

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT.

OAH CASE NO. 2015040188

ORDER GRANTING/DENYING
MOTION TO DISMISS

On March 3, 2014, the San Dieguito Union High School District (District) filed a motion to dismiss portions of Student's second amended due process request (complaint) on the ground that those claims are barred by a decision of the Office of Administrative Hearings (OAH) in a prior due process proceeding between the parties. This order finds that some, but not all, of Student's issues are precluded by the prior decision.

Background

On August 8, 2013, District filed a complaint naming Student in OAH case number 2013080189 (First Case). The issues were: (1) whether District appropriately assessed Student in Spring 2013 in the areas of speech and language and physical therapy (PT), and (2) whether the July 19 and July 25, 2013 individualized education programs (IEP's) offered Student a free appropriate public education (FAPE) under the Individuals with Disabilities Act (20 U.S.C. § 1400 et seq. (IDEA)) and related State law. The matter proceeded to hearing, and a final decision was issued on October 11, 2013 (the Decision).

On August 27, 2013, Parent on behalf of Student filed a complaint naming District in the instant case, OAH case number 2013090062 (Second Case). On November 8, 2013, Student filed a second amended complaint, and by order November 22, 2013, OAH determined that Student's second amended complaint stated seven issues: that District had denied Student a FAPE by: (1) preventing Parent from meaningfully participating in Student's July IEP team meetings, (2) failing to appropriately assess Student in Spring 2013 in the area of speech and language, (3) failing to appropriately perform assistive technology (AT) and psychoeducational assessments on Student in Spring 2013, (4) failing to provide Parent with educational records and thereby depriving Parent of the opportunity to meaningfully participate in the July 2013 IEP team meetings, (5) failing to implement a settlement agreement between Student and District dated October 12, 2012 (the settlement agreement), (6) failing to provide accommodations provided in Student's March 16, 2012 IEP, and (7) failing to offer an appropriate placement for Student in the July 2013 IEP's.

On December 3, 2013, District filed a motion to dismiss Student's claims in the Second Case as (i) barred by the Decision, which decided the same claims on the merits, (ii) barred by settlement agreement between the parties, or (iii) lacking merit. District's motion was denied in its entirety, in part because the decision in the First Case was not yet final.

District's Second Motion to Dismiss

With the current filing, District renews its motion to dismiss Issues 1, 2, 4, 6 and 7 as "barred by the IDEA." District contends that the doctrine of issue preclusion bars Student from proceeding on these issues in light of factual findings and legal conclusions rendered on identical issues in the Decision, regardless of whether an appeal is pending.

On March 10, 2013, Student filed an opposition, arguing that issue preclusion does not apply because (i) Student has appealed the Decision, and it is not a final determination, and (ii) the operative complaint in the Second Case states issues that were not determined by the Decision.

APPLICABLE LAW

Collateral estoppel, also known as issue preclusion, bars a party from relitigating issues previously litigated and determined. (*Long Beach Unified Sch. Dist. v. State of California* (1990) Cal.App.3d 155, 168 (*Long Beach*.) Issue preclusion serves multiple purposes, such as relieving parties of the cost and vexation of multiple lawsuits, conserving judicial resources, and, by preventing inconsistent decisions, encouraging reliance on adjudication. (*Allen v. McCurry* (1980) 449 U.S. 90, 94 [66 L.Ed.2d 308].)

If a state accords issue preclusion effect to a prior administrative decision, the doctrine applies to special education due process hearings under the IDEA in that state. (*Manchester School Dist. v. Crisman* (1st Cir. 2002) 306 F.3d 1, 33-34; *Mr. G. v. Timberlane Regional School Dist.* (D.N.H., Jan. 4, 2007, Case No. 04-cv-188-PB) 2007 U.S. Dist. Lexis 1544; *Patricia N. v. Lemahieu* (D.Hi. 2001) 141 F.Supp.2d 1243, 1256; *Moubry v. Independent School Dist.* 696 (D.Minn. 1998) 9 F.Supp.2d 1086, 1109, fn. 11.)

