BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
ABC UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013040604
v.	ORDER DENYING STUDENT'S MOTION TO DISMISS
PARENT ON BEHALF OF STUDENT.	

On February 15, 2013, Student filed a request for due process hearing in Office of Administrative Hearings (OAH) case number 2013020685, naming the ABC Unified School District (District). That case is currently set for hearing on May 15, 16, and 20, 2013. (Case number 2013020685 will hereafter be referred to as "Student's case.")

On April 12, 2013, the District filed a request for due process hearing in OAH case number 2013040604, naming Student (District's case). The District's case is set for hearing on May 9, 2013. On April 16, 2013, the District filed a motion to consolidate the Student's case with the District's case. Student has filed an opposition to that motion.

On April 12, 2013, Student filed a notice of insufficiency to the District's case. OAH found the District's due process hearing request to be sufficiently pled.

On April 18, 2013, Student filed a motion to dismiss the District's case. Student argues that there is no genuine controversy between the parties because the Student is willing to stipulate to certain facts in the District's case. Student believes that the District's case is an attempt at a "declaratory decision" which is not permitted under California education law. Student also contends that the District's case was filed in an attempt to delay the hearing in Student's case by seeking to consolidate the two cases.

The sole issue remaining to be heard in Student's case involves whether the District denied Student a free appropriate public education (FAPE) when it refused to offer a residential treatment center (RTC) placement to her in January 2013.

The two issues set forth in the District's case are: 1) Whether the District ceased being Student's local education agency (LEA) from the time of Student's release from College Hospital (on or about March 26, 2013), through and including a final written decision by OAH in the District's case; and 2) Whether the District was relieved from developing or implementing an IEP for Student during that same time period.

In Student's moving papers for the motion to dismiss, Student offered to stipulate to the first issue in the District's case. Student asks OAH to enter a stipulation that "As long as [Student] was, and remains in a residence outside of the ABC USD residence area, ABC USD was not her current LEA."

The District opposes Student's motion. The District contends that Student has offered to stipulate only to part of the District's case. The District contends that there is a genuine controversy between the parties and that it is entitled to a hearing on its due process request.

In Student's reply papers, Student offers to stipulate to language that is close to (although not exactly) the language in the second issue raised in the District's due process request.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

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].)

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].) 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

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, etc…..), special education law does not provide for a summary judgment procedure. Here, Student's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits.

On its face, the District's due process request raises an issue within OAH's jurisdiction – it seeks an order regarding the District's responsibility for Student's education during a particular time period. If the District believes it needs a final decision on the merits on that issue, it is entitled to such a decision. A stipulation by Student's counsel made in a motion to dismiss does not deprive OAH of jurisdiction to hear the issue. Absent a settlement agreement, the District is entitled to a decision that can be used for purposes of res judicata/collateral estoppel.

Likewise, Student's concern that the District's case is being filed solely to delay Student's case through consolidation of the two cases, is not a basis for dismissal. That concern may be a basis to deny consolidation, but it does not deprive OAH of jurisdiction to hear the case.[1]

The motion to dismiss must be denied. If there is truly no controversy between the parties regarding the two issues in the District's due process request, Student can offer to settle the case, can offer stipulations at hearing to reduce the time necessary to try the case, or can choose not to defend against the case and allow a final decision to be entered.

ORDER

1. Student's motion to dismiss is denied.

2. All dates remain on calendar as currently set.

Dated: April 26, 2013

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

[1] The District's motion to consolidate the two cases is addressed in another order. As stated in that order, the request to consolidate is denied, in part, because of the concerns that Student raises regarding delay of Student's case.