

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CENTER UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011120597

NOTICE OF EX PARTE
COMMUNICATION AND ORDER
DENYING REQUEST TO REOPEN
RECORD FOR BELATED FILING

Administrative Law Judge (ALJ) Deidre L. Johnson, State of California Office of Administrative Hearings (OAH), heard this expedited disciplinary matter on January 31, February 1, 2, and 9, 2012, in Antelope, California. Following the due process hearing, the undersigned ALJ ordered the parties to file their closing arguments with OAH on February 17, 2012, and to serve each other with a copy of their arguments.

On February 17, 2012, District filed its closing argument timely. Student did not file a closing argument. The record was closed on February 17, 2012.¹ On February 23, 2012, Parent submitted a written closing argument dated February 21, 2012, to OAH. At that time, the record was already closed. Parent's submission is deemed to be a motion to reopen the record to permit her to belatedly file Student's closing argument. District did not file any response within three business days. However, Parent did not provide any indication that she served the attorney for the District with her argument.

Assuming District was not served with Parent's letter, the undersigned ALJ has received and read an ex parte communication from a party to this action, and immediately notified the Presiding Administrative Law Judge of the letter.

Ex parte communications are not permitted while a due process proceeding is pending. "[W]hile special education due process hearing proceedings are pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to a hearing officer from an employee or representative of a party or from an interested person unless the communication is made on the record at the hearing." (Cal. Code. Regs., tit. 5, § 3084, subd. (a).) When an ex parte communication is received, the ALJ presiding over the matter must disclose the communication to all parties, make it part of the record, and may allow the parties an opportunity to address the matter. (Cal. Code. Regs., tit. 5, § 3084, subds. (c) – (e).)

¹ District's motion to admit an exhibit into evidence was timely filed on February 13, 2012, before the record was closed.

Since the undersigned ALJ is in the process of writing the Decision in this matter, this matter is still pending. The Decision is due by law on Friday, March 2, 2012. The subject matter of Parent's communication to the ALJ directly bears on the issues and evidence in this case.

The ALJ is hereby disclosing receipt of Parent's communication to the District and making it part of the record in this matter by attaching a copy of Parent's letter dated February 21, 2012, to this Notice of Ex Parte Communication.

Pursuant to the applicable law, the ALJ has discretion to allow the District the opportunity to address Parent's communication. In this case, permitting the District to respond would be counter to the ALJ's order at the close of the hearing that neither party has a right of reply in this case.

In the letter, Parent explained that the pastor of her church passed away on February 14, 2012, and due to this loss, she missed the filing deadline of February 17, 2012. However, Parent did not notify OAH that she requested a continuance of the filing deadline even though the ALJ explained the process during the hearing. In addition, Parent's closing argument appears to be a response to some claimed inaccuracies in District's closing argument.² However, as indicated above, Student does not have a right of reply. Student's motion to reopen the record to permit a belated filing is therefore denied. Accordingly, since District also does not have a right of reply to Student's closing argument, there is no reason to reopen the record for a response from the District.

Dated: March 1, 2012

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

² Parent's argument also makes objections about some of District's exhibits. However, most of those arguments are already in the record as Parent pointed out her problems with District's documents during the hearing.