In California, collateral estoppel applies to a decision reached in a quasi-judicial administrative proceeding that resolves disputed issues of fact properly before the agency after the parties have had an adequate opportunity to litigate. (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 944; *Taylor v. Lockheed Martin Corp.* (2003) 113 Cal.App.4th 380, 385; *White v. City of Pasadena* (9th Cir. 2012) 671 F.3d 918, 927-928; *Henderson v. Newport-Mesa Unified School Dist.* (2013) 214 Cal.App.4th 478, 503.) OAH special education due process decisions state the factual basis for the decision based on the evidence presented at the hearing, after the parties are afforded the right to present evidence and to confront, cross-examine and compel the attendance of witnesses. (Ed. Code, § 56505, subds. (e)(2) and (3); Gov. Code, § 11425.50 subd. (c).) Accordingly, issue preclusion applies to special education due process hearings in California.

For issue preclusion to be successfully invoked: (1) the issue must be identical to an issue decided in a prior proceeding; (2) the issue must have been actually litigated in the prior proceeding; (3) the issue must have been necessarily decided in the prior proceeding; (4) the decision in the prior proceeding must be final and on the merits; and (5) the party against whom preclusion is sought must have been a party, or in privity with a party, to the prior proceeding. (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 531.)

Finality for purposes of administrative issue preclusion is a two-step process: (1) the decision must be final with respect to action by the administrative agency, and (2) the decision must have conclusive effect. (*Long Beach, supra*, 225 Cal.App.3d at pp. 168-169.)

A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses no further power to reconsider or rehear the claim. (*Long Beach, supra*, 225 Cal.App.3d at p. 169.) Special education due process hearing decisions constitute final administrative determinations binding on all parties. (Ed. Code, § 56505, subd. (h).)

For an administrative decision to have conclusive effect, it must be free from direct attack, as may be made by appeal. An administrative decision will generally not be given collateral estoppel effect if it has been challenged on appeal or if the time for such appeal has not lapsed. (See *Long Beach, supra*, 225 Cal.App.3d at p. 169.)

However, in keeping with the purposes of issue preclusion, a final judgment in the strictest sense is not required where it would invite “needless duplication of effort and expense in the second action to decide the same issue, or, alternatively, postponement of decision of the issue in the second action for a possibly lengthy period of time until the first action has gone to a complete finish.” (*Sabek, Inc. v. Engelhard Corp.* (1998) 65 Cal.App.4th 992, 998, quoting Restatement of the Law (2d), Judgments, § 13, com. g.)

IDEA due process proceedings determine matters relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to that child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) Time is of the essence when a child’s educational program is at issue, and California law requires that a due process hearing be conducted and a decision rendered within 45 days of receipt of the complaint, unless an extension is granted for good cause. (Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020; see also 34 C.F.R. § 300.515(a) & (c) (2006)¹.) Postponement of a hearing on a child’s educational program for months or years pending the outcome of an appeal of a prior decision that decided some or all of those issues is untenable, and warrants an exception to the conclusive effect requirement for invoking issue preclusion.

¹ All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

Dispensing with the conclusive effect requirement does not impose an undue hardship on the parties. The party precluded from re-litigating precluded issues pending appeal may seek relief from the findings and decision on those issues from the reviewing court. (Ed. Code, §56505, subd (k); 34 C.F.R. § 300.516.) As to new issues, a party may request a due process hearing on new issues, even if they arise from the same school years addressed in the prior decision, because the IDEA does not preclude new filings on issues that could have been raised and heard in the first case, but were not. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c); Ed. Code, § 56509.) These other avenues of relief for previously litigated and new issues support an interpretation that, at the administrative level, special education due process hearing decisions constitute final administrative determinations binding on all parties, even pending appeal.

For the reasons given above, application of issue preclusion in administrative due process proceedings pending the appeal of a prior OAH decision on those same issues is reasonable and in accord with the IDEA, and fulfills the purposes of issue preclusion under California law.

