

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

REDLANDS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013030738

ORDER DENYING MOTION TO
DISMISS

On March 15, 2013, Student's parents on behalf of Student (Student) filed a request for due process hearing (complaint), naming Redlands Unified School District (District).

On March 20, 2013, the District filed a motion to dismiss issue two of Student's complaint, arguing that the issue is barred by the doctrine of res judicata.

On March 21, 2013, Student filed an opposition to the motion.

APPLICABLE LAW

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].)

The doctrine of res judicata serves 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 res judicata is a judicial doctrine, it is 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. 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.

DISCUSSION AND ORDER

In June 2012, Student filed a complaint against the District in OAH case number 2012060370. There were two issues for hearing in that case:

- 1) Whether the District denied Student a free appropriate public education (FAPE) by failing to consider, develop and use Student’s preferred mode of communication in Student’s May 21, 2012, individualized education program (IEP).
- 2) Whether the (a) services and (b) placement offered in the May 21, 2012 IEP offered Student a FAPE.

On December 24, 2012, OAH issued a decision in that case, finding in favor of Student on Issue 2(b) that the placement offered to Student in that IEP was inappropriate. The decision ordered the District to reimburse Student’s parents for the cost of their private placement of Student and required the District to hold an IEP meeting to make a new offer of placement for Student in the least restrictive environment (LRE).

Factual Finding 62 of that decision stated:

62. Ms. Tate had explained to Mother that the District did not have regular education preschools; therefore, Mother would have to seek a private preschool placement for Student. Accordingly, during the May 21, 2012 IEP meeting, Mother requested that the District discuss placing Student at a private, regular education preschool. Mother complained that this request was denied, and the District refused to discuss private school as a placement option for Student’s 2012-2013 school year.

A footnote to that Factual Finding added:

This particular concern was corroborated by several witnesses who had attended the May 21, 2012 IEP meeting. In fact, Ms. Steinbrunn testified that she had prevented the IEP team from discussing private school as a placement option for Student. Ms. Steinbrunn incorrectly believed that the Agreement prohibited such discussion at an IEP meeting. However, Student's Complaint failed to include a legal issue directly pertaining to this concern. This issue will therefore not be addressed in the Decision.

According to Student's current complaint (OAH case number 2013030738), the IEP meeting ordered in the prior decision was held on February 22, 2013.¹ On March 15, 2013, Student filed the instant case, alleging two issues. The first issue stated that the new IEP did not offer a FAPE. The second issue alleged the following:

Problem 2: Failure to Discuss Placement in a Regular Education Preschool at the 5/21/12 IEP

Redlands was obligated to discuss placement in a regular education classroom at the 5/21/12 IEP. Redlands explicitly refused to discuss placement in the regular education classroom at the 5/12/12 IEP (sic). The family was told that they would not allow such discussion at the IEP. This was a denial of FAPE. The 12/24/12 OAH Decision explicitly found that this issue was not part of student's complaint and that it would not be addressed in the Decision.

The District's motion to dismiss argues that the ALJ in the first case heard testimony and received documentation regarding placement, so the second issue in the new complaint is barred under *res judicata* because it could have been, but was not raised in the first hearing.

The District's argument is not well taken. The prior OAH decision specifically found that the procedural issue was not alleged and did not decide the issue. On that basis, the motion must be denied.

The more difficult question is what Student hopes to gain by raising the procedural question now. Student *won* part of the prior case and the May 2012 IEP was found invalid substantively because it did not offer Student a FAPE in the LRE. Even if Student's new allegation in the instant case is correct that the District also committed a procedural violation during that same IEP meeting, it is doubtful that such a finding will add anything new to an already-invalidated IEP. A finding of a procedural violation will not make the May 2012 IEP valid, nor will it make the IEP *more* invalid than it already was found to be.

¹ The heading to the issue recites the date of January 22, 2013, but the text of the issue states February 22, 2013.

However, that is an issue to be addressed at the Prehearing Conference, not on a motion to dismiss. Student's new procedural issue is different from the issues decided in the prior case and is not subject to res judicata under special education law. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.)

The motion to dismiss is denied without prejudice. Nothing in this Order is intended to prevent the District from raising this issue or a similar issue again during the Prehearing Conference or during the hearing in this matter.

IT IS SO ORDERED.

Dated: March 21, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings