BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2022110515

ORDER DENYING MOTION TO DISMISS

DECEMBER 14, 2022

On November 17, 2022, Parents on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming San Dieguito Union High School District. A request for due process hearing is called a complaint.

On December 6, 2022, San Dieguito filed a motion to dismiss Student's complaint on the grounds that OAH already decided Student's current issue in an earlier case between the parties, OAH case number 2022020209, called Student's First Case. On December 8, 2022, Student filed an opposition. On December 14, 2022, San Dieguito filed a reply.

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 requires that the issue presented for adjudication be the same one that was decided in the prior action, that there be a final judgment on the merits in the prior action, and that the party against whom the plea is asserted was a party to the prior action. (*See* 7 Witkin, California Procedure (4th Ed., Judgment § 280 et seq.) Under 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. (*Ibid.; 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 issues in Student's First Case, filed on February 7, 2022, were:

1. Did San Dieguito deny Student a free appropriate public education, or a FAPE, during the 2021–2022 school year by predetermining placement at San Diego Center for Children nonpublic school?
2. Did San Dieguito deny Student a FAPE during the 2021–2022 school year by offering Student placement at San Diego Center for Children nonpublic school?

These issues challenged San Dieguito's offer in Student's November 15, 2021 individualized education program, or IEP, finalized on January 24, 2022, that offered Student placement at the San Diego Center for Children. Issue 1 alleged a procedural error resulting in a denial of FAPE, and Issue 2 alleged a substantive denial of FAPE. The Decision, issued August 4, 2022, found a procedural error in the November 15, 2021 IEP that resulted in a denial of FAPE. Because OAH found a denial of FAPE in the November 15, 2021 IEP on procedural grounds, it determined that it was not required to decide if Student was also denied a FAPE on substantive grounds. The Decision held:

> Issue number two involves the same offer of a FAPE that is the subject of issue number one in this case. Because San Dieguito significantly impeded Parents' participation there can be no legally appropriate substantive offer of a FAPE in the November 15, 2021 IEP [finalized on January 24, 2022].

Before the hearing in Student's First Case took place, the nonpublic school where Student was placed under her then-current IEP, Excelsior School, closed. As Parents and San Dieguito disputed where Student would be placed pending the hearing, Parents privately placed Student at Winston School. At the hearing, Student put on evidence of private placement and was awarded reimbursement for tuition at Winston School from March 1, 2022 through the 2022 extended school year. Student has appealed in part

OAH's August 4, 2022 Decision. San Dieguito contends the instant case seeks to relitigate the claims in Student's First Case.

The sole issue in Student's instant case challenges San Dieguito's failure to offer Student an IEP after Excelsior closed, and is as follows:

> Did [San Dieguito] deny Student a FAPE by failing to offer an appropriate placement following the closure of Excelsior?

Excelsior did not close until February 28, 2022, and San Dieguito's alleged obligation to make an offer of new placement did not arise until that time. Student's current claim necessarily raises an issue not included in Student's First Case, filed on February 7, 2022. Neither the doctrine of res judicata or collateral estoppel apply to Student's current claim, which was not heard or decided in Student's First Case.

Student put on evidence of post-filing conduct by San Dieguito in order to obtain remedies to compensate Student through the end of the 2022 extended school year. However, evidence of costs incurred is not the equivalent of litigating a later-arising claim, and Student is not precluded from introducing new evidence at the hearing on his current claim. To the extent any witness in the current case testifies contrary to testimony in Student's First Case, the parties may bring that to the attention of the judge presiding at the hearing to attack that witness's credibility. San Dieguito

may also inform the judge of remedies awarded and paid to prevent a double recovery by Student.

San Dieguito's motion to dismiss is denied.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings