BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BENICIA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016041016 ORDER GRANTING MOTION FOR STAY PUT

On April 18, 2016, Student filed a motion for stay put. On April 21, 2016, District filed an opposition on the ground that the issue had been previously decided in Office of Administrative Hearings Case No. 2016010842. On April 22, 2016, Student filed a response to District's opposition.

On May 6, 2016, OAH issued an order for further briefing on Student's motion for stay put. The order directed the parties to provide the following information:

1) The beginning and ending dates for when Student participated in the Solano County Office of Education's adult transition program, also referred to as the Benicia Bridge Program;

2) A legible copy of Student's official high school transcript, and information regarding the meaning of the notation "(R/D)" next to certain courses on the transcript, dated February 2016;

3) Information on whether District has, in fact, awarded Student a regular high school diploma and, if so, the date that District provided Student with the diploma, and how it was awarded to him;

4) Briefing on the legal authority for a non-attorney advocate to provide or rescind valid, informed written consent regarding a student's free appropriate public education on behalf of a student or parent, including discussion of the applicability of the May 4, 2012 decision of the United States District Court for the Central District of California in *A.T. v. East Whittier City School District,* case number CV 10-10030-GHK(Ex), and a ruling in *J.L. v. Downey Unified School District,* case number CV 12-2285-GW(SSx) to Student's motion for stay put and District's opposition; and

5) Sworn declarations supporting any factual assertions included in the parties' supplemental briefing.

On May 13, 2016, the parties timely filed their supplemental briefing.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

Stay put may apply when a child with a disability files for a due process hearing on the issue of whether graduation from high school (which ends Individuals with Disabilities Education Act eligibility) is appropriate. (*Cronin v. Bd. of Educ. of East Ramapo Cent. Sch. Dist.* (S.D.N.Y. 1988) 689 F.Supp. 197, 202, fn. 4 (*Cronin*); see also *R.Y. v. Hawaii* (D. Hawaii February 17, 2010, Civ. No. 09-00242) 2010 WL 558552, **6-7 (*R.Y.*).) Stay put applies because if it did not, schools would be able to end special education eligibility for students by unilaterally graduating them from high school. (*Ibid*.)

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].)

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

The doctrines of res judicata and collateral estoppel serve many purposes, including relieving the cost and vexation of multiple lawsuits, conserving judicial resources, preventing inconsistent decisions, and 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 Individuals with Disabilities Education Act, however, contains a section modifying the general analysis regarding 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); 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

The parties submitted extensive materials to support their respective positions.

Student submitted the following materials to support his motion: Signature and Parent Consent page to Student's individualized education program, dated October 22, 2014; Student's IEP Amendment, dated October 27, 2014; Student's IEP Amendment, dated May 27, 2015; Educational Consultant Authorization, dated October or November 21, 2015; Student's individual transition plan, dated October 31, 2015; correspondence from educational consultant Linda Geller to District's Director of Special Services Carolyn Patton, dated December 13, 2015; Student's IEP Amendment, dated January 11, 2016; correspondence from Dr. Patton to OAH, dated February 10, 2016; Declaration of Dr. Patton, dated February 10, 2016; Declaration of Student, dated April 14, 2016; Declaration of Student's mother, dated April 14, 2016; Declaration of Student's attorney, dated April 17, 2016; Student's motion for stay put, dated April 18, 2016; Student's response to District's opposition to motion for stay put, dated April 22, 2016; a signed copy of Student's Certificate of completion from District's Benicia High School, dated June 6, 2015; an unsigned copy of Student's official high school transcript, dated January 27, 2016, issued by District; Declaration of Student's parent, dated May 11, 2016; and Student's Supplemental Briefing, dated May 13, 2016.

District submitted the following materials to support its opposition to Student's motion: District's opposition to Student's motion, dated April 21, 2016; a signed copy of

Student's official high school transcript, dated May 10, 2016; Declaration of Dr. Patton, dated May 13, 2016; and District's Supplemental Briefing, dated May 13, 2016.

District also requested that OAH review documents submitted in OAH Case No. 2016010842 regarding a prior motion for stay put involving the same parties. The ALJ has reviewed the documents previously filed by the parties in Case No. 2016010842, including Student's IEP's, dated October 22, 2014 and October 13, 2015; Student's Uniform Statutory Form Power of Attorney, dated December 1, 2015; IEP Notice, dated January 8, 2016; and Signature and Parent Consent page to the IEP Amendment, dated January 11, 2016.

Factual Background

The documents and supporting declarations filed by the parties establish the following facts relevant to determining Student's stay put placement. Except as noted below, these facts are not disputed by the parties.

October 22, 2014 Annual and Triennial IEP Team Meeting

On October 22, 2014, the IEP team convened to conduct Student's triennial review, including the development of an individual transition plan for him. Student, then age 18, and Student's mother signed the IEP document as participants in the meeting. Student was eligible for special education under the category of other health impairment. Prior to the October 22, 2014 IEP team meeting, Student had been receiving specialized academic instruction services through District's resource specialist program at Benicia High School.

The October 22, 2014 IEP offered a proposed "Graduation Plan," described as Student's participation "in high school curriculum leading to certificate of completion or other than diploma" with a projected completion date of June 1, 2015. The IEP also offered a proposed individual transition plan, similarly stating that Student's course of study was certificate of completion with an anticipated completion date of June 5, 2015. The IEP did not offer extended school year services. Student's next annual IEP team meeting was due on October 22, 2015 (age 19), and his next evaluation was due on October 22, 2017 (age 21).

Student, a non-conserved adult, provided written consent to the triennial IEP except for "[i]tems not resolved noted in [IEP Team Meeting] notes." An unresolved item in the notes was whether Student should be on a diploma or certificate of completion track. District recommended a continuation IEP team meeting to discuss whether Student should be on a diploma or certificate of completion track.

October 27, 2014 IEP Amendment

As a follow-up to the October 22, 2014 IEP team meeting, District prepared an IEP Amendment, dated October 27, 2014, stating that the "IEP team has determined that [Student] will be moved from the diploma track to the certificate of completion track."

Student and a District administrator met on November 3, 2014 to review the amendment. Student twice signed the document, first on the signature line for Parent/Guardian/Surrogate/ Adult Student, and second on the signature line for Student/Adult Student. Student did not insert his initials next to the statement that he agreed to the IEP amendment. Student declared under penalty of perjury that he thought that he had agreed to a certificate program, but he did not know that he had to insert his initials to indicate his agreement.

May 27, 2015 IEP Team Meeting

On May 27, 2015, the IEP team, including Student and Student's mother, convened to discuss Student's "transition to Benicia Bridge program," an adult transition program, for the 2015-2016 school year. Consistent with Student's declaration that he thought that he had agreed to a certificate program on November 3, 2014, the May 27, 2015 IEP amendment corroborates that Student was "on a certificate of completion." District offered to place Student at the Benicia Bridge Program at the beginning of the 2015-2016 school year. The IEP amendment was silent as to any discussion about a diploma track or extended school year services. Student signed the IEP Amendment as a participant but he did not insert his initials next to the statement that he agreed to the May 27, 2015 IEP amendment.

June 2015 Certificate of completion

On June 6, 2015, Student turned 19 years old, and coincidentally District, through Benicia High School, awarded him a certificate of completion. District did not award Student a regular high school diploma at the conclusion of the 2014-2015 school year (twelfth grade). Student's high school transcript indicates that he has completed 240 credits, exceeding the requirement of 220 credits needed to graduate high school. Student's complaint challenges whether he truly earned passing grades in grade-level courses.

August 2015 Student's Attendance in the Benicia Bridge Program

On August 26, 2015, Student started to attend a Solano County Office of Education adult transition program, called the Benicia Bridge Program, and attended that program through January 11, 2016, his last day of attendance in a special education program pursuant to a District IEP.

