BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BELLFLOWER UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018071234 ORDER PARTIALLY GRANTING MOTION TO DISMISS

On July 30, 2018, Student filed with the Office of Administrative Hearings a Due Process Hearing Request (complaint) naming Bellflower Unified School District.

On September 7, 2018, Bellflower filed a request for continuance citing a scheduling conflict and alleging Student's parents and attorney refused to participate in a resolution session. Student opposed the motion on September 12, 2018, alleging Bellflower failed to timely notify Parents of the proposed date and time for the resolution session and failed to work with Parents to identify a mutually agreeable date and time for the resolution session.

On September 14, 2018, Bellflower filed a motion to dismiss the complaint due to Student's failure to participate in a resolution session, or in the alternative to a motion to limit consideration of events and issues. Student did not respond to Bellflower's motion.

On September 17, 2018, OAH granted Bellflower's motion to continue and scheduled the prehearing conference for November 5, 2018, and a due process hearing commencing on November 13, 2018.

APPLICABLE LAW

Resolution Session

A local educational agency is required to convene a resolution meeting with the parents and the relevant members of the Individualized Education Program team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).[1]) The resolution session need not be held if it is waived

[1] All subsequent references to the Code of Federal Regulations are to the 2006 version.

by both parties in writing or the parties agree to use mediation. (§ 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3).) There are no provisions of law that allow a parent or a Local Education Agency to unilaterally waive the resolution meeting. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006.)

If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the Local Education Agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. § 300.510(b)(4).)

The 45-day timeline for the due process hearing starts the day after a resolution meeting, unless the parties agree in writing to waive the resolution meeting. (34 C.F.R. § 300.513(b) & (c).) If the Local Education Agency fails to hold the resolution meeting within 15 days of receiving notice of the due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (34 C.F.R. § 300.510(b)(5).)

Statute of Limitations

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

Res Judicata and Collateral Estoppel

Federal and state courts have traditionally adhered 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 [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 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, supra*, 449 U.S. at p. 94.) 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.)

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 re-litigating 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 purpose of the IDEA (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.)

Section 504 and State Civil Rights Claims

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.) or state civil rights laws.

DISCUSSION

Resolution Session

Bellflower argues Student's complaint should be dismissed because Parents failed to participate in the resolution session. Bellflower contends that it scheduled a resolution session for August 7, 2018, that Parents failed to attend. Student argues the notice was not sufficient as Parents did not receive Bellflower's letter until August 4, 2018; additionally, Student contends Parents were not consulted regarding a mutually agreeable date and time.

Student's parent is required to participate in a resolution session before a due process hearing may be commenced, and OAH has discretion to dismiss the matter if the parent refuses to participate in a resolution session and the district provides appropriate documentation supporting its motion to dismiss. Bellflower sent parents a letter notifying them of the resolution session but did not consult with them regarding the date or time. Student's attorney sent a letter via facsimile to Bellflower's attorney on August 7, 2018, after the proposed resolution session asking Bellflower to work with Student's advocate to arrange a mutually agreeable date and time for a resolution session. The parties' attorneys exchanged several communications regarding this matter and Bellflower sent a second letter regarding the resolution session to Parents on August 9, 2018. Bellflower also sent an email to Student's advocate on August 20, 2018, however, Student's advocate did not respond until September 10, 2018. Although Student's advocate was slow to respond to Bellflower, Bellflower has not proven that Parents refused to participate in a resolution session.

Student has also not shown that Bellflower did not offer to hold a resolution session within 15 days of receiving the complaint. Bellflower scheduled a resolution session for August 7, 2018, and sent a second letter on August 9, 2018, asking parents to contact it to schedule a resolution session or waive it. Bellflower staff also called parents twice regarding scheduling a resolution session. Student's parents and her attorney directed Bellflower to contact Student's advocate to schedule the resolution session, which Bellflower did on August 20, 2018. Student's advocate did not respond until September 10, 2018. Student's argument that Bellflower failed to timely schedule a resolution session is not persuasive as Bellflower attempted to schedule a resolution session within 15 days of receiving the complaint.

For the reasons listed above, Bellflower's motion to dismiss Student's complaint for failure to participate in a resolution session is denied, but Bellflower may raise this contention again if Parents fail to participate as ordered below.

Statute of Limitations

Bellflower argues that references to events that occurred prior to the two year statute of limitations, or July 27, 2016, should be excluded from consideration. There is no indication from Student's complaint that she is trying to pierce the statute of limitations. Student includes background information in her complaint, but she does not specifically

allege issues beyond the two year statute of limitations. Bellflower does not offer any authority stating that Student is precluded from offering background information in a complaint. Accordingly, Bellflower's motion to exclude references to events that occurred prior to July 27, 2016, is denied.

Res Judicata and Collateral Estoppel

Bellflower argues that references to issues and events that were considered and decided in OAH Case No. 2017050338 should be excluded as that case involved the same parties and is being appealed. Bellflower's motion indicates that it seeks to avoid re-litigating the question of whether or not it is required to conduct assessments for Student. However, Bellflower did not include any argument as to how the issues overlap, just a statement of the issues on appeal, the issues in Student's complaint, and a broad statement that the issues in Student's complaint overlap the issues on appeal. Bellflower also did not provide any law in support of its motion.

Bellflower's motion is denied without prejudice. If Bellflower seeks a determination regarding collateral estoppel/issue preclusion, it is ordered to file and serve a written motion specifying how the November 20, 2017 decision in OAH Case No. 2017050338, or the subsequent appeal, precludes OAH from hearing the issues in Student's complaint.

Section 504 and State Civil Rights Claims

Bellflower moved to have issue four dismissed claiming OAH does not have jurisdiction to hear the issue. Student's issue four alleges Bellflower violated Section 504 of the Rehabilitation Act and the state civil rights laws by failing to comply with a previous OAH Order. Student's issue four is outside OAH's jurisdiction. Accordingly, issue four is dismissed. All dates currently set in this matter are confirmed.

ORDER

1. Bellflower's motion to dismiss the complaint entirely for failure to participate in a resolution session is denied.

2. The parties are ordered to participate in a resolution session, or waive in writing the resolution session, within 15 business days of the date of this order.

3. All previously scheduled dates shall remain on calendar.

4. Bellflower's motion to exclude references to events occurring prior to July 27, 2016, is denied.

5. Bellflower's motion to dismiss or stay issues one, two, and three is denied without prejudice.

6. Bellflower's motion to dismiss issue four is granted.

DATE: September 25, 2018

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Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings