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 IN PART AND DENYING IN PART REQUEST FOR OFFICIAL NOTICE; DENYING MOTIONS IN LIMINE AND DENYING MOTION TO DISMISS ON THE GROUNDS OF COLLATERAL ESTOPPEL

The parties appeared before the undersigned for a Prehearing Conference on November 19, 2018. Antioch had filed three timely motions in limine prior to the hearing along with a request for official notice of several documents. Student's opposition was due after the Prehearing Conference on November 19, 2018. Student's oppositions to the motions were timely filed. Student also filed a "supplemental statement regarding motions in limine" on November 20, 2018 which was not a timely opposition and was not considered. At the time of the Prehearing Conference, Antioch was offered the opportunity to file reply briefs by November 21, 2018 which it did.

Request for Official Notice

Antioch filed a request for official notice, the administrative equivalent of judicial notice, of several documents. The request title indicated the documents pertained to all of the motions in limine filed. However, the request itself did not indicate which document was offered in support of which motion. Student did not oppose the request for official notice.

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 in part and denied in part, as specified below:

Antioch's request for official notice of the following documents is GRANTED pursuant to Evidence Code section 452, subdivision (d). Documents are listed by the Exhibit designation assigned by Antioch in attaching the documents to its motion.

Exhibit E : Decision in Student v. Antioch Unified School District, OAH case number 2017080513.

Exhibit G: January 30, 2018, Order Following Expedited Prehearing Conference in OAH Case No. 2018010348;

Exhibit H: Order Dismissing Case in OAH case number 2018010348;

Exhibit I: Transcript of the hearing on February 1, 2018 in the case of Antioch Unified School District v. Student, OAH case number 2018010348;

All other requests for official notice are DENIED.

Motions in Limine

APPLICABLE LAW

Motions in Limine address evidence preclusion not issue preclusion. Issue and claim preclusion are the subject of motions to dismiss on the grounds of collateral estoppel or res judicata respectively. Motions in limine are not expressly authorized by statute. Instead, authority for motions in limine may be implied from the administrative law judge's inherent powers. (*K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939.) Education Code section 56505.1, subdivision (h), empowers the ALJ presiding at a due process hearing to set a reasonable limit on the length of the hearing after consideration of all of the following: (i) issues to be heard, (ii) complexity of facts to be proven, (iii) ability of the parties or their representatives to present their respective cases, and (iv) estimates of the parties as to the time needed to present their respective cases. In addition, the presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Govt. Code §11513, subd. (f).)

California Evidence Code Section 350 states, "No evidence is admissible except relevant evidence." Relevant evidence is defined as evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evidence Code, § 210.) Further, "Any relevant evidence shall be admitted if it is the sort of evidence on which responsible person are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or stature rule which might make improper the admission of the evidence over objections in civil actions." (Govt. Code §11513, subd. (c).)

Request to Exclude CDE Documents

Antioch asks that any evidence regarding complaints to or actions by the California Department of Education pertaining to Student be barred, unless being introduced for impeachment or as evidence of a witnesses' credibility. Antioch argues that the complaints made to the CDE pertain to the same matters pending before the Office of Administrative Hearings in this case; and admission of the CDE's investigation report will be unduly persuasive because it is "cloaked in a penumbra of authority by virtue of CDE's status as a state agency." Antioch further argues that the standards of fact finding are different, pointing out that that Antioch did not have an opportunity to cross-examine witnesses considered by the investigator or present testimony on its own behalf.

Student asserts that a blanket prohibition of CDE documents is overbroad.

Both parties acknowledge the responsibility of the ALJ to limit the evidence admitted in a due process hearing to that which is relevant and avoids cumulative evidence. Both parties acknowledge that investigatory findings by the California Department of Education are not binding on OAH because a different standard is employed to gather information and reach conclusions following an investigation of a complaint filed with CDE than is required to admit evidence and reach a decision following a special education due process hearing. Antioch has cited no authority in support of its proposition that establishing a blanket ban on all documents from CDE is appropriate.

Motions in limine are intended to pertain to specific evidence identified with precise reasons for excluding it. Absent such specificity, the scope of the application of evidentiary bar is unclear. (*Kelly v. New West Federal Savings* (1996) 49 Cal. App. 4th 659, 670.) Antioch cites to a number of past OAH cases that have excluded documents from CDE. However, while some documents from CDE may have been determined to be irrelevant in prior OAH special education hearings, Antioch has drawn no comparisons between the facts of this case and the documents in question here; and the facts of the many prior OAH cases cited.[1] Nor is there any authority cited in Antioch's moving papers or reply identifying a prior OAH hearing established a wholesale ban on all documents emanating from CDE in advance of the hearing. Antioch has also provided no support for its assertion that an ALJ would be prejudiced by the fact that a CDE document emanates from a state agency. OAH routinely impartially evaluates documents from a variety of state agencies, experts and businesses in reaching decisions on cases. Any document introduced will be evaluated for admission based on all of the applicable evidentiary standards.

Antioch's motion to bar all CDE documents is overbroad. The motion is denied without prejudice to Antioch's right to raise appropriate objections to individual documents from CDE that may be introduced as evidence during the course of the hearing in this matter.

Request to Exclude Evidence Contradictory of Stipulated Agreement

Antioch's next motion in limine seeks a bar as to:

> "the introduction of any and all evidence (whether oral documentary demonstrative or otherwise), references to such evidence, testimony or argument that the District "unilaterally removed" Student from his last agreed upon placement or evidence that contradicts the stipulated agreement in Flyte II."

[1] Decisions in prior special education cases decided by OAH are not precedential but may be considered persuasive by an administrative law judge. (Govt. Code. § 11425.60.)

"Flyte II," OAH case number 2018010348, was an expedited case between these same parties that was convened to address the following issue:

> May Antioch place Student in an appropriate interim alternative educational setting, at Sierra School of Antioch, because it is substantially likely that Student poses a danger to himself or others if he remains in his current placement?

That case was resolved via stipulation at the outset of the hearing.

The current case raises the issue of "Whether Antioch allowed the parents to participate in the determination of the 45 day interim alternative educational setting placement of Student when it unilaterally determined to remove Student to Sierra School on January 18, 2018."[2] Antioch seeks a bar on all evidence related to the question of whether the removal of student was unilateral asserting that the stipulation is dispositive of that issue. Antioch's assertion that the stipulation is dispositive may be an affirmative defense. However, barring all reference to the possibility the removal was unilateral based on a stipulation pertaining to a prior issue that is not identical to the one at bar would be tantamount to a summary adjudication of Antioch's defense. There is no procedure allowing for summary adjudication of issues in special education law. Generally, motions in limine are not appropriately used to resolve factual disputes or weigh evidence. (*UM Corp.v. Tsuburaya Products Co., Ltd.* (C.D. Cal. 2017) 2017 WL 5983766, at p. 1.)

Antioch has not specified any particular pieces of evidence to which its proposed bar would apply. While it mentions certain findings of fact made by Administrative Law Judge Dalton in OAH case number 2017080513, motions in limine are not appropriately directed to barring evidence in a subsequent case due to individual findings of fact in a prior case. Findings of fact are based on the issues that are the subject of the current hearing and the evidence presented during that hearing. Collateral estoppel and res judicata bar the relitigation of identical issues and claims, respectively, that were previously fully litigated between the same parties. They do not appropriately create a bar regarding evidence of individual findings of fact because the context may be different in a subsequent case. A bar as to any and all evidence that Student was "unilaterally removed" is not appropriate. All relevant evidence will be considered unless an objection is sustained as to its admissibility. Antioch is free to raise whatever objections it deems appropriate to the evidence introduced at the time of hearing.

Motion to Dismiss on the Grounds of Collateral Estoppel

> REQUEST TO EXCLUDE EVIDENCE THAT CONTRADICTS PREVIOUSLY LITIGATED MATTERS

[2] Although this issue was combined with issue number four at the time of the prehearing conference, upon reconsideration, the undersigned has determined that the issue as originally stated is clearer and it shall be considered at hearing as originally pled. An amended Prehearing Conference order will follow.

Antioch's final motion in limine seeks an order excluding all evidence that contradicts "previously litigated matters." However, the motion as presented appears to conflate the concepts of a motion to dismiss issues with a motion in limine. Antioch's moving papers state:

> "Specifically, Antioch seeks an order barring the re-litigation of the facts and issues it asserts were litigated in prior actions between these parties as follows:
>
> 1. The appropriateness and thoroughness of the May 2016 assessment and the impact of autism on Student's education;
>
> 2. Implementation of Student's Behavior Intervention Plan, collection of behavior data and implementation of behavior consultation and training.

Antioch asserts that these matters were previously decided in OAH case number 2017080513, a case litigated by the same parties to this action which raises the issue of a motion to dismiss on the grounds of collateral estoppel as opposed to a motion in limine.

Student has responded to the collateral estoppel issues raised by Antioch. Student argues that the Decision in 2017080513 did not address the issue of the thoroughness of the May 2016 assessment or the implementation of Student's behavior intervention plan, collection of behavior data and implementation of behavior consultation and training.

As Student has addressed the collateral estoppel issues raised, this motion shall be treated as a motion to dismiss on the grounds of collateral estoppel.

APPLICABLE LAW

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. The existence of multiple cases over the past 10 months results in a complex analysis of whether issues raised in this complaint are identical to issues previously raised.

THE APPROPRIATENESS AND THOROUGHNESS OF THE MAY 2016 ASSESSMENT AND THE IMPACT OF AUTISM ON STUDENT'S EDUCATION

Antioch asserts that the consideration of this issue is barred by factual findings in the Decision in OAH case number 2017080513 which Antioch calls *Flyte I.* However, as noted by Administrative Judge Lehrman in her June 8, 2018 order regarding Antioch's motion to dismiss this exact issue from Student's original complaint, the issue of the appropriateness and thoroughness of the May 2016 psychoeducational assessment was not raised in OAH case number 2017080513. That case involves the same parties but a different issue. The question of whether the psychoeducational assessment was "appropriate" that is, met legal standards, was not considered.

Antioch argues that "the weight of the decision…did consider the appropriateness and thoroughness of the psychoeducational assessment." However, the ALJ in case number 2017080513 ALJ did not analyze all elements to determine the appropriateness of the full psychoeducational assessment conducted. While the ALJ may have made findings of fact related to aspects of the psychoeducational assessment, Antioch has failed to demonstrate that all elements of an analysis of the legal appropriateness of the psychoeducational assessment were completed in the prior case. OAH cases are not precedential. All admissible evidence will be considered in making a determination as to the appropriateness of the psychoeducational assessment as a whole. Antioch may raise whatever objections it deems appropriate to individual evidence introduced during the course of the hearing in this matter.

In order for collateral estoppel to bar relitigation of an issue, the issues being considered must be identical. "The 'identical issue' requirement addresses whether 'identical

factual allegations' are at stake in the two proceedings...." (*Lucido v. Superior Court, supra,* 51 Cal.3d at p. 342, 272 Cal.Rptr. 767, 795 P.2d 1223.) While there must also be identity of parties and a final determination of the issue, if the issue is not identical to that which was considered in the prior action, identical factual allegations are not at issue in the two cases and there is no need to proceed with the collateral estoppel analysis. Here, the issue is not identical to that considered in OAH case number 2017080513. Collateral estoppel preclusion of prior findings of fact made in a prior case related to a different issue is not supported.

IMPLEMENTATION OF STUDENT'S BEHAVIOR INTERVENTION PLAN, COLLECTION OF BEHAVIOR DATA AND IMPLEMENTATION OF BEHAVIOR CONSULTATION AND TRAINING.

Antioch argues that "Student's Behavior Intervention Plan, including implementation, review and revision, was litigated at length in *Flyte I*." Student asserts that the issues in OAH case number 2017080513 did not include any issue regarding the completion of a revised behavior plan to address Student's change in behaviors and further that the ALJ in OAH case number 2017080513 specifically limited evidence to only that up to and including January 16, 2018. Student submitted no evidence that the ALJ limited the evidence as asserted.

In this case, the relevant issue reads, "Did Antioch Unified School District fail to convene an IEP team meeting to timely revise and review Student's behavior intervention plan prior to removing him from the placement agreed to in the December 15, 2015 Individualized Educational Program."

The complaint in OAH case number 2017080513 addressed several issues related to the December 15, 2015 behavior intervention plan including whether the plan was properly implemented, whether FAPE was denied due to a failure to keep records or collect data for the behavior intervention plan, and whether appropriate behavior consultation and training to implement the plan was provided. None of these issues are identical to the question posed in the current case of whether the behavior intervention plan was properly and timely reviewed and revised in an IEP team meeting prior to Student's removal from the placement designated in his 2015 IEP. As explained above, identity of the issue is a prerequisite for issue preclusion pursuant to the doctrine of collateral estoppel. While multiple aspects of Student's behavior intervention plan may have been "litigated at length" in the prior case, the standard to be applied is whether the exact issue being raised was previously litigated by the same parties resulting in a final decision on that issue. Antioch has failed to establish that the issue articulated in the current case was previously litigated in *Flyte I*.

The procedures applicable to Special Education cases do not remove a Student's opportunity to raise issues that were not pled in a prior case. Here, although Student may have raised other issues pertaining to Student's behavior intervention plan and may have raised issues pertaining to an aspect of the May 2016 psychoeducational assessment, the issues raised in this case are not identical and may proceed to hearing.

ORDER

1. Antioch's request for official notice is GRANTED IN PART and DENIED IN PART as specified above.

2. Antioch's Motion in Limine to exclude records of CDE actions is DENIED.

3. Antioch's Motion in Limine to exclude evidence contradictory of the stipulated agreement between the parties made on the record at the February 1, 2018 hearing in OAH Case Number 2018010348 is DENIED.

4. Antioch's Motion to Dismiss Student's issues number two and four on the grounds of res judicata or collateral estoppel is DENIED.

5. Nothing in this order precludes Antioch from raising any objection to evidence introduced at hearing it deems appropriate at the time the evidence is introduced.

IT IS SO ORDERED.

DATE: December 3, 2018

DocuSigned by:
Penelope S. Pahl
B3DF836E5DA94F2...

PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings