

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019060909

**ORDER DENYING NEWPORT-MESA UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS**

On September 25, 2019, Newport-Mesa Unified School District filed a Motion to Dismiss portions of Student's Request for Due Process filed with the Office of Administrative Hearings. Newport-Mesa Unified School District is referred to as Newport-Mesa. Office of Administrative Hearings is referred to as OAH. Student did not file an opposition to Newport-Mesa's Motion to Dismiss.

APPLICABLE LAW

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (I); 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 (I), 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.

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 v. McCurry* (1980) 449 U.S. 90, 94 [101 S.Ct. 411, 66 L.Ed.2d 308].)

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 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 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, 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 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.

In *Nev. v. United States* (1983) 463 U.S. 110 [103 S.Ct. 2906, 77 L.Ed.2d 509], the United States Supreme Court stated that "the doctrine of res judicata [claim preclusion or issue preclusion] provides that when a final judgment has been entered on the merits of a case, '[it] is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.'" (*Id.* at pp. 129-130 [citation omitted].) In other words, res judicata and collateral estoppel also preclude the use of evidence that was admitted, or could have been offered, at a prior proceeding.

The purpose of the IDEA (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education”, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) 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.)

This limited jurisdiction does not include jurisdiction over claims alleging a school district’s failure to comply with a settlement agreement. (*Id.* at p. 1030.) 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, § 4600, et. seq.), 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. 2007, No. C 05-04977 VRW) 2007 WL 949603, the District Court held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a mediated settlement agreement, as opposed to “merely a breach” of the mediated

settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure.

DISCUSSION

Student's complaint raises two issues containing a total of eight claims against Newport-Mesa, as follows:

1. Did Newport-Mesa deny Student a free appropriate public education from June 20, 2017 through the 2017-2018 school year, including the extended school year by:
 - a. Failing to timely implement the OAH decision;
 - b. Failing to assess Student in all areas of suspected disability;
 - c. Failing to offer Student appropriate supports and services; and
 - d. Failing in their child find obligation?
2. Did Newport-Mesa deny Student a free appropriate public education during the 2018-2019 school year by:
 - a. Failing to timely implement the OAH decision;
 - b. Failing to assess Student in all areas of suspected disability;
 - c. Failing to offer Student appropriate supports and services; and
 - d. Failing in their child find obligation?

Newport-Mesa, in its Motion to Dismiss, requests that Student's complaint, with the exception of Student's Issue Two (c), be dismissed. Newport-Mesa contends OAH has no jurisdiction to determine the remainder of Student's claims, because those claims fall outside of the applicable statute of limitations, and Student is seeking to enforce the terms of the decision rendered in OAH Case No. 2016090101. The decision in OAH Case No. 2016090101 ordered Newport-Mesa to provide Student independent educational

evaluations in the areas of psychoeducation, health, academic achievement, and speech and language, and to hold an individualized education program team meeting to discuss the assessments once completed if Mother requested an IEP team meeting.

Newport-Mesa contends the majority of the factual allegations contained in Student's complaint arose on or before June 20, 2017, the commencement of the operable statute of limitations. Many of Student's factual allegations predate the statute of limitations, however, the issues as phrased by Student commence on June 20, 2017, which falls within the two-year statute of limitations.

Newport-Mesa contends many of Student's factual allegations were previously litigated in OAH Case No. 2016090101, and should not be relitigated in the current case. Student's issues do not indicate an attempt to relitigate issues arising before June 20, 2017. While Student may attempt to introduce evidence which has previously been adjudicated or is now irrelevant to this matter, Newport-Mesa may raise appropriate objections at hearing.

Newport-Mesa contends OAH has no jurisdiction to determine whether a school district has complied with the orders contained in the March 14, 2017 decision. Generally, OAH does not have jurisdiction to enforce or interpret settlement agreements or OAH decisions. Student's complaint, however does not seek enforcement or interpretation of OAH Case No 2016090101. Instead, Student contends Newport-Mesa's failure to obtain the required independent educational evaluations in a timely manner resulted in a denial of a free appropriate public education in line with the reasoning of *Pedraza*.

Student's complaint contains a number of factual allegations which, on their face, are irrelevant or factually outside of OAH jurisdiction. Student's issues, however, are not

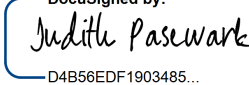
limited to matters that are factually outside of OAH jurisdiction, and require a ruling on the merits. Accordingly, the motion is denied.

ORDER

1. Newport-Mesa Unified School District's Motion to Dismiss is denied.
2. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATED: September 30, 2019

DocuSigned by:

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Judith Pasewark
Administrative Law Judge
Office of Administrative Hearings

