

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

JULIAN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012020570

ORDER GRANTING STUDENT'S  
MOTION TO WITHDRAW HER CASE  
WITHOUT PREJUDICE

On February 6, 2012, Student's father filed a request for due process on her behalf with the Office of Administrative Hearings (OAH). OAH granted the parties' first joint request for continuance on March 16, 2012. On July 5, 2012, the parties again filed a joint request for continuance pending settlement of the case. OAH granted the request in an Order dated July 5, 2012, but served on July 6, 2012.

On July 9, 2012, Student filed a Request to Dismiss her case without prejudice, pending approval by the Julian Unified School District's Board of Education of a settlement agreement entered into by the parties. In her request, Student states that should the Board approve the settlement agreement, she will thereafter request dismissal of her case with prejudice.

Neither state or federal special education statutes or regulations nor the California Administrative Procedures Act specifically address motions to withdraw complaints be it before, during, or after the commencement of a due process hearing. However, OAH may look by analogy to the Code of Civil Procedure, section 581, et seq., which addresses such motions in the context of state civil proceedings.<sup>1</sup> Section 581, subdivision (c), states that a plaintiff may dismiss his or her complaint, or any portion of it, with or without prejudice prior to the actual commencement of trial.

No hearing has commenced in the instant case. Therefore, Student is entitled to withdraw her case without prejudice. Student's motion is granted and her case is dismissed without prejudice.

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

IT IS SO ORDERED.

Dated: July 9, 2012

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings