BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020090375

ORDER GRANTING MOTION TO DISMISS TIME-BARRED CLAIMS AND ISSUES BARRED BY THE DOCTRINE OF COLLATERAL ESTOPPEL; ORDER DENYING SECOND MOTION TO AMEND COMPLAINT; ORDER OF DISMISSAL

JANUARY 25, 2021

On September 11, 2020, Parent on behalf of Student filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, naming Upland Unified School District. The Office of Administrative Hearings is referred to as OAH.

On November 24, 2020, OAH issued a Decision, referred to as the November 24, 2020 Decision, in the consolidated cases in OAH case numbers 2019080542,

2020040245, and 2020010465, involving Student and Upland Unified. On December 30, 2020, OAH took official notice of the November 24, 2020 Decision in this matter.

On December 30, 2020, OAH granted Student's motion to amend her due process hearing request, called a complaint and referred to as the First Amended Complaint. However, OAH dismissed issues barred by the doctrine of collateral estoppel and claims outside the jurisdiction of OAH. The matter proceeded on Student's remaining issues, identified as Issues 10, 11a, 11b, and 12 in the First Amended Complaint.

On January 12, 2021, Upland Unified moved to dismiss the First Amended Complaint. Upland Unified contends Student's claims are barred by the two-year statute of limitations and the doctrine of collateral estoppel. On January 15, 2021, Student filed an opposition.

On January 19, 2021, Student filed a second motion to amend her complaint and another amended complaint, referred to as the Second Amended Complaint. On January 20, 2021, Upland Unified filed an opposition to the motion to amend the complaint and sought dismissal of the issues in the Second Amended Complaint.

APPLICABLE LAWS

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.

In *Avila v. Spokane Sch. District 81* (9th Cir. 2017) 852 F.3d 936, the Court found that the Individuals with Disabilities Education Act's, also known as the IDEA, statute of limitations barred claims filed more than two years after the time parents "knew or should have known" about the actions forming the basis for their complaint. (*Id.* at pp. 937, 945.) The Court held that in the IDEA's statute of limitations provision, Congress intended to enact a "discovery rule," not an "occurrence rule." (*Id.* at pp. 939-945.)

California implements the IDEA through its special education law. (*Miller v. San Mateo-Foster City Unified School Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860.) Consistent with the IDEA, California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the underlying facts that form a basis for the action. (Ed. Code, § 56505, subd. (l).) Knowledge that a student's education is inadequate is sufficient for the statute of limitations to begin to accrue. (M.M. & E.M. v. Lafayette School Dist. (N.D.Cal., Feb. 7, 2012 Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, ** 17 – 19, affd. in part & revd. in part (9th Cir. 2014) 767 F.3d 842, 858-859.)

DOCTRINE OF COLLATERAL ESTOPPEL

Federal and state courts have traditionally adhered to the doctrine of collateral estoppel. (*Allen v. McCurry* (1980) 449 U.S. 90, 94 [101 S.Ct. 411, 66 L.Ed.2d 308] (*Allen*); see 7 Witkin, California Procedure (4th Ed.) Judgement § 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 (*Lucido*); 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].) Collateral estoppel requires that the issue presented for adjudication be the same one that was litigated and 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. (*Lucido*, *supra*, 51 Cal.3d at p. 341.)

The doctrine of collateral estoppel serves 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 is a judicial doctrine, it is 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 IDEA contains a section that modifies the general analysis regarding 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.

A party aggrieved by the findings and decisions in a due process hearing may appeal to a competent court of jurisdiction within 90 days of receipt of the hearing decision. (Ed. Code, § 56505, subd. (k).)

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

DISCUSSION

FIRST AMENDED COMPLAINT

Here, Issue 10 of the First Amended Complaint falls outside of the two-years statute of limitations. Issue 10 contends that Upland Unified denied Student a free appropriate public education, called a FAPE, by failing to provide Parent with an assessment plan for the 2018-2019 school year within 15 days of Parent's request. The First Amended Complaint references communications between Parent and Upland Unified in June and July 2018, regarding Parent's request for assessments. Specifically, Parent communicated to Upland Unified on July 26, 2018, Parent's consent to assess Student. The First Amended Complaint makes no reference of any request for Student to be assessed after July 26, 2018, and specifically, following September 11, 2018, two years prior to the filing of the initial complaint in this matter. School districts must provide an assessment plan within 15 days of parental request. (Ed. Code, § 56043,

subd. (a).) Thus, Upland Unified was required to timely provide Parent with an assessment plan within 15 days, which was no later than August 11, 2018. Therefore, Student was aware of the alleged violation after August 11, 2018, and had until August 11, 2020, to request a due process hearing to allege a violation for failing to timely provide Parent with an assessment plan for the 2018-2019 school year. In addition, the First Amended Complaint fails to allege an exception to the two-years statute of limitations. Finally, the November 24, 2020 Decision established that Parent knew her procedural rights. Accordingly, Issue 10 of the First Amended Complaint is barred by the two-years statute of limitations, and therefore, dismissed.

Student's remaining issues 11(a), 11(b), and 12 in the First Amended Complaint were decided by the November 24, 2020 Decision. In Issues 11(a) and 11(b), Student challenges whether the 2016 assessment plans were valid and in effect for the 2018-2019 school year, and if so, whether they complied with state law. Specifically, Student contends in Issue 11(a) that the 2016 assessment plans failed to provide written notice to Parent as to whether an individualized education program, called an IEP, team meeting would be convened following the completion of assessments. Issue 11(b) contends the same assessment plans failed to provide Parent with notice that an IEP team meeting would be convened to discuss the assessment results, Student's needs, and any recommendations related to special education.

In August and September 2020, OAH held a due process hearing involving Student and Upland Unified. The hearing for the consolidated cases involved a number of issues related to the 2016 assessment plans and Upland Unified's obligation to provide Student a FAPE for the 2018-2019 school year. Issues 11(a) and 11(b) were addressed in Issue 1 of the November 24, 2020 Decision. Issue 1 of the consolidated due process hearing was raised by Student to determine if Upland Unified failed to

provide sufficient information to Parent as to why Upland Unified required additional assessments pursuant to the September 30, 2016, and October 19, 2016 assessment plans.

OAH concluded under Issue 1 of the November 24, 2020 Decision that the 2016 assessment plans informed Parent that an IEP team meeting would be convened to discuss the results of the assessments. OAH also found that Upland Unified provided Parent with an invitation to an IEP team meeting with proposed dates of October 21 or 31, 2016, to meet. Furthermore, OAH concluded that the information Upland Unified provided on the September 30 and October 19, 2016 assessment plans itself was sufficient to inform Mother of the areas of suspected disability Upland Unified intended to assess, the methods it would use to assess Student, and the category of personnel who would assess each area. OAH further found on November 24, 2020, that Upland Unified explained additional data was needed to determine whether Student continued to meet eligibility criteria and continued to need special education and related services, her present levels of performance, and whether Student needed any modifications to special education and related services to meet the annual goals in her IEP and to participate, as appropriate, in the general curriculum.

In addition, the November 24, 2020 Decision determined Student was no longer eligible for special education and related services after June 30, 2017, due to Parent's failure to consent to Upland Unified's triennial assessments. Furthermore, OAH found that Upland Unified had no further duty after June 30, 2017, to offer or provide Student a FAPE, to convene IEP team meetings, or otherwise afford Student most of the rights available to students with disabilities under the IDEA and related state law. The November 24, 2020 Decision further concluded that Parent's failure to consent afforded Upland Unified a complete defense to almost any claim Student might raise that Upland

Unified denied her a FAPE after June 30, 2017, and in the 2017-2018 school year or thereafter.

The doctrine of collateral estoppel applies to Student's Issues 11(a) and11(b). Student and Upland Unified were afforded an opportunity to litigate Issue 1 and Upland Unified's obligation to offer Student a FAPE during the 2018-2019 school year or anytime thereafter, with both parties offering testimony and documentary evidence to support their contentions. Accordingly, Issues 11(a) and 11(b) is barred by the doctrine of collateral estoppel and dismissed.

Student's Issue 12 claims that Upland Unified failed to timely file a due process hearing request to determine if the 2016 IEP constituted a FAPE for the 2018-2019 school year. Issue 12 is encompassed within Issue 8 of the November 24, 2020 Decision. Student's Issue 8 claimed alleged violations against Upland Unified for failing to timely request a due process hearing request through January 2020, to determine whether the October 31, 2016 IEP offered Student a FAPE after Parent did not consent. On November 24, 2020, OAH determined Issue 8 was untimely, barred by the two-years statute of limitations, and therefore, dismissed. In addition, as discussed above, Upland Unified had no further duty after June 30, 2017, to offer or provide Student a FAPE, to convene IEP team meetings, or otherwise afford Student most of the rights available to students with disabilities under the IDEA and related state law. Accordingly, Issue 12 of the First Amended Complaint is barred by two-years statute of limitations and the doctrine of collateral estoppel to the extent it claims a denial of FAPE for the 2018-2019 school year and any time thereafter. Therefore, Issue 12 is dismissed.

SECOND AMENDED COMPLAINT

In Student's Second Amended Complaint, she moved to add another nine issues, numbered 13 through 21. Issue 13 again raised claims which were dismissed by OAH on December 30, 2020, as being outside OAH's jurisdiction. OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51). Therefore, Student's motion to amend her complaint to add Issue 13 is denied.

The remaining issues in the Second Amended Complaint, numbered 14 through 21, are based on the same facts alleged in the initial complaint and First Amended Complaint, all of which involved events that occurred prior to September 11, 2018, two years prior to the filing of the initial complaint in this matter. In addition, the new issues raised in the Second Amended Complaint involving assessments and special education eligibility are barred by the two-years statute of limitations and/or the doctrine of collateral estoppel for the same reasons discussed above and as decided in OAH's December 30, 2020 Order Granting Request for Official Notice of the November 24, 2020 Decision and Granting Motion to Dismiss Issues Barred by the Doctrine of Collateral Estoppel; Order Dismissing Non-IDEA Claims; Order Granting Motion to Amend Complaint and Dismissing Issues Barred by Collateral Estoppel and Non-IDEA Claims. Accordingly, Student's second motion to amend her complaint to add the remaining issues, identified as Issues 14 through 21 is denied, as the second amended complaint fails to raise any new claims within OAH's jurisdiction, and not barred by the two-years statute of limitations and the doctrine of collateral estoppel. Therefore, having dismissed each of the issues in Student's First Amended Complaint, and having

denied Student's second motion to amend her complaint, this matter is dismissed. All dates are vacated.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings