BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

YUBA CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023050319

ORDER, *NUNC PRO TUNC,* FILING STUDENT'S CLOSING BRIEF

AUGUST 30, 2023

On June 27, 28 and 29, Administrative Law Judge Penelope Pahl, held a hearing in this case. At the conclusion of the testimony, the parties requested a continuance to file closing briefs. The record was held open to July 31, 2023, at 3:00 PM, for brief filing. Yuba City Unified School District filed a timely closing brief. No closing brief was received from Student in this case. On August 21, 2023, OAH issued the Decision.

On August 24, 2023, Student filed a "Motion for Reconsideration or in the Alternative to Reopen the Administrative Record." Student's motion asserted she had filed a timely closing brief that had not been considered, prejudicing Student. Yuba City did not file a response to the motion.

Student filed a closing brief on July 31, 2023, with the wrong case number on both the face of the brief and the accompanying proof of service. The brief was, therefore, placed in the wrong case docket. On August 1, 2023, the case manager, for the case designated on the brief, notified the attorney who signed the brief, Sheila Bayne, that she had filed the brief in a closed case. Student's counsel did not refile the brief with the correct case number or contact OAH regarding the mislabeled document. As the brief did not get filed in the correct docket, the undersigned did not know a closing brief had been filed. Student's motion is considered in light of these facts.

Courts have inherent power to enter judgments, *nunc pro tunc*, so they relate back to the time when they should have been entered. A *nunc pro tunc* judgement is allowed for the purposes of preserving the rights of litigants. *Nunc pro tunc* judgments are allowed, or refused, as justice may require in view of the circumstances of a particular case. (*Young v. Gardiner-Denver Co.* (1966) 244 Cal. App 2d 915, 919; see, Ca. Code Civ. Proc., § 473, subd. (d).)

In this case, this order is entered despite the multiple and continued errors on the part of Student's counsel. Here, Student's motion:

- fails to cite the correct statute on which relief should be sought, instead citing to the standard for reconsideration of an order on a pre-hearing motion;
- moves to reopen the administrative record to "hear Student's opening statement," despite the rest of the motion requesting that Student's closing brief be considered;
- still fails to correct the case number on the closing brief; and
- fails to acknowledge that the reason the closing brief was not considered initially was due to Student's counsel's document error.

Despite the collection of errors in Student's motion, in this instance an order is entered *nunc pro tunc* to accept the filing of Student's closing brief. This order is entered on the grounds that OAH had received a timely brief, albeit with an inaccurate case number; and that brief did not make it to the attention of the hearing ALJ. This order is entered to allow the ALJ to consider Student's closing arguments to avoid any possible prejudice to this Student.

The document titled "Petitioner's Closing Brief" erroneously designated OAH case number 2023020646, shall be considered filed as of July 31, 2023, at 2:18 PM in case number 2023050319. Student's counsel should not presume future briefs that are inaccurately numbered, misstate her requests, or fail to cite supporting authority will result in a reopening of the administrative record. Following consideration of the brief, an amended decision will be issued.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings