

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012090564

ORDER DENYING MOTION TO
DISMISS WITHOUT PREJUDICE

On September 18, 2012 Parent on behalf of Student (Student) filed a Due Process Hearing Request (complaint) naming the Rialto Unified School District (District) as respondent. The complaint alleged two problems. The first is that Student has been beaten and robbed at school, causing physical and emotional injuries, without receiving counseling by the District. The second problem alleged is that Student is unable to learn at school because he is being teased, and has bipolar disorder.

On October 16, 2012, District filed a Motion to Dismiss on the grounds that the matters alleged in the complaint had been resolved as part of a Final Settlement Agreement. The Motion contains almost no information regarding the terms of the Final Settlement Agreement.

District's Motion states that District and Parent signed a Final Settlement Agreement for this case on October 4, 2012, and that Student's claims should therefore be dismissed. District's Motion attaches the signature page of an Agreement. The signature page appears to contain the signatures of Parent and District, and appears to relate to this matter, delineated by the OAH case number. However, the signature page does not contain any information as to the claims resolved, nor the terms of the settlement, sufficient to determine that the claims at issue in the complaint were released.

Since it cannot be determined from the signature page whether all or any portion of the complaint has actually been released, District's Motion must be denied at this time. More importantly, only Student can withdraw the request for due process hearing, not District. Accordingly, the proper procedure in these situations is for the party requesting the due process hearing to file the notice of withdrawal that is included with the initial scheduling order.

Based on the above, District's motion must be denied. District may refile the motion if it provides further information from which the ALJ can determine whether the claims at issue in the complaint were released as part of the Agreement. Alternatively, and more appropriately, Student should file a notice of withdrawal.

ORDER

District's Motion to Dismiss is denied.

Dated: October 22, 2012

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings