



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for October 20, 2017

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COURT DECISIONS

PRECEDENTIAL:

Petitioners: Federal Education Association - Stateside Region, Karen Graviss

Respondent: Department of Defense, Domestic Dependents Elementary and Secondary School

Tribunal: U.S. Court of Appeals for the Federal Circuit

Case Number: [2015-3173](#)

Issuance Date: October 13, 2017

Rehearing En Banc

Due Process

- Ex parte communications

In a previous precedential decision, 841 F.3d 1362, issued on November 18, 2016, the court reversed an arbitrator's decision and held that a teacher's due process rights were violated by improper ex parte communications in the form of emails between a supervisor and a subordinate who later served as the deciding official in the teacher's removal proceedings.

Holding: The court granted the agency's motion for rehearing en banc, and it vacated its November 18, 2016 decision. The court directed the parties to file supplemental briefs and to specifically address the court's decisions

in *Sullivan v. Department of the Navy*, 720 F.2d 1266 (Fed. Cir. 1983), and *Ryder v. United States*, 585 F.2d 482 (Ct. Cl. 1978). The court further invited the views of amici curiae.

NONPRECEDENTIAL:

Anderson v. Office of Personnel Management, No. [2017-1597](#) (Oct. 16, 2017) (affirming the Board's decision to sustain the denial of the appellant's request to waive recovery of an alleged annuity overpayment).

O'Lague v. Department of Veterans Affairs, No. [2016-2300](#) (Oct. 17, 2017) (Rule 36 affirmance).

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