October 13, 2015 Annual IEP Team Meeting

On October 13, 2015, the IEP team convened to conduct Student's annual review. including the development of an individual transition plan for him. Student, then age 19, and Student's mother attended the meeting. Student remained eligible for special education under the category of other health impairment. The IEP Team Meeting Notes state that it was "Student's first year in the SCOE Adult Transition Program," and that the "Benicia Adult transition is the offer of FAPE [free appropriate public education.]"

Student's proposed individualized transition plan, dated October 13, 2015, corroborated that Student had "earned his certificate of completion and [was] now attending the adult transition program to complete goals that will lead to his postsecondary outcomes." The transition plan further states that his course of study was a certificate of completion with an anticipated completion date of June 2018 (age 22). The IEP did not offer any extended school year services. Student's next annual IEP team meeting was due on October 12, 2016 (age 20), and his next evaluation was due on October 22, 2017 (age 21).

Student did not provide written consent to the October 13, 2015 IEP at the conclusion of the meeting but he continued to attend the adult transition program (Benicia Bridge Program) through January 11, 2016.

December 1, 2015 Power of Attorney

On December 1, 2015, Student executed a Uniform Statutory Form Power of Attorney before a notary public, authorizing his mother to act at his "agent (attorney-in-fact)" regarding multiple powers, including his educational rights.

December 13, 2015 Educational Consultant's Correspondence

On December 14, 2015, District received a detailed letter, dated December 13, 2015, from Linda Geller, a non-attorney educational consultant, enclosing a copy of the executed Power of Attorney, and an "Educational Consultant Authorization" form, executed by Student's mother in October or November 2015. The parties sharply dispute the scope of Ms. Geller's authorization regarding Student's special education, and the interpretation of Ms. Geller's emphatic statement in the letter that Student's parents "did not give informed consent to this decision [changing from diploma to certificate of completion track in October 2014] and are rescinding it!" Factual findings and legal conclusions related to Ms. Geller's authority to act on Student's behalf cannot be resolved through a stay put motion, and require a due process hearing on the merits of the case.[2]

January 8, 2016 IEP Notice

On January 8, 2016, in response to Ms. Geller's correspondence, District issued an IEP notice, inviting Student and parent to an IEP team meeting on January 11, 2016. The purpose of the meeting was to discuss "change of placement."

[2] See *Student v. Vacaville Unified School District and Fairfield-Suisun Unified School District* (2011) Cal.Offc.Admin.Hrngs. 2010080262, affd., *D.A. ex rel. Adams v. Fairfield-Suisun Unified School Dist.* (E.D.Cal., September 18, 2013, No. 2:11–cv–01174–TLN–KJN) 2013 WL 5278952.

January 11, 2016 IEP Team Meeting

The IEP team convened on January 11, 2016, including Student and Student's mother. District prepared an IEP Amendment, stating that there was a "request to move [Student] from a certificate of completion track to a diploma track." The parties sharply dispute the IEP team's discussions, including oral agreements, about moving Student from a certificate of completion track to a diploma track.

Student and Student's mother did not provide written consent to the IEP amendment. On January 11, 2016, Student's mother signed a hand-written statement on the amendment, stating: "I disagree with everything discussed." Student's mother declared under penalty of perjury that she did not agree to change Student's placement from a certificate of completion track to a diploma track.

As of the January 11, 2016 IEP team meeting, Student's then-current placement was the Sonoma County Office of Education's adult transition program/Benicia Bridge Program, which Student had been attending since August 2015.

Student's Attempts to Return to the Benicia Bridge Program

On January 12 and 13, 2016, Student attempted to attend the Benicia Bridge Program, but was not allowed to return because District believed that he had earned a regular high school diploma and was no longer eligible for special education services as of January 11, 2016. Student's complaint challenges, among other issues, whether graduation from high school with a diploma is appropriate for him.

As of April 18, 2016, the date of Student's complaint, Student has not been awarded a diploma. District has ordered a diploma for Student as a special printing, which will be backdated to January 11, 2016, and given to Student when it arrives.

Analysis of Res Judicata and Collateral Estoppel

On January 21, 2016, Student filed a due process complaint against District, designated as OAH Case No. 2016010842, alleging various issues regarding his free appropriate public education. District contends that Student's motion for stay put should be denied based on the related doctrines of res judicata and collateral estoppel, because the same stay put issue, involving the same parties, was decided in stay put order, dated February 26, 2016 in OAH Case 2016010842.

Student's January 21, 2016 complaint alleged, among other issues, that District unlawfully exited Student from the adult transition program, but it did *not* challenge whether it was appropriate for District to award Student a regular high school diploma. On March 10, 2016, Student withdrew his complaint, and on March 15, 2016, OAH dismissed the case. Accordingly, the parties did not have an opportunity to adjudicate any issues at a due process hearing, and there was no final judgment on the merits.

Student's pending complaint, unlike his previous complaint, challenges whether District unlawfully exited him from the adult transition program, *and* awarded him a diploma. The complaint alleges that Student's "academic skills were well below that required to pass curriculum courses and it was clear that he was not truly earning passing grades in grade-level classes." The complaint also alleges as an issue to be decided at hearing whether Student's stay put placement is an adult transition program.

The doctrine of res judicata does not apply here, because the Individuals with Disabilities Education Act 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. Here, Student's complaint includes closely related but separate issues from the complaint in OAH Case No. 2016010842, because it alleges as issues to be decided at a hearing whether District has denied Student his stay-put placement, and whether District unlawfully and unilaterally awarded him a diploma and exited him from special education.

The doctrine of collateral estoppel also does not apply here, because the issue of stay put in OAH Case No. 2016010842 was not heard and decided at a due process hearing, and there was no final judgment on the merits regarding Student's stay put placement.

Analysis of Stay Put Placement

Despite Student's or parent's lack of clear written consent to an IEP document, the parties' conduct establishes that the October 13, 2015 IEP was the last agreed upon and implemented IEP, placing Student in Sonoma County Office of Education's adult transition program (the Benicia Bridge Program) on a certificate of completion track. There is no dispute that Student attended the Benicia Bridge program from the beginning of the 2015-2016 school year, pursuant to the May 27, 2015 IEP amendment, and through January 11, 2016, his last day of attendance there, pursuant to the October 13, 2015 annual IEP. The purpose of the January 11, 2016 IEP team meeting was to discuss a change of placement from a certification of completion track to a diploma track based on the demand set forth in Ms. Geller's December 13, 2015 correspondence. However, Student or Student's parent, acting as his power of attorney, did not provide written consent to the January 11, 2015 IEP amendment, which states that "IEP team agrees that [Student] is being moved [from a certificate track] to the diploma track. Rather, Student's mother disagreed with "everything discussed" during the meeting.

District intends to confer a regular high school diploma upon Student, backdated to January 11, 2016, upon District's receipt of it. In both *Cronin* and *R.Y.*, stay put orders were granted, prohibiting the school districts from unilaterally exiting students from special education by conferring a diploma pending a due process dispute. Student timely filed a complaint, challenging District's determination to exit him from special education, based on District's determination that he had earned a diploma. Accordingly, Student is entitled to a stay put order that District be barred from conferring a regular high school diploma on Student, pending a due process hearing on Student's complaint. Student also is entitled to

remain in his last agreed and implemented placement pursuant to Student's October 13, 2015 IEP during the pendency of Student's claim.

ORDER

1. Student's motion for stay put is granted.

2. District is barred from conferring a regular high school diploma on Student during the pendency of Student's claim.

3. Student is entitled to remain in his last agreed and implemented placement in the Sonoma County Office of Education's Benicia Bridge Program pursuant to Student's October 13, 2015 IEP during the regular school year during the pendency of Student's claim.

IT IS SO ORDERED.

DATE: May 31, 2016

DocuSigned by:
Caroline Zuk
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CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings