

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

FREMONT UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009061327

ORDER DENYING MOTION TO  
DISMISS

On June 25, 2009, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf naming Fremont Unified School District (District) as the respondent.

On September 11, 2009 District filed a Motion to Dismiss Student's due process complaint for lack of jurisdiction on grounds that Parent lacked standing to bring the complaint on Student's behalf because Parent was divorced and was not the custodial parent and did not hold educational rights.

On September 17, 2009 in response to District's motion, Parent filed an incomplete Custody and Visitation Order which purported to show Parent was awarded joint custody of Student. The Order did not identify the county and court of issuance nor did it contain a signature from the Judge or Clerk of the court or date of issuance.

On September 21, 2009, the undersigned ALJ held a status to request further proof from Parent. Parent was ordered to provide that proof by noon on September 22, 2009 to permit the ALJ to fully review the evidence and issue an order on the motion to dismiss. On September 22, 2009, Parent timely filed proof establishing she is the custodial parent and the holder of educational rights on behalf of Student. Parent also filed a Notice of Withdrawal of the complaint requesting case closure.

In view of Student's withdrawal of the complaint District's motion is denied because the issue is moot.

ORDER

GOOD CAUSE APPEARING, District's Motion to Dismiss is denied.

Pursuant to Student's request to withdraw the complaint the case is closed and all previously scheduled dates are vacated.

IT IS SO ORDERED

Dated: September 22, 2009

/s/

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STELLA OWENS-MURRELL  
Administrative Law Judge  
Office of Administrative Hearings