BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HAYWARD UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018080561 ORDER DENYING PARTIAL MOTION TO DISMISS

On August 13, 2018, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Hayward Unified School District. On October 3, 2018, District filed a Motion to Partially Dismiss, seeking to bar certain of Student's allegations on the basis of res judicata and collateral estoppel, based upon the Decision in OAH Case No. 2017020096, issued on May 10, 2017, in a prior due process matter between these same parties. Student did not oppose the Motion to Partially Dismiss. As discussed below, the motion is denied.

APPLICABLE LAW

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.)

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 claims 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

The issue that was decided in OAH Case No. 2017020096 was: "Does Hayward Unified School District's December 5, 2016 Individual Education Program fail to provide Student a free appropriate public education because the offer of a moderate/severe day class for 90 percent of the day was not appropriate?" The issue stated in the current complaint is: "The District did not provide a FAPE to Student during the period between the December 5, 2016, IEP, and the November 29, 2017, IEP, because the services provided to Student during that period were not adequate, and the District knew or should have known that such services were inadequate."

Res judicata: The claims, or primary right, asserted in OAH Case No. 2017020096 concerned the offer of placement in a moderate/severe day class. The issue in the current complaint concerns related services. Placement and related services are distinct claims or primary rights. Thus, the doctrine of res judicata does not apply.

Collateral Estoppel: District argues that one sentence in the Decision in OAH Case No. 2017020096 establishes collateral estoppel, barring Student from litigating the propriety of related services. That one sentence was located in the final Order portion of the Decision, and stated: "Hayward's offer of a special day class for 90 percent of Student's day did not provide FAPE because it was not an offer of special education and related services in the least restrictive environment." Notwithstanding the inclusion of the phrase "and related services" in the Order, it is clear, from a review of the Decision as a whole, that the propriety of the related services offered in the December 5, 2016 IEP, was not actually litigated. Thus, the doctrine of collateral estoppel does not apply here.

District also argues that the remedy ordered in the prior Decision estops the current claim. This argument is not persuasive. To the extent the remedy ordered there may overlap with the remedy sought here, and to the extent Student may prevail on the current claim as well as the prior claim, District may raise its arguments at hearing to prevent possible inequitable double recovery. This does not, however, bar the claim from being litigated.

Accordingly, District's motion to partially dismiss is DENIED.

DATE: October 15, 2018

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