BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

On June 5, 2018, Student filed a request for due process hearing (complaint) naming Antioch Unified School District as respondent. On June 11, 2018, Administrative Law Judge June Lehrman issued an order dismissing Issue number two of the complaint on the grounds that it was identical to an issue decided in OAH case number 2017080513; and dismissing Issue Number 5 on the grounds that it sought relief outside OAH's jurisdiction, for claims under various state and federal civil rights statutes.

On August 8, 2018, the undersigned issued an order granting Student's request to file an amended request for due process (first amended complaint). The amended complaint was deemed filed on that same date.

On August 20, 2018, Antioch filed a motion to dismiss issues in Student's first amended complaint accompanied by a request for official notice of a list of documents. The request for official notice did not specify the particular aspects of the documents on which official notice was sought. On August 24, 2018, Student filed an opposition to the motion to dismiss. No opposition to Antioch's request for official notice was filed by Student. On October 24, 2018, Antioch filed a reply to Student's opposition.

Request for Official Notice

The parties in this case have had two prior cases heard within the past year. In OAH case number 2017080513, the hearing was completed and a final decision issued. OAH case number 2018010348, was an expedited case that was settled by the parties mid-hearing. Antioch has requested that OAH take official notice, the administrative equivalent of judicial notice, of a number of rulings and pleadings in those cases, as well as a prior rulings in the case currently before this tribunal. In Special Education hearings, official notice may be taken of any fact which may be judicially notice by the courts of the state of California. (Govt. Code § 11515.) Antioch's request for official notice is granted. The undersigned takes official notice of documents listed in Antioch's request for official notice pursuant to Evidence Code section 452, subdivision (c) and (d).

Grounds for Motion to Dismiss

Antioch seeks dismissal of four issues included in Student's First Amended Complaint in this matter. They are:

a. Issue number four, which alleges:

> "Whether the District failed to comply with procedural requirements of IDEA and State law when it gave notice of that manifestation determination meeting less than twenty-four hours prior to the meeting and then held that meeting over parents' objections and without the parents.

Antioch asserts this issue is duplicative of Issue number 3, which reads:

> "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."

b. Issue number five which alleges:

> "Whether the District provided [Student] with a special education teacher who was qualified, properly credentialed and trained to address [Student's] behaviors and special education needs.

Citing section 1412(a)(14)(E) of title 20 of the United States Code, Antioch asserts there is no private right of action for this claim.

c. Issue number six, which alleges:

> "Whether the District has denied [Student] a free, appropriate public education and denied his parents meaningful participation in their son's individualized education plan process when it failed to timely review the Regional Center assessment report of 2017 at an IEP team meeting.

Antioch asserts that this issue was previously dismissed by Administrative Law Judge Lehrman in her order on Antioch's motion to dismiss pertaining to the original complaint filed in this matter.

d. Issue number seven which alleges:

> "Whether the District has denied [Student] and his parents right under Section 504, ADA and State Civil Rights laws."

Antioch asserts that this claim was also dismissed by ALJ Lehrman in the order on the motion to dismiss regarding the original complaint filed in this matter.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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. OAH does, however, recognize and apply the doctrines of *res judicata* and collateral estoppel to promote recognition of final judgments on the merits. 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].) Collateral estoppel precludes the relitigation of an issue previously presented for adjudication so long as it is the same one that was decided in the prior action; that there was a final judgment on the merits in the prior action; and that the party against whom the issue is asserted was a party to the prior action. (See 7 Witkin, California Procedure (4th Ed., Judgment § 280 et seq.); *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.) The only exception to the usual application of these doctrines in IDEA cases is that 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.

DISCUSSION

Issue Seven

The filing of an amended complaint is not an opportunity to re-file claims that were previously dismissed. The civil rights claims alleged in the amended complaint in issue number seven, were specifically dismissed by ALJ Lehrman on June 6, 2018[1]. OAH does not have jurisdiction over civil rights claims as was determined by ALJ Lehrman. Issue number seven is dismissed.

Issue Six

Similarly, issue number six, regarding whether Student was denied a FAPE either substantively or procedurally due to failure to timely review a Regional Center report was previously dismissed by ALJ Lehrman[2]. Her order cited the decision on issue eight in OAH case number 2017080513 which was identical to the issue alleged in Student's original complaint and to issue six in this complaint. Issue six is dismissed.

Issue Five

Issue number five alleges a private right of action for failure to provide an adequately qualified or properly credentialed teacher. Student acknowledges in the allegation that there is no jurisdiction in the IDEA for an individual to raise a claim of this type. While the IDEA does generally require that states must establish and maintain qualifications to ensure that staff providing special education are appropriately and adequately prepared to do so; the statute also specifically denies individuals a private right of action for failures of a state agency to provide adequately qualified teachers. (20 U.S.C. 1412(a)(14)(E).) Instead, he asserts an unidentified state law basis for raising the claim. For purposes of special education due process hearings, OAH has jurisdiction over only special education claims created by state and federal law. Student has failed to state a claim in Issue Five over which OAH has jurisdiction. Issue number five is dismissed.

Issue Four

Issue number four raises concerns about the handling of the manifestation determination hearing preceding Student's removal to an interim alternative educational

[1] See, original complaint issue number five.

[2] See original complaint issue number two.

setting. The issue overlaps with issue number three and, as such, lacks clarity. Clarifying Issue Four will be deferred to the Prehearing Conference. Due to the lack of clarity, the motion to dismiss Issue Four is denied without prejudice. Further, Antioch is not precluded from orally renewing this motion during the prehearing conference following issue clarification.

ORDER

1. Antioch's request for official notice documents pertaining to this case and prior OAH cases involving these parties is GRANTED. Official Notice is taken of: the Order Granting Request for Judicial Notice and Granting in Part and Denying in Part Motion to Dismiss dated June 8, 2018; the Order Granting Motion to File First Amended Complaint; Petitioner's Second Amended Complaint in OAH Case No 2017080513; the Order Following Prehearing Conference in OAH Case No 2017080513; The Decision in OAH Case No. 2017080513; Petitioners' Complaint for Reversal of Administrative Decision and for Damages for Violations of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1913; Request for Expedited Due Process Hearing in OAH Case No 2018010348; and Order dismissing OAH Case No 2018010348

2. Antioch's Motion to Dismiss is granted as to Issues five, six, and seven.

3. Antioch's motion to dismiss issue number four is denied without prejudice. The clarity of that issue in conjunction with issue number three shall be deferred to the Prehearing Conference. Nothing in this order precludes Antioch from raising dismissal of Issue number four during the Prehearing Conference, following the clarification of the issue in conjunction with Issue number 3.

4. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

DATE: August 29, 2018

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings