

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT AND KERN
COUNTY OFFICE OF EDUCATION.

OAH Case No. 2016020421

ORDER GRANTING MOTION TO
DISMISS EXPEDITED ISSUES

Student filed his request for expedited due process hearing (complaint) on February 9, 2016. On February 25, 2016, Panama-Buena Vista Union School District filed a motion to dismiss Student's complaint on grounds that the expedited issues raised in Student's complaint were barred by the doctrines of res judicata and collateral estoppel. Student filed an opposition on February 26, 2016. On February 29, 2016, District filed a reply in support of its motion and Student filed a response to District's reply. On March 1, 2016, District filed a reply to Student's response.

APPLICABLE LAW

The Office of Administrative Hearings will grant motions to dismiss allegations that are facially outside of OAH's 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 to resolve disputed facts.

Federal and state courts generally adhere 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.)

Res judicata, or claim preclusion, describes the preclusive effect of a final judgment on the merits. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896-97. It prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. (*Ibid.*) Under the doctrine of res judicata, if a plaintiff prevails in an action, the cause of action is merged into the judgment and may not be asserted in a subsequent lawsuit; conversely, a judgment for the defendant bars further litigation of the same cause of action. (*Ibid.*) All claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date. Res judicata precludes piecemeal litigation by splitting a single cause of action or relitigating the same cause of action on a different legal theory or for different relief. (*Mycogen*, supra, 28 Cal 4th

at pp. 896-897 (citing (*Weikel v. TCW Realty Fund II Holding Co.* (1997) 55 Cal.App.4th 1234, 1245).)

In California, a cause of action for purposes of res judicata determined in accordance with the “primary right” theory. (*Mycogen*, supra, 88 Cal. 4th at p. 904.) A ‘cause of action’ is comprised of a ‘primary right’ of the plaintiff, a corresponding ‘primary duty’ of the defendant, and a wrongful act by the defendant constituting a breach of that duty. (*Mycogen*, supra, 88 Cal. 4th at p. 904, citing *Crowley v. Katleman* (1994) 8 Cal.4th 666, 681–682, 34 Cal.Rptr.2d 386, 881 P.2d 1083.) A primary right is simply the plaintiff's right to be free from the particular injury suffered. It is not to be confused with the legal theory of liability, or the remedy sought. A primary right is indivisible: the violation of a single primary right gives rise to but a single cause of action. (*Mycogen*, supra, 88 Cal. 4th at pp. 904-905.)

Collateral estoppel, or issue preclusion, precludes relitigation of factual or legal issues that have been argued and decided in prior proceedings. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335.) The doctrine applies only if the following requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. The party asserting collateral estoppel bears the burden of establishing these requirements. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.)

The doctrines of res judicata and collateral estoppel serve many purposes. These include relieving parties of the cost and vexation of multiple lawsuits, conserving judicial resources, and encouraging reliance on adjudication by preventing inconsistent decisions. (*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].)

Collateral estoppel and res judicata apply to determinations made in quasi-judicial 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.)

The Education Code contains a specific provision regarding res judicata or collateral estoppel in a special education proceeding. The provision states that the procedural safeguards in the code “do not preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.” (Ed Code, § 56509. See also 20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006).) Therefore, although parties are precluded from relitigating causes of action 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.

DISCUSSION

District seeks a dismissal of Student's expedited issues, contending that they are the same expedited issues raised in two previous complaints filed October 6, 2014 (Complaint I) and October 6, 2015 (Complaint II) that were decided after hearings in January 2015 and November 2015, respectively.

OAH's January 23, 2015 expedited decision in Case No. 2014100290 with respect to Complaint I, held that District did not deny Student's procedural right to a manifestation determination meeting pursuant to title 20, United States Code, section 1415(k) before suspending Student for more than 10 days between August 18, 2014, and November 22, 2014 for violations of District's code of student conduct. In Complaint I, Student contended that, although he was not then a child receiving special education, District should have known he was a child with a disability entitled to procedural protections of section 1415(k), based on parent and teacher concerns regarding his behavior, expressed prior to the conduct leading to his suspensions. The decision held that District did not deny Student's procedural right to a manifestation determination meeting, because Parent had declined to consent to an assessment of Student, which precluded a determination that District had knowledge that Student was a child with a disability. (20 U.S.C. § 1415(k)(5)(C)).

The November 13, 2015 expedited decision in Case No 2015100237, not appealed, concerned alleged wrongful conduct of District occurring after Student filed Complaint I. The decision held that District did not deny Student's procedural right to a manifestation determination meeting pursuant to title 20, United States Code, section 1415(k) before expelling Student from school on January 13, 2015 for violations of District's code of student conduct. In Complaint II, Student contended that, although he was not then a child receiving special education, District should have known he was a child with a disability entitled to procedural protections of section 1415(k) at the time it expelled Student, because: (i) Parent had signed an assessment plan in January 2015 prior to Student's expulsion; and (ii) District had failed to provide Student an assessment plan in Spanish prior to October 6, 2014, which Student contended was a procedural failure that should equate to District having a basis of knowledge that Student was a child with a disability. Applying collateral estoppel based on the factual findings in the January 2015 decision, the November 2015 decision held that District did not deny Student's procedural right to a manifestation determination meeting, because: (i) Student's January 2015 expulsion was based entirely on Student's conduct that occurred before parent signed the assessment plan; and (ii) at the time District provided Parent an assessment plan in Spanish, Student had not yet been suspended for 10 or more days, and was not entitled to the procedural protections of section 1415(k).

In the present matter, Student contends that District denied Student's procedural right to a manifestation determination meeting pursuant to title 20, United States Code, section 1415(k) before suspending Student for more than 10 days in 2014 and then expelling Student from school on January 13, 2015. Student alleges that District had found him eligible for special education at a February 2007 individualized education program team meeting under the category of speech and language impairment. Student alleges that District improperly

exited Student from special education in his February 2008 IEP without Parental consent, and that Student therefore remained eligible for special education in 2015. Therefore, Student contends, he had a procedural right to a manifestation determination meeting pursuant to title 20, United States Code, section 1415(k) both when District suspended Student for more than 10 days and when it later expelled him in January 2015. Student also contends that District denied Student a free appropriate public education by failing to provide Student services after improperly exiting him from special education in 2008. Student seeks compensatory education and services as a proposed remedy.

Res Judicata: Student's causes of action, or primary rights, asserted as expedited issues in this matter are (i) the procedural right to a manifestation determination meeting held pursuant to Title 20, United States Code, section 1415(k), before being suspended from school for more than 10 days in 2014 and then being expelled in January 2015; and (ii) the right to receive continued special education services that were improperly terminated in his February 2008 IEP.

Student's first cause of action is barred by res judicata. This cause of action is made up of the same causes of action previously asserted by Student in Complaint I and Complaint II. Student's legal theory in support of his first cause of action – that Student remained a special education Student because his 2008 exit from special education was improper, and on that basis was entitled to a manifestation determination – is not itself a cause of action.

Student's second cause of action is not barred by res judicata. Student's claim that he was denied his right to special education services after District allegedly improperly exited him from special education in 2008 was not asserted in either complaint I or Complaint II. This cause of action is not an expedited issue and may be addressed through the non-expedited proceeding.

Collateral Estoppel: Student's factual and legal contention that District allegedly improperly exited him from special education in 2008 was not litigated or decided in the former proceedings, and is not barred by collateral estoppel.

ORDER

District's Motion to Dismiss Student's expedited issues predicated on his claim that he was entitled to the protections of title 20 United States Code section 1415(k) and a manifestation determination meeting, before District suspended Student for more than 10 days in 2014 and then expelled him from school on January 13, 2015, is granted.

Student's claim that he was denied his right to special education services as a result of District improperly exiting him from special education in 2008 is not dismissed, and the issue will be addressed in the non-expedited proceedings in this matter.

All expedited dates in this matter are vacated.

IT IS SO ORDERED.

DATE: March 3, 2016

DocuSigned by:


ROBERT G. MARTIN
Administrative Law Judge
Office of Administrative Hearings