DISCUSSION

For purposes of this motion, it has been determined that the issue preclusion requirement of the finality of the Decision on appeal need not be met. The preclusion requirement of privity has also been met, as the party against whom preclusion is sought, Student, was also a party in the First Case. Therefore, Issues 1, 2, 4, 6 and 7 of Student's second amended complaint may be dismissed if the remaining criteria for issue preclusion are met: that those issues (1) are identical to an issue decided in the First Case, (2) were actually litigated in the First Case, and (3) were necessarily decided in the First Case.

Student's Issue 2, which asserts that District failed to appropriately assess Student in Spring 2013 the area of speech and language, is substantially identical to, and subsumed in, a portion of the District's first issue in the First Case, which was whether the District appropriately assessed Student in the areas of speech and language and PT. The issue of whether Student was appropriately assessed in the area of speech and language was fully litigated in the First Case, and the Decision makes detailed factual findings regarding the speech assessment. (Factual Findings 5-7, 15-24, 41.²) These findings were thoroughly analyzed and discussed in the Decision (Legal Conclusions 10-13, 14 and 16), and necessarily decided in the First Case. Therefore, Student has already received one fair hearing on Issue 2, and is precluded from relitigating this issue in the Second Case. Accordingly, District's motion to dismiss Issue 2 is granted.

Student's Issues 1 and 4, which both allege that Student was denied a FAPE because Parent was deprived of an opportunity to meaningfully participate in the July 2013 IEP team meetings, were part of the showing District was required to make in the First Case on its

² All references are to the factual findings and legal conclusions in the Decision.

second issue, that the July 2013 IEP's offered Student a FAPE. As stated in the Decision, District was required to prove that it complied both procedurally and substantively with the IDEA. (*Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 192 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*); *Amanda J. v. Clark Cnty. Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 881; see Legal Conclusions 4 and 8.) Conduct that significantly impedes a parent's opportunity to participate in the development of the student's IEP constitutes a denial of FAPE. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *W. G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F. 2d 1479, 1482; see Legal Conclusions 9 and 13.) The Decision made detailed factual findings regarding Parent's participation in the July 2013 IEP team meetings (Factual Findings 13, 24, 25, 27, 34, 35, 38, 40, 42, 44, 46, 50, 51, 55 and 55), and included a thoughtful and thorough legal analysis of whether Parent had been given an opportunity to meaningfully participate in those meetings. (Legal Conclusions 25, 31, 36 and 40.) Therefore, Student's Issues 1 and 4 were identical to an issue in the First Case, and were actually litigated and necessarily decided in the First Case. Accordingly, District's motion to have these issues precluded from the Second Case is granted.

Student's Issue 7 alleges that District denied Student a FAPE in the July 19, 2013 IEP by offering an inappropriate placement. This issue is also subsumed in the second issue of the First Case, which sought a determination of whether Student was offered a FAPE by the July 2013 IEP's. A significant portion of the Decision's factual findings was devoted to the July 2013 IEP's and their offer (Factual Findings 25-40), as was the majority of its legal analysis (Legal Conclusions 17-41.) Student's Issue 7 was identical to an issue in the First Case, fully and actually litigated, and necessarily decided in the Decision. Accordingly, District's motion to have Student's Issue 7 dismissed from the second amended complaint is granted.

Student's Issue 6 alleges that District denied Student a FAPE for the 2013-2014 school year by failing to provide Student with all accommodations mandated by the March 12, 2012 IEP. This is an implementation issue, and none of the issues in the First Case addressed implementation of Student's existing IEP. Whether the March 2012 IEP was fully implemented was neither referenced nor addressed in the Decision. Therefore, District's motion to dismiss Issue 6 as already litigated in the First Case is denied.

ORDER

1. District's motion to dismiss is granted as to Issues 1, 2, 4 and 7 of Student's second amended complaint.
2. District's motion is denied as to Issue 6 of Student's second amended complaint.
3. The matter will proceed as scheduled as to the remaining issues.

DATE: March 13, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings