BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

NORRIS SCHOOL DISTRICT,

OAH CASE NUMBER 2020010423

and

NORRIS SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020060184

ORDER DENYING MOTION TO STRIKE AND GRANTING REQUEST FOR OFFICIAL NOTICE

AUGUST 14, 2020

This matter was heard before by Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings, on July 14 through 17, and July 20, 22, and 23, 2020. The Administrative Law Judge is referred to as ALJ. The Office of Administrative Hearings is referred to as OAH.

On the last day of hearing the ALJ ordered the parties to file limited closing briefs, due on August 10, 2020, relating only to Issue 6, concerning the Covid-19 school closures. Final closing briefs are due on August 17, 2020. The ALJ requested that the parties meet and confer and file a stipulation with OAH as to any authorities relating to the Covid-19 school closures of which the parties agreed the ALJ could take official notice pursuant to California Government Code section 11515.

On August 10, 2020, both parties filed their closing briefs as to Issue 6. The parties also filed a Joint Stipulation Re: Covid-19 Guidance Materials. On August 11, 2020, Student filed a motion to strike authorities cited to in Norris School District's closing brief regarding Issue 6. OAH received no response from Norris.

Government Code section 11515 permits a tribunal to take official notice of any generally accepted technical or scientific matter with the agency's field, and of any fact which may be judicially noticed by California courts under Evidence Code section 452. Parties present at the hearing must be informed of the matters to be noticed, and any party may refute the officially noticed matters by evidence or written or oral presentation of authority. Evidence Code section 452 permits judicial notice of "facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute."

Here, Student asserts that Norris's brief referenced resources, requesting official notice of those resources. Student asserts the parties did not stipulate to those resources, and objects to those resources as hearsay and not in compliance with the ALJ's order to meet and confer. First, Student contends that Norris's reference to notes from a conference held by California State Superintendent of Public Instruction Tony Thurmond regarding Covid-19 school closures are not part of any official guidance issued by the California Department of Education. Student contends the notes are double hearsay and not an appropriate subject for official notice. Student also contends that Norris's reference to a "position paper" by the California Association of School Psychologists is irrelevant, hearsay, and not an appropriate subject for official notice. Student also asserts that two referenced letters written to Secretary of Education Betsy DeVos are hearsay and that Norris does not explain how these letters are appropriate for official notice. Student seeks an order striking these references from the record.

Student's motion to strike is granted. Norris has not established that notes from a "live conference" webinar hosted by Superintendent Thurmond, a "position paper" by California Association of School Psychologists, or two letters written to Secretary DeVos, are appropriate subjects for official notice under Government Code Section 11515. Those resources will not be considered by the ALJ.

The ALJ grants the parties' request for official notice of those authorities listed in the parties' Stipulation filed on August 10, 2020. In addition to the parties' Stipulation, the ALJ takes official notice of a press release issued by the United States Department of Education on April 27, 2020, informing the public that, as of that date, Secretary of Education Betsy DeVos "was not recommending Congress pass any additional waiver authority concerning the FAPE and least restrictive environment requirements of the IDEA", noting that "learning must continue for all students during the COVID-19 national

emergency." (*U.S. Dep't of Education, Secretary DeVos Reiterates Learning Must Continue for All Students, Declines to Seek Congressional Waivers to FAPE, LRE Requirements of IDEA*., April 27, 2020 Press Release).

IT IS SO ORDERED.

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Adrienne L. Krikorian
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Adrienne L. Krikorian

Administrative Law Judge

Office of Administrative Hearings