**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

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| CINDY MYSLOW and MATTHEW MYSLOW, ON THEIR OWN BEHALF AND AS GUARDIANS OF TRAVIS MYSLOW<br>Plaintiffs, | : | CIVIL ACTION NO.<br>3:02-cv-1957 (JCH) |
| v. | : | |
| RAYMOND AVERY, ET AL.,<br>Defendant. | : | JUNE 10, 2003 |

**RULING ON DEFENDANTS' MOTION**
**TO DISMISS [DKT. NO. 18]**

Plaintiffs Cindy and Matthew Myslow, the parents of a minor child, Travis, bring this action for attorney's fees against the defendants, Raymond Avery, JeanAnn Paddyfote, Thomas Mulvihill, and the New Milford Board of Education, pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, et seq. Plaintiffs allege that, because they prevailed at an administrative due process hearing resolving issues associated with Travis' educational needs, they are entitled to attorney's fees incurred in connection with subsequent Planning and Placement Team ("PPT") meetings.

Defendants move for dismissal of the claims against them under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Specifically, the defendants claim that the doctrine of res judicata bars this action because the plaintiffs' attorney's fees were the subject of an earlier-filed action, Myslow v. Avery, 3:02-CV-4 (PCD). For the reasons set forth below, the defendants' motion is granted.

## I. BACKGROUND

### A. The Individuals with Disabilities Education Act

Congress enacted the IDEA "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. § 1400(d)(1)(A). A "child with a disability" includes a child with a "serious emotional disturbance." 20 U.S.C. § 1401(3)(A)(I).

The IDEA provides for "detailed administrative procedures to guarantee disabled children an appropriate education." J.C. v. Regional School District 10, Bd. of Educ., 278 F.3d 119, 121 (2d Cir. 2002). The Act requires school districts to create an individualized education program ("IEP") for each child, typically prepared by an IEP team, consisting of "parents, teachers, and educational specialists who meet and confer in a relatively informal, collaborative process to determine how best to accommodate the needs of the disabled student." Id. (citing 20 U.S.C. § 1414(d)(1)(B)). If a parent is not satisfied with the IEP, he or she may present a complaint to the school, and, if the complaint is not resolved to his or her satisfaction, request an impartial due process hearing. 20 U.S.C. § 1415 (b)(6), (f)(1). Any party aggrieved by the hearing officer's decision may bring a civil action in United States district court. 20 U.S.C. § 1415(I)(2)(A).

## B. Factual Background[1]

Travis is a student with learning disabilities, specifically dyslexia and dysgraphia, who is eligible for special education and related services pursuant to the IDEA. To resolve a dispute between the Myslows and the Board over an appropriate educational plan for Travis, a due process hearing was conducted. On November 20, 2001, the State of Connecticut hearing officer issued a final decision in Travis' case. The officer determined that the educational program offered by the Board for the 2000-2001 school year was not appropriate, ordered the Board to pay for homebound instruction for Travis until an adequate individual education program could be developed, and made various findings with respect to Travis' need for a psychiatric evaluation.

Following the hearing officer's decision, the plaintiffs filed an action in United States District Court for attorney's fees under the IDEA. Myslow v. Avery, 3:02-CV-4 (PCD)("prior action"). In that action, plaintiffs sought payment of fees incurred in connection with the due process hearing. The plaintiffs alleged that "[a]t least one, and possibly more, PPT meetings are necessary in order to implement the hearing officer's final decision." Amd. Compl. (prior action) ¶ 30. The Board filed an offer of judgment in that case on February 12, 2002. Plaintiffs accepted the offer on February 15, 2002.

In the months following the hearing officer's determination, plaintiffs attended

[1]For the purposes of this motion to dismiss, the court accepts as true all facts alleged in the plaintiffs' complaint.

numerous PPT meetings. Meetings were held to, inter alia, select an independent consultant to determine whether Travis needed a psychiatric evaluation, review diagnostic placement and behavior plans, and discuss Travis' placement in a private school. This pending action seeks attorney's fees incurred in connection with these meetings.

## II. DISCUSSION

### A. Standard

A motion to dismiss can only be granted if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002)(quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)). In considering such a motion, the court must accept the factual allegations alleged in the complaint as true and all inferences must be drawn in the plaintiffs' favor. Scutti Enterprises, LLC. v. Park Place Entertainment Corp., 322 F.3d 211, 214 (2d Cir. 2003).

### B. Res Judicata

Under the doctrine of res judicata, "'once a final judgment has been entered on the merits of a case, that judgment will bar any subsequent litigation by the same parties or those in privity with them concerning the transaction, or series of connected transactions, out of which the [first] action arose.'" Cieszkowska v. Gray Line New York, 295 F.3d 204, 205 (2d Cir. 2002)(quoting Maharaj v. Bankamerica Corp., 128 F.3d 94, 97 (2d Cir.1997)). The doctrine "precludes the parties or their privities from relitigating claims

that were or could have been raised in [the prior] action." Marvel Characters, Inc. v. Simon, 310 F.3d 280, 286-87 (2d Cir. 2002). However, a prior judgment cannot extinguish claims "which did not even then exist and which could not possibly have been sued upon in the previous case." Id. at 287 (internal quotation and citation omitted).

It is clear that the pending action and the prior action arose out of the same transaction or series of transactions, i.e., the due process hearing in which the Myslows prevailed. Because "a dismissal, with prejudice, arising out of a settlement agreement operates as a final judgment for res judicata purposes," id., the plaintiffs' acceptance of the Board's offer of judgment in the prior action has a preclusive effect. Although plaintiffs argue that their claims for attorney fees were not covered by the prior action because they were incurred after that action was filed, the court disagrees. In the prior action, plaintiffs specifically claimed that the New Milford Board of Education was liable for fees incurred in connection with past and future PPT meetings, held as a result of the due process hearing officer's determination. Myslow v. Avery, Civ. No. 3-02-cv-0004(PCD), Amended Complaint, p.10, ¶2. In amending the Complaint on January 28, 2002, plaintiffs sought fees incurred to date, fees to be incurred in the district court action, and fees to be incurred in connection with "[A]t least one, and possibly more, PPT meetings . . . ." Id. at ¶30. See also, id. at ¶2. Therefore, the plaintiffs' acceptance of the offer of judgment in that case extinguished any future claims to fees incurred in connection with those meetings.

## III. CONCLUSION

For the reasons set forth above, defendants' Motion to Dismiss [Dkt. No. 18] is GRANTED. The clerk is ordered to close this case.

**SO ORDERED**

Dated at Bridgeport, Connecticut this 10th day of June, 2003.

_____/s/_____
Janet C. Hall
United States District Judge