BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019090129

ORDER DENYING OFFICIAL NOTICE

AUGUST 24, 2020

On August 13, 2020, at the conclusion of Student's case-in-chief, Student moved to introduce two additional documents, marked for reference as Student's Exhibits 125 and 126. Student contends Exhibit S-125 is pertinent to Issues 3 and 4 in this matter, which concern the timeliness of adapted physical education assessment(s). Student contends Exhibit S-126 is pertinent to Issue 14, which concerns the accuracy of Chaffey's reporting of Student's grades, and to the reading remediation program Student requests for a remedy in this case. Student's counsel represented that the documents were official publications of the California Department of Education, or CDE. Student requested that the Administrative Law Judge take official notice of the documents. Judicial notice is generally called official notice when taken by an administrative tribunal. (Gov. Code, § 11515.) Evidence Code, section 452, subdivision (h) allows the taking of

judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

Exhibit S-125 is a six-page document titled "Adapted Physical Education Guidelines in California Schools." Exhibit S-126 is a 22-page document titled "The California Reading Initiative and Special Education in California." When offering the documents on August 13, 2020, counsel indicated that she had recently subpoenaed a CDE official to testify to the documents' authenticity and/or contents. On August 19, 2020, in light of the fact that all the remaining witnesses in both Chaffey's case and Student's rebuttal case were available to conclude the hearing, which had lasted 21 days in total, the ALJ denied Student's request for an additional future hearing day to enable CDE to respond to the recent subpoena.

On Friday, August 21, 2020, Chaffey filed written opposition to Student's request for official notice. Chaffey argued that the documents contained hearsay, that official notice of a publication cannot establish the truth of the recitals therein, and cannot render inadmissible hearsay admissible. Chaffey also argued that it had not been given sufficient notice of the documents, which were not part of the evidence exchanged prior to hearing. Chaffey further argued that the evidence, even if relevant, was prejudicial because its probative value would be substantially outweighed by the probability that its admission would necessitate undue consumption of time, or create substantial danger of undue prejudice, or confuse the issues.

Chaffey's contentions are persuasive. Student's request for official notice is hereby denied. The documents were not served on Chaffey timely in compliance with Education Code section 56505, subdivision (e)(7), nor was there any reason for the failure to do so. The issues and remedies Student asserts have been known since the

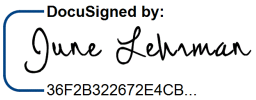
filing of the amended complaint in this matter on January 6, 2020, and throughout the entirety of the hearing that preceded the request. It was not until after 20 hearing days had elapsed that Student's counsel first mentioned the documents, but they were not presented solely in rebuttal, nor for any other discernible reason that would explain the lateness. Student's documents should have been timely produced, and, among other things, properly authenticated through an appropriate witness. The untimeliness prevented Chaffey from being able to adequately prepare to respond to the documents' content through the testimony of its witnesses, and deprived it of any opportunity to clarify the meaning, context, and weight given to them.

Moreover, as Chaffey argues, Exhibit 126 appears on its face to have been copyrighted in 1999, nearly 21 years ago. Student failed to introduce any evidence that the California Reading Initiative was relevant to the time period at issue, or in force, or otherwise valid. As Chaffey further argues, Exhibit 125 on its face appears to have a table of contents that consists of 210 pages, while the Exhibit is only a six-page document. Further, both documents contain multiple levels of inadmissible hearsay. For example, Chaffey argues that the underlying research and opinions on which the California Reading Initiative was based are disputed, and are not official acts of the CDE. It would be unduly time consuming to properly vet the documents, their contents and reliability, and to hear the witnesses both parties should have offered concerning the documents' contents, if Student had timely enough presented the documents as probative to the issues in this case.

In sum, the documents should have been timely disclosed and exchanged and offered through a competent witness so that Chaffey would have had an opportunity to cross-examine the witness as to, among other things, the reliability of the documents, the bases for the recommendations contained in the documents, and the validity of the

underlying research and opinions on which the documents were based. Therefore, the request for official notice is denied. Student's Exhibits 125 and 126 are excluded.

IT IS SO ORDERED.



June Lehrman

Administrative Law Judge

Office of Administrative Hearings