BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015030848 ORDER DENYING MOTION TO DISMISS AND CLARIFYING ISSUES ALLEGED IN STUDENT'S AMENDED COMPLAINT

On March 18, 2015, Student filed a Due Process Hearing Request, naming Berkeley Unified School District as respondent. On April 20, 2015, Student amended his complaint.

On May 7, 2015, Berkeley filed a Motion to Dismiss Student's amended complaint alleging that the allegations raised therein are barred by the doctrines of res judicata and collateral estoppel resulting from a decision in Case Number OAH 2014040781.

Student filed an opposition to the Motion to Dismiss on May 11, 2015, generally asserting that the issues raised in the current matter were not litigated in the prior case.

Student v. Berkeley Unified School District, OAH Case No. 2014040781 proceeded to hearing and a final decision was issued on November 17, 2014. That case involved allegations that Berkeley procedurally and substantively denied Student a free appropriate public education during the 2011-2012, 2012-2013, and 2013-2014 school years including the extended school years (ESY).

APPLICABLE LAW

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 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 (IDEA), 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) (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

In the current case, Student's amended complaint asserts that during the 2014 extended school year (ESY), Berkeley failed to implement Student's individualized education program regarding speech and language services, occupational therapy services, and transportation. Student also asserts a procedural allegation that Berkeley failed to give Mother prior written notice in response to a letter faxed to Berkeley on May 28, 2014, inquiring about the related services during the 2014 ESY. Student's amended complaint contains an explanation regarding why Mother sent the letter including an assertion that her request was due to her non-involvement in placement and service discussions as a member of Student's IEP team during the 2013-2014 school year.

Berkeley argues that Student is precluded from asserting these claims in the current matter because the issue of whether or not Student was denied a free appropriate public education for the 2013-2014 school year including the ESY was ruled upon in OAH 201404078. Berkeley notes that the prior decision included specific findings that Mother was not denied meaningful participation in the IEP team meetings held during the 2013-2014 school year.

Berkeley is correct to the extent that the issue of meaningful parental participation in the development of Student's IEP's during the 2013-2014 school year, and including 2014 ESY,was decided in OAH 2014040781. That determination and the specific issues ruled upon in OAH 2014040781, however, did not include contentions regarding Berkeley's alleged failure to implement Student's related services during the 2014 ESY, nor the alleged failure to provide prior written notice to Mother's letter sent on May 28, 2014. Accordingly, Berkeley's Motion to Dismiss is denied as to the specific issues raised in Student's amended complaint. Student is on notice, however, that arguments related to a lack of meaningful parental participation in the development of Student's IEP's throughout the 2013-2014 school year were fully litigated and are not subject to review or relitigation in the instant case.

ORDER

1. Berkeley's Motion to Dismiss Student's amended complaint is denied.

2. It is clarified that the following issues are raised in Student's amended complaint and were not adjudicated in OAH Case No. 2014040781:

   Issue 1: Was Student denied a free appropriate public education during the 2014 extended school year because Berkeley failed to implement Student's individualized education program regarding speech and language services, occupational therapy services, and transportation during the 2014 ESY?

   Issue 2: Was Student denied a free appropriate public education during the 2014 ESY because Berkeley failed to provide Mother prior written notice in response to a letter faxed to Berkeley on May 28, 2014, regarding Student's ESY related services.

IT IS SO ORDERED.

DATE: May 11, 2015

/S/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings