

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TUOLUMNE COUNTY CALIFORNIA
CHILDREN'S SERVICES.

OAH Case No. 2015090107

ORDER DENYING MOTION TO
DISMISS

On August 24, 2015, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint), naming Tuolumne County California Children's Services. On October 27, 2015, California Children's Services filed a Motion to Dismiss, alleging that Student filed a compliance complaint with the California Department of Education on the same issues as in the due process complaint, which the California Department of Education investigated and found in part for Student and in part for California Children's Services. California Children's Services also contended that Student requests that OAH enforce its July 13, 2013 decision in favor of Student.

On October 29, 2015, Student filed an opposition, which asserted that Student's complaint is not barred by the California Department of Education's compliance complaint findings, and that Student does not seek that OAH enforce its prior decision. On November 2, 2015, California Children's Services filed a reply brief.

APPLICABLE LAW

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); see also Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

OAH's limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement or order in a decision rendered by OAH. (*Id.* at p. 1030.) In *Wyner*, during the course of a due process hearing the parties reached a settlement agreement in which the school district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student initiated another due process hearing, and raised claims alleging

the school district's failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, determined that the issues pertaining to compliance with the earlier order were beyond its jurisdiction, and this ruling was upheld on appeal. The *Wyner* court held that "the proper avenue to enforce SEHO orders" was the California Department of Education's compliance complaint procedure (Cal. Code Regs., tit. 5, § 4650), and that "a subsequent due process hearing was not available to address . . . alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing." (*Wyner*, *supra*, 223 F.3d at p. 1030.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 WL 949603, the United States District Court for the Northern District of California held that when the student is alleging a denial of FAPE as a result of a violation of a settlement agreement, and not merely a breach of the settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure. By analogy, the same reasoning applies for the enforcement of orders issued by OAH as OAH does not have jurisdiction to enforce its own orders, but does have jurisdiction when the student alleges a denial of FAPE as a result of the failure to comply with an OAH order.

In addition to due process hearing procedures, each state educational agency shall adopt written procedures for resolving complaints of individuals and organizations regarding special education programs. (34 C.F.R. § 300.151(a) (2006).) As part of complaint investigations, a state educational agency must perform an investigation, if necessary; allow for the opportunity to submit additional information regarding the allegations in the complaint; review all relevant information and make a determination as to whether the public agency is violating the IDEA; and issue a written decision that addresses each allegation in the complaint. (34 C.F.R. § 300.152(a) (2006).) The state educational agency must complete this investigation and issue the written decision within 60 days of the filing of the complaint, unless exceptional circumstances exist which warrant an extension. (*Id.*)

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].)

DISCUSSION

Student’s due process complaint contains two contentions against California Children’s Services. The first contention alleges that California Children’s Services denied Student a FAPE from August 24, 2013 through the present by failing to implement Student’s last agreed upon and implemented educational program as to the provision of physical therapy and occupation therapy, her June 3, 2011 individualized educational program. Student’s second contention is that California Children’s Services failed to participate in the April 22, 2015 IEP team meeting. California Children’s Services asserts that Student’s complaint is barred since Student seeks to enforce the prior OAH decision and that the California Department of Education’s compliance complaint findings bar further adjudication of Student’s claims.

On July 15, 2013, OAH issued a decision that found that California Children’s Services denied Student a FAPE. This decision is presently on appeal, and while the decision is on appeal Student’s stay put placement is the service levels in Student’s June 3, 2011 IEP. On May 27, 2015, Student filed a compliance complaint with the California Department of Education, which contended that California Children’s Services was not providing the stay put services and failed to participate in an IEP team meeting. The California Department of Education investigated and determined that California Children’s Services did not provide stay put services and ordered California Children’s Services to provide compensatory education to Student. Further, California Department of Education found against Student in that California Children’s Services did participate in the IEP team meeting at issue.

As to California Children’s Services’ contention that Student requests that OAH enforce its own decision, Student’s due process complaint seeks no such remedy. Until there is an agreement otherwise between the parties as to the IEP physical therapy and occupational therapy service levels, or contrary decision by the appellate court, California Children’s Services must provide services in compliance with the June 3, 2011 IEP. Further, Student’s complaint is framed as a denial of FAPE by California Children’s Services’ purported failure to provide stay put services, which OAH has jurisdiction to hear.

As to California Children’s Services’ assertion that Student’s two contentions are barred by the findings in the California Department of Education compliance complaint investigative findings and corrective order, California Department of Education compliance complaint findings do not constitute administrative adjudicative findings. The California Department of Education’s compliance complaint findings are done after an investigation, not an adjudicative hearing. Therefore, the California Department of Education investigation findings do not constitute either *res judicata* or collateral estoppel. However, California

Children's Services can use its compliance with the corrective order in providing the compensatory education services to rebut claims that it owes Student additional services if Student prevails at hearing. Accordingly, California Children's Services' motion to dismiss is denied.

ORDER

California Children's Services' Motion to Dismiss is denied. The matter shall proceed as scheduled.

DATE: November 5, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings