BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN MATEO-FOSTER CITY SCHOOL DISTRICT.	OAH Case No. 2015100293 ORDER DENYING MOTION TO DISMISS

On October 1, 2015, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming San Mateo-Foster City School District. On November 4, 2015, OAH denied, without prejudice, Student's request to file an amended complaint because of the format of the proposed amendment. On November 9, 2015, Student filed a second request to amend his complaint which OAH granted on November 20, 2015. Student's second amended complaint was scheduled for a prehearing conference on January 8, 2016, and hearing beginning January 20, 2016.

On January 5, 2016, San Mateo-Foster City filed a Motion to Dismiss all of Student's issues based on the doctrines of res judicata and collateral estoppel. San Mateo-Foster City asserts that the substance of Student's issues were previously litigated and adjudicated in the consolidated matter of OAH Case Nos. 2015040885/2015030258. On January 6, 2016, Student filed an opposition to the Motion to Dismiss.

APPLICABLE LAW

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.)

In *Nevada v. United States* (1983) 463 U.S. 110 [103 S.Ct. 2906, 77 L.Ed.2d 509], 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 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

San Mateo-Foster City maintains that all of Student's current claims were determined in the prior Decision issued October 22, 2015 in the consolidated matter of OAH Case Nos. 2015040885/2015030258. San Mateo-Foster City is not correct.

As Student correctly states in his opposition, the undersigned very specifically noted in her prior Decision that Student was limited in the consolidated matter to litigating only those issues specifically identified in his amended complaint filed June 3, 2015, and in the District-filed complaint dated March 4, 2015, as further clarified in the August 7, 2015 Order

Following Prehearing Conference. The issues litigated and adjudicated in the prior hearing were as follows:

Student's Issues:

1. Did San Mateo-Foster City deny Student a free appropriate public education during the 2014-2015 school year from November 1, 2014, through the extended school year by failing to:

(a) reschedule individualized education program team meetings upon Parents' request;

(b) consider Parents' input regarding proposed amendments to IEP's in the areas of behavior support and social skills;

(c) consider external evaluations;

(d) incorporate external evaluations into Student's IEP;

(e) have San Mateo-Foster City members of Student's IEP team contact independent evaluators;

(f) notify Parents prior to an IEP team meeting that a change in Student's placement would be recommended;

(g) grant Parents' request to observe and record Student during class sessions;

(h) permit Parents access to Student's records and evaluation notes;

(i) offer a program designed to meet Student's unique behavioral needs by not offering individual applied behavior analysis (ABA) services;

(j) offer a program designed to meet Student's unique speech and language needs by not offering individual speech and language services; and

(k) offer extended school year services for the 2014-2015 school year?

San Mateo-Foster City's Issue

1. Is San Mateo-Foster City's January 8, 2015 behavioral assessment of Student legally compliant?

The undersigned specifically stated in the October 22, 2015 Decision at page two, footnote one, that Student was precluded from raising the following additional issues at the time of hearing:

> whether his placement at Horrall Elementary School constituted the least restrictive environment; whether Parents were denied the opportunity to observe other placement options; whether he was afforded sufficient mainstreaming time; whether District predetermined his placement; the appropriateness of his goals; the appropriateness of the initial assessment and the occupational therapy assessment; whether he required social skills services; and whether he was provided prior written notice.[1]

Footnote one clearly states that while these additional issues would not be added to the consolidated matter, Student retained his right to file a separate complaint. Student exercised this right by filing this second matter.

In the instant case, Student identified the following issues for hearing, as clarified by Administrative Law Judge Rebecca Freie during the January 8, 2016 prehearing conference with the parties and as delineated in the Order Following Prehearing Conference:

1) For the 2014-2015 school year, did District deny Student a FAPE because its initial assessments did not meet all legal requirements in that:

a. District's assessors did not consider all information in the intake form completed by Parents;

b. District's assessors did not interview Student's preschool teacher in person, and did not conduct a complete (sufficiently lengthy) classroom observation; and

c. District did not assess Student in all areas of suspected disability, specifically because it did not conduct an occupational therapy assessment to explore sensory processing deficits?

2) For the 2014-2015 school year, was District's placement of Student in the preschool SDC at Horrall one that would not meet his unique needs and provide him with educational benefit in the least restrictive environment?

3) Did District deny Student a FAPE for the 2014-2015 school year by not providing him with occupational therapy to address sensory processing deficits?

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[1] In addition, the Decision specifically notes at pages 34-35, in paragraph 24, that prior written notice regarding San Mateo-Foster City's proposals to change Student's placements was not at issue in the prior hearing, was not litigated by the parties, and that no finding nor determination was made in that regard.

4) For the 2014-2015 school year, did District deny Student a FAPE by failing to include one or more social skills goals (either as a speech and language goal, or a behavioral goal) in his IEP dated November 9, 2014, as amended on January 9, 2015, and not providing him with social skills therapy/training?

5) For the 2014-2015 school year, was Student denied a FAPE because his IEP contained inadequate supports for mainstreaming, specifically a trained one-to-one aide who was to be faded as appropriate, when Student was mainstreamed?

6) For the 2014-2015 school year, did District commit a procedural violation by not permitting Parents to observe classrooms (in various District schools) that were not proposed by District as potential placements which denied Parents meaningful participation in the IEP development process and resulted in a denial of FAPE?

7) For the 2014-2015 school year, did District commit a procedural violation by predetermining Student's placements at Horrall and then at George Hall Elementary School which denied Parents meaningful participation in the IEP development process which resulted in a denial of FAPE?

8) For the 2014-2015 school year, was Student denied a FAPE because District did not provide Parents with prior written notice when Student's placement was changed from Horrall to Hall?

9). Did District commit a procedural violation by holding IEP team meetings on June 15, 2015, and November 9, 2015, after Student had filed requests for due process hearings with OAH, which resulted in a denial of FAPE?

Since Student did not identify these issues in his prior complaint in the consolidated matter, and because he was not required to do so at that time under the IDEA, he is not precluded from litigating these separate issues now in this second proceeding. San Mateo-Foster City's arguments that various factual findings and legal conclusions within the October 22, 2015 Decision finally determined each issue in the current matter are not persuasive. The issues currently raised by Student were not at issue in the prior case, were not litigated by the parties, and were not adjudicated. Based on evidence presented at hearing, the undersigned made factual findings and legal conclusions in the October 22, 2015 Decision relevant to the issues brought forth by the parties. Because those issues are different from the issues currently pending, the prior findings and conclusions cannot be used to summarily prevent Student from bringing the instant matter. Student is not barred from pursuing his current complaint which contains separate allegations that San Mateo-Foster City denied him a FAPE during the same time period.

San Mateo-Foster City fails to provide any legal authority for its request that OAH, nevertheless, order Parents to provide an offer of proof as to how each new issue and requested remedy addresses areas not covered in the prior consolidated matter. This request is denied.

For the reasons stated above, San Mateo-Foster City's motion to dismiss is DENIED.

ORDER

1. San Mateo-Foster City's Motion to Dismiss is DENIED.

2. This matter shall proceed to hearing as previously ordered.

DATE: January 13, 2016

/S/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings