

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENT ON BEHALF OF STUDENT,

v.

EAST SIDE UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019030332

ORDER GRANTING MOTION TO DISMISS ISSUES 1, 3, 4, 5,  
6, AND 8

On March 7, 2019, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, referred to as OAH, naming East Side Union High School District.

On July 23, 2019, East Side filed a Motion to Dismiss Student's complaint. East Side generally alleges five of Student's eight issues are barred by the doctrines of res judicata and collateral estoppel. As to the remaining three issues, East Side requests dismissal on the grounds that Student cannot be awarded any remedy in light of OAH's prior determination that he is no longer eligible for special education and related services.

Student has not filed a response to the Motion to Dismiss.

## 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.)

Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties or their agents from re-litigating 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 re-litigation 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. Board. of Education* (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 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.)

The doctrines of res judicata and collateral estoppel serve many purposes such as relieving parties of the cost and vexation of multiple lawsuits and conserving judicial resources. In addition, these doctrines serve to prevent inconsistent decisions thereby 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, also known as IDEA, 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 IDEA provides that a decision made in an impartial due process hearing “shall be final.” (20 U.S.C. § 1415(i)(1)(A).) However, 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. (20 U.S.C. § 1415(f)(1)(A), (g), (i)(1)(B) & (i)(2); Ed. Code, § 56505, subd. (k).)

## DISCUSSION

On January 11, 2019, East Side filed a Request for Due Process naming Student in OAH case number 2019010414. That matter proceeded to hearing in March 2019 before Administrative Law Judge Charles Marson on the following four issues:

1. May East Side exit Student from special education and related services because he is no longer eligible for them in any category?

2. Did East Side provide Parents with meaningful participation in the individualized education program or IEP process at the IEP team meeting on December 4, 2018?
3. Was the assessor who conducted the independent educational evaluation of Student's speech and language actually an employee of East Side? and
4. Were East Side's triennial assessments appropriate such that Student is not entitled to independent educational evaluations of his speech and language or psychoeducational status at East Side's expense?

On May 17, 2019, OAH issued a final Decision in case number 2019010414. Administrative Law Judge, or ALJ, Charles Mason determined that the speech and language assessment conducted by Dr. Hernandez in February 2018 was a component of Student's triennial evaluation and not an independent educational evaluation. As such, ALJ Marson considered the appropriateness of this assessment as part of East Side's Issue 4 and declined to make a determination as to the assessor's employment status as this had no effect on the Decision.

The Decision in OAH case number 2019010414 found that East Side's triennial psychoeducational and speech and language assessments of Student were legally appropriate such that Parents were not entitled to publically funded independent educational evaluations in these areas. The Decision also found that East Side provided Parents meaningful participation in the IEP process at the IEP team meeting on December 4, 2018. Finally, the Decision determined that East Side may exit Student from special education and related services because he was no longer eligible for them in any category.

Student has identified eight issues for hearing in the current matter which is scheduled for hearing beginning August 6, 2019. His issues are as follows:

ACCESSIBILITY MODIFIED

1. Did East Side deny Student a free appropriate public education, known as a FAPE, and significantly impede Parent's meaningful participation in his individualized education program planning from February 2018 to present when it failed to assess him in the area of other health impairment upon receiving notice that Student had a medical diagnosis of autism, attention deficit hyper activity disorder and childhood emotional disturbance; and failed to address these medical diagnoses in its 2018 triennial evaluation.
2. Did East Side deny Student a FAPE by failing to offer him an adequate program in the 2017-2018 and 2018-2019 school years?
3. Did East Side deny Student a FAPE when it failed to timely hold a triennial assessment, failed to conduct triennial assessments, failed to hold the IEP team meeting within 60 days of Parent's consent to assess, and failed to provide Parent with the assessment report prior to the 2017 IEP team meeting?
4. Did East Side violate Student's procedural rights when it failed to respond to Parent's request for an independent assessment during the 2017-2018 school year?
5. Was East Side's 2017-2018 triennial assessment of Student in compliance with all legal requirements and did it appropriately assess him in all areas related to his suspected disabilities, or is Student entitled to independent psychoeducational and speech and language evaluations?
6. Did East Side deny Student a FAPE when it failed to timely produce records to Parent during the 2017-2018 and 2018-2019 school year?
7. Did East Side deny Student a FAPE and violate Parent's procedural rights when it ceased to provide services without notice to Parent or consent from Parent during the 2017-2018 school year?

8. Did East Side deny Student the opportunity to meaningfully participate in school-related matters by failing to provide Parent with written translations of Student's IEP, evaluation, and other special education documents during the 2017-2018 and 2018-2019 school year?

East Side moves to dismiss Student's Issues 1, 3, 4, and 5 as necessarily decided in OAH Decision 2019010414 which found the speech and language assessment was not an independent educational evaluation but rather part of the triennial assessments, and that these assessments were appropriate despite their delayed completion. The Decision determined that East Side's delay in completing and presenting its assessments had no adverse impact on Parent or Student.

East Side's argument is well-taken. The prior hearing and final Decision in OAH case number 2019010414 specifically addressed the appropriateness of East Side's speech and language assessment and psychoeducational evaluation. The Decision determined that the assessments were not timely but that the delay caused no harm, and found the assessments appropriate. Specifically, the Decision concluded that the psychoeducational evaluation assessed Student in all suspected areas of disability including autism and attention deficit hyperactivity disorder and whether he had an other health impairment or an emotional disturbance. The Decision determined that Student was not entitled to independent educational evaluations in the areas of speech and language and psychoeducational functioning.

ALJ Marson further analyzed correspondence between Father and East Side and considered and weighed the testimony of Father, the speech assessor Dr. Hernandez, and East Side witnesses in determining whether the speech assessment was an independent educational evaluation. East Side contended it was and therefore only needed to meet the requirements governing independent evaluations. Student litigated

his position that Dr. Hernandez' evaluation was not truly an independent educational evaluation such that he remained entitled to one. The Decision in OAH case number 2019010414 found that there was no District speech assessment with which Parent could have disagreed and that the failure to provide Parent the criteria for independent educational evaluations was harmless.

Accordingly, Student's Issues 1, 3, 4, and 5 are barred by the doctrines of res judicata and collateral estoppel.

East Side additionally argues that Student's Issue 8 was also determined in the prior matter as ALJ Marson concluded that Parents meaningfully participated in the May 17 and December 4, 2018 IEP team meetings. Although East Side did not seek a determination that Parents meaningfully participated in the May 2018 IEP team meeting, ALJ Marson found that the December meeting was a continuation of the May meeting and that the two could not be completely separated in analyzing participation. Audio recordings for each meeting were introduced into evidence and analyzed in the Decision. ALJ Marson determined that Father dominated the meetings, vehemently disagreed with assessment recommendations, had ample opportunity to ask questions, prevented assessors from explaining their findings, and presented his own views of Student's difficulties at length.

East Side's argument that Issue 8 is barred is persuasive. In the first case, Student did not contend, as he does now, that East Side denied meaningful participation by failing to provide written translations of his IEP's or evaluations. Rather, as found in the Decision, Student asserted Parents were denied participation based on East Side's failure to provide educational records, specifically a copy of the May 2017 IEP. Even so, the Decision in OAH case number 2019010414 specifically addressed Parent's participation in the May 2018 and December 2018 IEP team meetings and determined that Parent

was a meaningful participant in this two-part IEP team meeting, such that Student's Issue 8 is precluded. In summary, the claims underlying Student's Issues 1, 3, 4, 5, and 8 have already been litigated and decided in OAH case number 2019010414. Student is barred from re-litigating these issues in this matter.

East Side's next argument is that Student's Issues 2, 6, and 7 should be dismissed as the prior Decision's determination that Student is no longer eligible precludes any compensatory remedy. It appears East Side is arguing that Student's remaining issues are moot in light of OAH's Decision that he no longer requires special education. Under the doctrine of mootness, a court may refuse to hear a case because it does not present an existing controversy by the time of decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.) A case becomes moot when the court cannot provide the parties with any effectual relief. (*Knox v. Service Employees Intern. Union, Local 1000* (2012) 567 U.S. 298, 307 [132 S.Ct. 2277, 228]7.)

Student's Issues 2, 6, and 7 raise existing controversies as to whether East Side denied him a FAPE by failing to offer an appropriate program and failing to timely produce records during the 2017-2018 and 2018-2019 school years, and whether it failed to implement Student's IEP services during the 2017-2018 school year. Student is entitled to raise issues in a due process complaint that concern the period prior to OAH's determination of ineligibility, despite East Side's position that Student will not be able to prove a loss of educational benefit. East Side's request that OAH determine Student's remaining issues moot is, in fact, a motion for summary judgment which OAH does not have jurisdiction to entertain. East Side fails to provide any authority that would require OAH to hear and determine the equivalent of a motion for summary judgment, without giving Student the opportunity to develop a factual record as to the specific alleged FAPE denials and whether he is entitled to any relief.



However, a closer look at Student's complaint reveals that Issue 6 alleges a procedural violation of failing to timely provide the written triennial assessment reports and underlying speech protocols. OAH Decision 2019010414 determined that Student suffered no harm from the delay in the assessment process, and that the assessments were legally appropriate such that he is not entitled to independent educational evaluations. The prior Decision necessarily determined the written reports and underlying data were valid and appropriate and specifically found that Parent meaningfully participated in the IEP team meetings held to review the assessments.

Student had the opportunity to cross examine the speech and language assessor regarding her testing protocols and to seek any relief in the prior matter for an alleged failure to receive testing records in terms of any prejudice in proceeding to hearing in their absence. Student is precluded from raising these claims here and attempting to re-litigate the issue of meaningful participation. Accordingly, Student's Issue 6 is also barred by the doctrines of collateral estoppel and res judicata.

## ORDER

1. East Side's motion to dismiss Issues 1, 3, 4, 5, 6, and 8 is granted.
2. East Side's motion to dismiss Issues 2 and 7 is denied.
3. This matter shall proceed to hearing as currently scheduled as to Issues 2 and 7.

DATED: July 31, 2019

Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings

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