BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018050914
v.	ORDER GRANTING REQUEST FOR OFFICIAL NOTICE AND GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS
ANTIOCH UNIFIED SCHOOL DISTRICT.	

On May 31, 2018, Antioch Unified School District filed a Motion to Dismiss and Request for Judicial Notice. On June 5, 2018, Student filed an opposition and Antioch filed a Reply.

Request for Official Notice

Antioch requests OAH to take judicial notice of certain pleadings in two prior OAH matters. For OAH Case No. 2017080513, Antioch seeks notice of: (1) Student's Second Amended Complaint; (2) Prehearing Conference Order dated March 7, 2018; (3) Decision dated March 7, 2018; and (4) Student's Notice of Appeal dated May 9, 2018. For OAH Case No. 2018010348, Antioch seeks notice of: (1) Request for Expedited Hearing dated January 11, 2018; and (2) Order of Dismissal dated February 1, 2018.

APPLICABLE LAW AND DISCUSSION

Judicial notice is generally called official notice when taken by an administrative tribunal. (See, e.g., Gov. Code, § 11515.) Official notice may be taken of any fact which may be judicially noticed by the courts. (*Ibid*.) Evidence Code, Section 452, subdivision (d), allows courts to take judicial notice of court records.

OAH will take official notice of the above documents pursuant to Evidence Code section 452, subdivision (d).

Motion to Dismiss on grounds of Res Judicata and Collateral Estoppel

Antioch seeks to avoid re-litigating issues between the same parties, and requests dismissal of the current case based upon the theories of collateral estoppel, res judicata and lack of jurisdiction. Student argues that the issues raised in the current matter differ from those previously litigated.

APPLICABLE LAW

Federal and state courts have traditionally adhered to the related doctrines of res judicata and collateral estoppel. Under the doctrine of res judicata, or claim preclusion, a final judgment on the merits of an action precludes the parties or their agents from re-litigating issues that were or could have been raised in that action. Collateral estoppel, or issue preclusion, precludes re-litigation of factual or legal issues that have been argued and decided in prior proceedings. (*Allen v. McCurry* (1980) 449 U.S. 90, 94; *Levy v. Cohen* (1977) 19 Cal.3d 165, 171; *Lucido v. Superior Court* (1990) 51 Cal.3d 335.) Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit on a different cause of action involving a party to the first case. These doctrines also apply to determinations made in quasi-judicial administrative settings. (See *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 944, citing *People v. Sims* (1982) 32 Cal.3d 468, 479).

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

In *Nevada v. U.S.* (1983) 463 U.S. 110, 129-130 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 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 re-litigating 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.

DISCUSSION

Issue One

Student's current complaint, in Issue One asks: "Whether the District conducted an appropriate and thorough assessment of [Student] for autism in May 2016, when Dr. Valerie Lopes conducted a psychoeducational assessment for the District." In OAH Case No. 2017080513, Student, in his closing brief, argued that District's 2016 psychoeducational assessment for autism was not appropriately thorough. The Decision in that matter, however, found at Legal Conclusions 73-74, that Student did not raise that issue in his complaint in OAH Case No. 2017080513, and that District did not agree and in fact affirmatively declined to add to the issues being redressed at hearing. Therefore the Decision explicitly did not address that claim. For this reason, Issue One was not identical to any issue decided in the former proceeding, was not actually litigated in the former proceeding, and was not necessarily decided in the former proceeding. District's Motion to Dismiss Student's Issue One is denied.

Issue Two

Student's current complaint, in Issue Two, asks: "Whether the District should have, following its receipt of Dr. Miller's 2017 Regional Center report and diagnosis, conduct[ed] a new assessment of [Student] in the suspected area of disability [of] autism or should have, at least, reviewed that Regional Center report." This overlaps with Issue 8 in OAH Case No. 2017080513, which asked "Did District deny Student a FAPE by failing to assess him in the area of autism and by failing to address the impact of autism on his education?" The Decision determining Issue 8, at Legal Conclusions 61-76, addressed whether "District failed to assess in all areas of suspected disability when it did not respond to a Regional Center diagnosis of autism by Dr. Miller," which is virtually the identical question posed in Issue Two of the current complaint. The Decision determined that Student's diagnosis under autism spectrum disorder came through a Regional Center eligibility assessment by Dr. Miller on January 1, 2017, when he was eight years old. The Decision reviewed the contents of Dr. Miller's report. It found that Parents did not provide Dr. Miller's assessment to District until September 29, 2017. It found that at an October 3, 2017, IEP team meeting, Parents noted the new diagnosis of autism, indicated that the assessor had highlighted Student's areas of need, and reiterated their desire for District to help Student become an independent learner, access peers, and work with peers. The Decision found that Parents' educational consultant, Linda Geller, requested an educationally related mental health assessment to address concerns about Student's anxiety, but that she did not request another autism assessment or a thorough review of the Regional Center assessment. And, it concluded that Student failed to demonstrate by a preponderance of evidence that District failed to assess and address Student's unique needs in autism.

The party against whom preclusion is sought here, Student, was the same party in the former proceeding. Issue Two was identical to this issue as it was decided in the former proceeding. Based on Legal Conclusions 61-76, the same issue was actually litigated in the former proceeding, and was necessarily decided in the former proceeding. District's Motion to Dismiss Student's Issue Two is granted, and Issue Two is dismissed.[1]

Issue Three

Student's current complaint, in Issue Three asks: "Whether the District failed to timely revise, and review at an IEP team meeting, the Behavior Intervention Plan/BIP that was agreed to and partially implemented for [Student] before removing him from his last agreed-upon educational placement." The factual allegations of the complaint make clear that the removal in question occurred on or about January 17 or 18, 2018.

Issues 1, 2 and 4 of OAH Case No. 2017080513 addressed whether Student's December 15, 2015 behavior intervention plan had been implemented. But, no issue presented in OAH Case No. 2017080513 addressed whether District failed to timely revise, and review at an IEP team meeting, the Behavior Intervention Plan/BIP prior to removing him from his last agreed-upon educational placement on or about January 17 or 18, 2018. District's Motion to Dismiss Student's Issue Three is denied.

Issue Four

Student's current complaint, in Issue Four asks: "Whether the District allowed the parents to participate in the determination of a 45-day interim alternative educational setting placement when it unilaterally determined to remove [Student] to Sierra School on January 18, 2018."

District argues that this issue is precluded, not as having been actually litigated, but as having been already resolved. On January 11, 2018, District initiated an Expedited Due

[1] The prior OAH decision is not yet "final." Administrative determinations are not "final" until the time to appeal has lapsed or all appeals have been exhausted (see *People v. Garcia* (2006) 39 Cal.4th 1070, 1078; *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 169). A party aggrieved by an administrative decision may appeal it to a state or federal court of competent jurisdiction within 90 days of the issuance of the decision. (*Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1030; Ed. Code, § 56505, subd. (k).) Because Student has filed such an appeal, the doctrine of collateral estoppel does not technically apply. However, OAH nevertheless does not have jurisdiction to revisit an issue it previously decided. (*Wyner ex rel. Wyner*, *supra,* 223 F.3d at p. 1030 ["once a decision is rendered by [a hearing officer], that decision is final and the same issue [may be appealed but] may not be revisited]."). Therefore, OAH does not have jurisdiction to re-litigate Issue Two.

Process Hearing in OAH Case No. 2018010348, seeking an order that Student be moved to an interim alternative educational setting for 45 school days on the grounds that maintaining Student's then current placement was substantially likely to result in injury to Student or others. That case was resolved between the parties, and on February 1, 2018, OAH issued an Order Dismissing Case, that stated: "On the record, the parties agreed that the issue was whether Antioch Unified School District could place Student in an [IAES] for up to 45 school days at Sierra School of Antioch. Student [s]tipulated that District could place Student at Sierra School for up to 45 school days as an IAES. District then dismissed the case." As a result of the stipulation, the District's case was dismissed.

The parties now vigorously dispute whether the prior dismissal encompassed Student's current Issue Four. The wording of the issue as dismissed was whether District "could" place Student at Sierra, with Student stipulating that District "could" do so. The Issue Four wording is different, asking "Whether the District allowed the parents to participate in the determination of a 45-day interim alternative educational setting placement when it unilaterally determined to remove [Student] to Sierra School on January 18, 2018."

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 & Elec. 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.)

The parties' agreement dismissing OAH Case No. 2018010348 is ambiguous concerning whether it encompassed Issue Four. Further evidence would be required concerning the parties' ambiguous intent in the stipulation and dismissal of OAH Case No. 2018010348, and whether it was or was not intended to encompass Issue Four. For this reason, District's Motion to Dismiss Student's Issue Four is denied.

Issue Five

Student's current complaint, in Issue Five, seeks relief based on statutes over which OAH does not have jurisdiction to entertain claims, specifically 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), section 1983 of Title 42 United States Code (Section 1983), the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.) and the Unruh Civil Rights Act (Civ. Code, § 51)]. Thus, Student's Issue Five is dismissed.

ORDER

1. District's Motion to take Judicial/official Notice is granted.

2. District's Motion to Dismiss Student's Issue One is denied.

3. District's Motion to Dismiss Student's Issue Two is granted and Student's Issue Two is dismissed.

4. District's Motion to Dismiss Student's Issue Three is denied.

5. District's Motion to Dismiss Student's Issue Four is denied.

6. District's Motion to Dismiss Student's Issue Five is granted and Student's Issue Five is dismissed.

IT IS SO ORDERED.

DATE: June 8, 2018

DocuSigned by:
June Lehrman
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JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings