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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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13 M.D.,

1:08-cv-01873-AWI-GSA

14
15 Plaintiff,

ORDER RE JOINT MOTION FOR
APPROVAL OF SETTLEMENT

16 vs.

(Docs. 14 & 15)

17 ROSEDALE UNION SCHOOL
DISTRICT, et. al.,

18 Defendants.
19 _____/

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21 Plaintiff, M.D., is a minor in this action.¹ Pending before the court is a Joint Application for
22 Approval of Settlement filed March 5, 2009.

23 The minor's claim pertains to experiences she encountered as a student at Freedom Middle
24 School within the Rosedale Unified School District in Kern County, California.²

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27 ¹According to the Joint Application for Approval of Settlement, the minor is fourteen years of age.

28 ²A First Amended Complaint was filed with the Kern County Superior Court on December 2, 2008. Thereafter, on
December 5, 2008, Defendants removed the action to this Court.

1 The Joint Application for Approval of Settlement indicates that an offer of settlement for a total
2 of \$9,999.00 was accepted by Plaintiff that will result in the dismissal of the action with prejudice, and
3 that each party will bear its own costs. Plaintiff's attorneys are representing her on a pro bono basis and,
4 as a result, do not seek an award of attorneys's fees.

5 This Court's Local Rule 17-202 addresses settlements for minors and provides in pertinent part:

6 (b) Settlement. No claim by . . . a minor . . . may be settled or compromised
7 absent court order by the Court in approving the settlement or compromise.

8 . . . (2) Such application [for minor's compromise] shall disclose, among
9 other things, the age and sex of the minor . . . , the nature of the causes of action to be
10 settled or compromised, the facts and circumstances out of which the causes of action
11 arose, including the time, place and persons involved, the manner in which the
12 compromise amount or other consideration was determined, including such additional
13 information as may be required to enable the Court to determine the fairness of the
14 settlement or compromise

15 . . . (c) Disclosure of Attorney's Interest. When the minor . . . is represented by an
16 attorney, it shall be disclosed to the Court by whom and the terms under which the
17 attorney was employed . . . and whether the attorney has received or expects to receive
18 any compensation, from whom, and the amount.

19 . . . (e) Payment of Judgment. Whenever money . . . is recovered on behalf of a
20 minor . . . the money . . . will be (1) disbursed to the representative pursuant to state law
21 upon a showing that the representative is duly qualified under state law, (2) disbursed
22 otherwise pursuant to state law, or (3) disbursed pursuant to such other order as the Court
23 deems proper for the protection of the minor

24 The Joint Application for Approval of Settlement does not include information necessary for this
25 Court to make a recommendation regarding the merits of the application. For example, there is no
26 information with regard to payment of the judgment. Subdivision (e) of Local Rule 17-202 specifically
27 provides that when money or property is recovered on behalf of a minor, it must be "(1) disbursed to the
28 representative pursuant to state law, (2) disbursed otherwise pursuant to state law, or (3) disbursed
pursuant to such other order as the Court deems proper for the protection of the minor." This Court is
left to speculate as to whom the money will be disbursed to, and what arrangements have been made
regarding the deposit and/or maintenance of accounts regarding the money. Thus, the parties shall
provide a description of the manner in which the settlement proceeds will be distributed.

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1 In addition, it is noted that the Joint Application for Approval of Settlement makes no reference
2 to a guardian ad litem for Plaintiff. In fact, the caption does not reflect a guardian in any fashion.³
3 Moreover, it does not appear that an application to be the minor's guardian ad litem was ever filed with
4 this Court. Rule 17(c) of the Federal Rules of Civil Procedure provides in relevant part:

5 (1) With a representative. The following representatives may sue or defendant may sue
6 on behalf of a minor or an incompetent person :

- 7 (A) a general guardian;
8 (B) a committee;
(C) a conservator;
(D) a like fiduciary

9 (2) Without a Representative. A minor or an incompetent person who does not have a
10 duly appointed representative may sue by a next of friend or by a guardian ad litem. The
11 court must appoint a guardian ad litem - or issue another appropriate order-to protect a
minor or incompetent person who is unrepresented in an action.

12 Local Rule 17-202(a) requires "appropriate evidence of the appointment of a representative for the
13 minor" or similar motion by the court shall be presented. No evidence has been presented to this Court
14 to establish a party has in fact been appointed Plaintiff M.D.'s guardian ad litem. If a guardian ad litem
15 was in fact appointed in the state court proceeding, a copy of that court's order should be provided to
16 this Court.

17 Given the deficiencies noted above, this Court does not have sufficient information upon which
18 to make a recommendation that the Joint Application for Approval of Settlement be approved, or to
19 determine whether a hearing is necessary. Accordingly, IT IS HEREBY ORDERED that the additional
20 information be provided as outlined above within ten (10) court days of this order.

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24 IT IS SO ORDERED.

25 **Dated: April 2, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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28 ³Previous pleadings filed in this matter, however, did include reference to "Guardian Ad Litem, V. Dixon." See Doc.
10.