

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

SECOND NOTICE OF EX PARTE  
COMMUNICATION

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. At that time, OAH records reflected that Student did not file a closing argument. The record was closed on February 17, 2012. The Expedited Decision in this case was issued and served on March 2, 2012.<sup>1</sup> On March 5, 2012, the ALJ found a sealed envelope in her OAH mail box from Parent, addressed to the ALJ and containing Student's closing argument dated February 16, 2012, with attachments. The envelope bore an OAH stamp showing receipt by OAH on February 17, 2012.<sup>2</sup> Student's submission contained no indication that it had been served on the District as directed by the ALJ during the hearing.

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

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<sup>1</sup> On February 23, 2012, Parent submitted a written letter to OAH dated February 21, 2012, that was deemed to be Student's request to reopen the record and admit the letter as her closing argument. However, Parent did not provide any indication that she served the attorney for the District with her argument. On March 1, 2012, the ALJ issued a notice of ex parte communication to the District that included an order denying Student's request.

<sup>2</sup> The envelope was hand-delivered to OAH as there was no postage or return address, and no indication that the communication was in reference to a particular case. OAH staff did not open the envelope promptly, research the case title to find the OAH case number, and lodge the document with the case. Instead, it was placed in the ALJ's OAH mailbox during a time when the ALJ was absent from the office.

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).)

The ALJ is hereby disclosing to the District receipt of Parent’s communication and making it part of the record in this matter by attaching a copy of Student’s closing argument dated February 16, 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 closing argument dated February 16, 2012. In this case, consistent with the order dated March 1, 2012, 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.<sup>3</sup>

The subject matter of Student’s closing argument to the ALJ directly bears on the issues and evidence in this case. However, the Expedited Decision was issued on March 2, 2012. The ALJ will therefore issue an Amended Decision based on OAH’s actual receipt of Student’s closing argument on February 17, 2012.

IT IS SO ORDERED.

Dated: March 8, 2012

/s/  
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DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>3</sup> The ALJ concludes that Parent’s communication dated February 21, 2012 was Student’s reply to the District’s closing argument and was properly not admitted.