BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013090062
v.	ORDER: (1) DENYING DISTRICT'S MOTION TO DISMISS AND (2) DENYING STUDENT'S MOTION FOR SANCTIONS
SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	

On December 3, 2013, the San Dieguito Union High School District (District) filed a motion to dismiss Student's claims as (i) barred by a prior Office of Administrative Hearings (OAH) decision deciding the same claims on the merits, (ii) barred by settlement agreement between the parties, or (iii) lacking merit (as to Issue 5).

On December 9, 2013, Student filed an opposition, essentially asserting that the OAH decision is not final and that Student's complaint contends that he was denied a free appropriate public education (FAPE) because the settlement agreement was not fully implemented. Student also requested that District be sanctioned for filing a frivolous motion.

On December 12, 2013, District filed opposition to the sanctions request, asserting that the OAH decision must be final, or it would not be appealable. On December 16, 2013, Student filed further opposition.

As discussed below, the prior OAH decision is not yet final for purposes of administrative issue preclusion, and Student's allegations raise factual issues within OAH jurisdiction to be determined on the evidence. Although District's motion will be denied in its entirety, District's legal argument appeared to be partially in error rather than frivolous, and sanctions will not be imposed.

APPLICABLE LAW AND DISCUSSION

Prior OAH Decision

District contends that the doctrine of issue preclusion bars Student from proceeding on Issues 1, 2, 4, 6 and 7, in light of factual findings and legal conclusions rendered on identical issues in the decision in *San Dieguito Union High School District v. Student*, OAH case number 2013080189, dated October 11, 2013 (Prior Decision).

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].)

The doctrine of res judicata serves 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 res judicata is a judicial doctrine, it is 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.)

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 Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 168-169 (*Long Beach*).)

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 not be given collateral estoppel effect if it has been challenged on appeal or if the time for such appeal has not lapsed. (*Long Beach*, *supra*, 225 Cal.App.3d at p. 169.) A party aggrieved by the findings and decision in a special education due process hearing decision may appeal the decision to a state court of competent jurisdiction or to a district court of the United States within 90 days of receipt of the hearing decision. (Ed. Code, §56505, subd (k); 34 C.F.R. 300.516.)

The Prior Decision is dated October 11, 2013. Although it is a final decision for OAH administrative purposes, as of the ruling on District's motion, the 90-day period in which either party may exercise the right to appeal that decision has not yet expired, and the Prior Decision cannot be given preclusive effect. Accordingly, District's motion to dismiss Issues 1, 2, 4, 6 and 7 on the ground of issue preclusion is denied.

Settlement Agreement

District contends that Student's issues 3 and 6 are barred by the terms of a settlement agreement between Student and District, dated October 12, 2012, purporting to have settled all issues in two earlier due process matters: *Student v. San Dieguito Union High School District*, OAH case number 2012050089, and *San Dieguito Union High School District v. Student*, OAH case number 2012070603 (Settlement Agreement).

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).) In *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541, the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a FAPE as a result of violation of a settlement agreement, as opposed to "merely a breach" of the settlement agreement that should otherwise be addressed by the California Department of Education's compliance complaint procedure.

Here, as clearly set forth in the November 22, 2013 OAH order denying District's notice of insufficiency, Student is not seeking to enforce the Settlement Agreement. Rather, Student has alleged at Issue 3 that he was denied a FAPE because he was required to miss excessive instructional time due to Districts' poor scheduling of assessments, and at Issue 6 that District failed to provide Student with all accommodations called for in his March 16, 2012 IEP. These allegations of District's post-agreement conduct raise issues of fact and law that are not limited to matters facially outside of OAH jurisdiction, but instead seek a ruling on the merits. Accordingly, District's motion to dismiss Issues 3 and 6 for lack of jurisdiction is denied.

Dismissal Sought on the Merits on Issue 5

Student alleges at issue 5 that he was denied a FAPE by District's failure to provide transportation pursuant to the Settlement Agreement during the first week of the 2013-2014 school year, or on September 18, 2013 and October 10, 2013. District seeks dismissal of this claim on the merits, contending that it had no obligation to provide transportation to Student under the Settlement Agreement or stay put, and that even if such an obligation existed, District's failure to provide the service was not a "material failure" rising to the level of a denial of FAPE.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties), special education law does not provide for a summary judgment procedure. Here, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, Districts' motion to dismiss Issue 5 is denied.

Student's Request for Sanctions

In a special education due process matter, an Administrative Law Judge (ALJ) has the authority to award attorneys' fees under the Government Code and the California Code of Regulations. Government Code section 11455.30, subdivision (a) provides:

> (a) The presiding officer may order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in Section 128.5 of the Code of Civil Procedure.

That section is implemented by California Code of Regulations, title 1, section 1040, which provides:

> (a) The ALJ may order a party, a party's representative or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.
>
> (1) 'Actions or tactics' include, but are not limited to, the making or opposing of Motions or the failure to comply with a lawful order of the ALJ.
>
> (2) 'Frivolous' means
>
> (A) totally and completely without merit or
>
> (B) for the sole purpose of harassing an opposing party.

A comprehensive discussion of the grounds for sanctions under Code of Civil Procedure section 128.5 is set forth in *Levy v. Blum* (2001) 92 Cal.App.4th 625, 635-637. A trial court may impose sanctions under Code of Civil Procedure section 128.5 against a party, a party's attorney, or both, for "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." A bad faith action or tactic is frivolous if it is "totally and completely without merit" or if it is instituted "for the sole purpose of harassing an opposing party." (*Ibid*.) Whether an action is frivolous is governed by an objective standard: whether any reasonable attorney would agree it is totally and completely without merit. There must also be a showing of an improper purpose; i.e., subjective bad faith on the part of the attorney or party to be sanctioned. An improper purpose may be inferred from the circumstances. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

District's opposition to Student's motion makes clear that this motion was brought due to District's erroneous interpretation of the "finality" requirement for administrative issue preclusion. District relied on the finality of the Prior Decision for administrative purposes, but failed to take into account its lack of conclusive effect. The issue raised was not so common as to render District's motion totally and completely without merit by any reasonable attorney, and the motion does not appear to have been made for an improper purpose. Accordingly, Student's motion for sanctions is denied.

ORDER

1. District's motion to dismiss is denied.

2. Student's motion for sanctions is denied.

3. All dates currently set in this matter are confirmed.

Dated: December 16, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings