

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011090998

NOTICE OF EX PARTE CONTACT

Following the due process hearing in this matter, the parties were ordered to file their closing briefs with the Office of Administrative Hearings (OAH) on November 14, 2011, with a courtesy copy to be emailed to the undersigned Administrative Law Judge (ALJ).

On November 14, 2011, Robert K. Closson, advocate for Student, submitted a copy of his closing brief on behalf of Student to the ALJ via email. In his email Dr. Closson made a comment regarding his personal family issues. The undersigned sent Dr. Closson an email acknowledging receipt of the brief and stating, "Thank you and good luck with your family."

On November 15, 2011, Dr. Closson emailed the undersigned again. In this email, he put forth his views on life's events and disabilities. The undersigned scanned through the email, but seeing it could be an attempt to initiate ex parte contact, the undersigned did not review it in detail. The undersigned then immediately notified his Presiding Administrative Law Judge of the contact and requested that an OAH staff member again inform Dr. Closson that these types of communications are improper.<sup>1</sup>

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 Administrative Law Judge 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).)

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<sup>1</sup> Dr. Closson was previously told on the record not to send emails to the undersigned following a previous attempt to make ex parte contact.

Since the undersigned ALJ is in the process of writing the Decision in this matter, this matter is still pending. While it is questionable that the subject communication from Dr. Closson was made “regarding any issue in the proceeding,” out of an abundance of caution, the ALJ is hereby disclosing his communication to the District and making it part of the record in this matter by attaching a copy of the email to this Notice of Ex Parte Communication. The District is hereby given the opportunity to address Dr. Closson’s email if it chooses to do so. If District feels compelled to file a response, it must do so by 5:00 p.m., November 23, 2011, and then, and only then, will Dr. Closson be permitted to file a reply to any response District may file. Any reply from Dr. Closson must be filed within three business days of receipt of any response filed by the District.

To assist the District in making its decision whether to respond, the undersigned is informing them that he has not, and will not, consider Dr. Closson’s email in rendering any decision on any issue now pending in this proceeding.

Dated: November 18, 2011

/s/

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GARY GEREN  
Administrative Law Judge  
Office of Administrative Hearings