

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021030090

ORDER GRANTING MOTION TO DISMISS ISSUE 8 AND
DENYING MOTION TO DISMISS ISSUES 1, 2, 4, 5, 6, AND 7

SEPTEMBER 16, 2021

On March 1, 2021, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Long Beach Unified School District. The Office of Administrative Hearings is referred to as OAH. On August 11, 2021, Student sought permission to file an Amended complaint, which OAH granted on August 16, 2021.

On August 31, 2021, Long Beach filed a Motion to Dismiss issues 1, 2, 4, 5, 6, 7, and 8 from Student's complaint, asserting that issues had previously been decided, involved settlement terms not involving Student right to a free appropriate public education, were not claims for relief, or were beyond OAH's jurisdiction.

Student filed an opposition on September 7, 2021. Although Student's opposition was filed one day late, Student gave notice before the opposition was due that it would be late and explained that counsel was in active litigation involved in other matters. Long Beach did not object to the request. Given the complexity of the motion and counsel's obligations in other matters, good cause was shown to grant the request for one business day of additional time.

RES JUDICATA AND COLLATERAL ESTOPPEL- ISSUES 1, 4, 5, AND 6

Long Beach asserts that issues 1, 4, 5, and 6 should be dismissed because they were ruled upon as part of OAH case 2020090441, which was filed by Student against Long Beach on September 15, 2020, heard between March 9 and 18, 2021, and decided on May 6, 2021.

In the complaint here, Student asserts in Issue 1 that Long Beach failed to either provide an independent educational evaluation of Student's need for occupational therapy or timely file a due process hearing request over its disagreement with Student's choice of evaluator.

Student's Issue 4 here alleges that Long Beach failed to contract with Dr. Ikeda, the provider of an independent assessment in vision therapy, for a follow-up evaluation of the length and duration of vision therapy services Student required.

Student's Issue 5 asserts that Long Beach did not provide Student's educational record in response to requests made by Parents on March 26, April 5, April 6, and August 3, 2021.

Student's Issue 6 alleges that Student was not enrolled in and did not receive services from Long Beach during the extended school year period in 2020.

Long Beach seeks to have these issues dismissed under the doctrines of res judicata and collateral estoppel because they are substantially the same issues, because they involve time periods that overlap with issues decided in the previous case, and because resolving these issues will require the use of documents that were introduced in the hearing of the other case and the testimony of persons who testified in the other hearing.

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; *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, 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 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.

DISCUSSION

The issues heard in the previous due process are related to those heard here. Long Beach asserts that they, and the supporting evidence Student has described in his prehearing conference statement, are almost identical and thus should be dismissed.

The Prehearing Conference Order of February 19, 2021 set out the issues heard in the previous case. Long Beach contends that the issues are the same and that the decision in the previous case made findings that preclude hearing the issues raised here.

Long Beach contends that “the facts relating to” Issue 1 here and issue two in the prior action “are identical” and have been fully litigated, with Long Beach prevailing. The

issues do not appear identical, as the second issue presented in the February 19, 2021 Prehearing Conference Order asks “Did Long Beach fail to assess Student in the area of Occupational Therapy, including sensory integration, from September 2019 through September 2020, such that Student is entitled to an independent educational evaluation at public expense?” This does not involve the same claim as Issue 1 here, asserting Long Beach’s failure to choose to provide an independent evaluation or file for due process.

Long Beach contends that Issue 1 is precluded because the Decision in the other case on claim 2 found that Parents failed to carry their burden of showing that Long Beach had information that Student needed to be assessed for his occupational therapy needs. Both claims involve an independent occupational evaluation, but the issues are not the same and the similarity of the evidence and witnesses to be presented here with those presented at the first hearing does not overcome the modifications to the res judicata and collateral estoppel doctrines by the IDEA. Issue 1 here and Claim 2 in the previous action are separate legal issues with different burdens of proof and legal analyses. Issue 1 will not be dismissed.

Similarly, Long Beach contends that Student’s Issue 4 here repeats the fifth claim in his previous action. The Prehearing Conference order set that issue as “Did Long Beach deny Student a FAPE from February 2020 through September 2020, by failing to provide Student with the vision therapy services recommend by Dr. Ikeda?” The causes of action are not the same. In the previous action Student alleged a violation of his right to a FAPE because he did not get vision therapy. Here, he asserts in Issue 4 that Long Beach failed to contract with Dr. Ikeda to fund his follow-up examination. In its moving papers, Long Beach contends that that was Parents’ responsibility and that its original contract with Dr. Ikeda was sufficient to cover a

second assessment. Issue 4 is a separate issue and not the same as the fifth claim in the previous action. Issue 4 will not be dismissed.

Long Beach contends that Issue 5's charge that it failed to provide Student's educational records in response to Parents' requests is an attempt to appeal rulings made at the hearing concerning objections to rebuttal evidence and witnesses. Long Beach makes this claim in a footnote and does not satisfactorily explain this conclusion. It appears that Long Beach is concerned that hearing the issue of its failure to respond to record requests will reopen a dispute over the admission of rebuttal evidence relevant to Student's Issue 6 here. Such concerns do not invoke the doctrines of res judicata and collateral estoppel. If Student asserts that the failure to provide his educational records caused him a denial of FAPE, he is entitled to have that issue heard. Issue 5 will not be dismissed.

Long Beach contends that Issue 6 is the same as claim 6 in his previous action, which was stated as "Did Long Beach deny Student a FAPE from September 2019 through September 2020, by failing to provide Student with assistive technology and accommodations described in his IEP?" Issue 6 here asserts that Student was not enrolled during the 2020 extended school year and did not receive services from Long Beach during that time. Long Beach argues that the fact that it prevailed on this issue means that OAH found that Student was not denied FAPE during the 2020 extended school year. Student sharply disagrees, stating that the ALJ hearing the action stated on the record that the 2020 extended school year was not at issue. No support is given for that assertion, and there is no citation to any such discussion in the Decision. Accordingly, no weight is given to that argument.

The issue of whether a student was denied FAPE in a certain time period by failure to provide assistive technology and accommodations is narrower than whether a

Student was enrolled in school and whether he received any services. Although the text of the Amended complaint talks more about the surprise airing of extended school year issues at the hearing of the other matter and the difficulty of getting Student's educational records, it does state a different issue than Claim 6. As the two issues are separate, Issue 6 will not be dismissed.

SETTLEMENT- ISSUE 2

Long Beach contends that Issue 2 concerns a claim of denial of FAPE based upon a non-FAPE term in a settlement agreement. Student's Issue 2 asserts that Long Beach received reports from Pride Learning Center on Student's progress in reading remediation but failed to review them with the IEP team.

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); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) This limited jurisdiction does not include claims alleging a school district's failure to comply with a settlement agreement. (*Id.* at p. 1030.)

In the *Wyner* case, the parties reached a settlement agreement in which the district agreed to provide certain services during the course of a due process hearing. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student filed another due process hearing alleging the district did not comply with the settlement agreement in the first case. A hearing officer determined

that the issues alleging the failure to comply with the settlement agreement in the first case were beyond its jurisdiction. This ruling was upheld on appeal. The decision in *Wyner* held that “the proper avenue to enforce Special Education Hearing Office 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 Special Education Hearing Office order in a prior due process hearing.” (*Wyner, supra*, 223 F.3d at p. 1030.)

More recently, in *Pedraza v. Alameda Unified School Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603), the District Court held that OAH has jurisdiction to adjudicate claims that allege a student was denied a free appropriate public education as a result of the violation of a mediated settlement agreement. However, a breach of a mediated settlement agreement should be addressed by the California Department of Education’s compliance complaint procedure.

DISCUSSION

Long Beach agreed to provide Student with services at Pride Learning Center as part of a settlement agreement. In the due process hearing request and at IEP team meetings, Student’s counsel has expressed the opinion that the services Student received from Pride did not help him make progress. However, Student’s due process hearing request does not assert in Issue 2 that Student was denied FAPE because of the inadequacy of those services. If Student had done so, Long Beach might be correct in its assertion that the claim should be dismissed as raising a FAPE claim over a settlement term. Instead, Student has alleged that the reports Long Beach received from Pride were independent educational assessment results it was obligated to have the IEP team

consider pursuant to Ed Code section 56329(c). Accordingly, Issue 2 will not be dismissed.

FAILURE TO STATE A CLAIM- ISSUE 7

Long Beach contends that Issue 7 raises no FAPE issue and is merely a request for remedies. This issue is raised only in a footnote and is not discussed in detail. Issue 7 asserts that Student is “finally making progress in his private placement” and that his parents should be reimbursed for its cost. Student contends that the failure of a district to provide FAPE may entitle parents to reimbursement for a private placement, so it is an issue that is properly before OAH.

If Long Beach believed it cannot effectively respond to the claim pleaded, it had the option of filing a notice of insufficiency. Further, whether Issue 7 is merely a remedy or an issue relating to denial of FAPE can be discussed at the Prehearing Conference. Therefore, Issue 7 will not be dismissed here.

JURISDICTION- ISSUE 8

Long Beach asserts OAH lacks jurisdiction over Issue 8 because it asserts violations of Student’s rights “under Section 504, the Americans with Disabilities Act/ADA, and State civil Rights laws.” As noted above, 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).

The complaint states that it anticipates that these claims will be dismissed by OAH for lack of subject matter jurisdiction, and Student’s Opposition to the motion makes the same acknowledgement. Accordingly, Issue 8 is dismissed.

ORDER

1. Long Beach's Motion to Dismiss is granted as to Issue 8. The matter will proceed as scheduled as to the remaining issues.

Chris Butchko

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings