently convened a new IEP team meeting in November of 2012 and the November IEP team made a new offer that parent accepted. The District appears to argue that because Student's parent agreed to the implementation of the November 2012 IEP, Student is foreclosed from challenging the adequacy of the August 2012 IEP. The District offers no statutory or case law authority in support of this contention. The implementation of a new IEP does not render moot Student's claim that the August 2012 IEP denied him a FAPE. A case is moot if there is no existing controversy by the time of hearing. Student contends that the August 2012 IEP did not offer him a FAPE and he is currently seeking residential placement as both a compensatory and prospective remedy subject to proof at hearing. A live controversy exists and the case is not moot.

The District's request that OAH determine that Student's complaint is moot, is, in fact, a motion for summary judgment. The District's motion is contingent on factual

information, which the District provides by way of an attached IEP and declaration in support of its motion. The motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. To decide the District's motion to dismiss would require the type of evidence-taking and credibility determinations that will occur at hearing. The District fails to provide any authority that would authorize OAH to hear and determine the equivalent of a motion for summary judgment, without giving Student the opportunity to develop a factual record.

Accordingly, the motion to dismiss is denied in its entirety.¹ All dates currently set in this matter are confirmed.

ORDER

1. The District's Motion to Dismiss is denied.
2. The matter shall proceed as scheduled.²

Dated: January 16, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

¹ There is a statement in the District's motion that should Student proceed to hearing, he does so for an improper purpose. This Order effectively renders that assertion moot.

² On January 10, 2013, OAH received a letter from the District wherein the District indicates that it is not available for the final day of hearing currently scheduled for Friday, February 15, 2013, due to a District-wide holiday. Parties shall be prepared to address scheduling issues at the prehearing conference on January 23, 2013, including calendaring a final day of hearing for the week of February 18, 2013 to be conducted telephonically.