BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: UPLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017021090 NOTICE OF EX PARTE COMMUNICATION

On May 22, 2017, a telephonic prehearing conference was held before Administrative Law Judge Tara Doss, Office of Administrative Hearings. Jonathan Read and Maryam Rastegar, Attorneys at Law, appeared on behalf of District. Dave Palmer, a non-attorney representative, and Parent appeared on behalf of Student. The prehearing conference was recorded. The Prehearing Conference Order was issued on May 23, 2017. The hearing is scheduled to commence on May 31, 2017, before ALJ Doss.

On May 25, 2017, the Office of Administrative Hearings received a letter from Parent. The letter was addressed to Presiding Judge Margaret Gibson, and was copied to Division Presiding Judge Bob Varma, Director of the Department of General Services Daniel Kim, and Secretary of the Government Operations Agency Marybel Batjer. OAH has no indication that it was also provided to District.

OAH staff forwarded the letter to the undersigned Presiding Judge as the direct-line Supervisor to ALJ Doss.

The letter set out concerns that Parent had regarding the manner in which ALJ Doss conducted the prehearing conference. It asserted that favorable treatment was being given to District in its presentation of the case and that Parent is concerned that she is not receiving due process.

The letter from Parent, directed to OAH, is deemed an ex parte communication during the pendency of these proceedings.

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

allow the parties an opportunity to address the matter within 10 days of receipt of the notification of communication. (Cal. Code. Regs., tit. 5, § 3084, subds. (c)-(e).)

Here, the ex parte communication was made to an OAH Presiding ALJ rather than to ALJ Doss. It is nonetheless, an ex parte communication during the pendency of these proceedings. As such, it must be disclosed to all parties, made a part of the record, and all parties must be allowed an opportunity to address the matter within 10 days of receipt of the notification of communication. This Notice therefore discloses the communication to District. The letter shall be attached to this Notice and shall be made part of the record in this matter.

Parent's letter is treated as a Motion for Disqualification of ALJ Doss as the hearing judge, based upon allegations of bias, and will be ruled on in due course. To allow the District's response to be considered and the Motion for Disqualification to be ruled upon, without delaying the hearing that is scheduled to commence on May 31, 2017, District's response is ordered to be filed by 12:00 PM on Tuesday May 30, 2017.

DATE: May 26, 2017

DocuSigned by:
June Lehrman
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JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings