BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

LONG BEACH UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024080420

ORDER DENYING REQUEST FOR OFFICIAL NOTICE

JANUARY 31, 2025

On August 9, 2024, Long Beach Unified School District filed a request for due process hearing with the Office of Administrative Hearings, referred to as OAH, naming Student. On August 23, 2024, OAH granted Long Beach's first request for continuance of the hearing dates. ALJ Dalton heard this matter on November 13, 2024, and December 3, 4, 5, 10, 11, and 12, 2024. On January 10, 2025, the parties filed their written closing briefs.

On January 10, 2025, after Student filed his written closing brief, he filed a request for administrative notice. OAH did not receive a response from Long Beach.

Judicial notice is generally called official notice when taken by an administrative tribunal. (See Gov. Code, § 11515.) No specific statute or regulation governs the taking

of official notice in special education due process proceedings. For guidance in such situations, OAH often looks to the California Evidence Code. Section 452 of that Code allows, in part, the taking of judicial notice of regulations and legislative enactments issued by any public entity, official acts of the legislative, executive, and judicial departments of any state, and the records of any court. (Evid. Code, § 452, subds. (b), (c), & (d).) Section 452, subdivision (h) further allows judicial notice of, "Facts 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." (Evid. Code, § 452, subd. (h).) The party seeking judicial notice has the burden of furnishing sufficient information to enable the court to take judicial notice of the requested matters. (Evid. Code, § 453, subd. (b).)

Evidence Code Section 350 states, "No evidence is admissible except relevant evidence." Relevant evidence is defined as evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) Further, "any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." (Govt. Code §11513, subd. (c).) Although a court may judicially notice a variety of matters, only relevant material may be noticed. (*Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569.)

Student requests official notice of documents found on Long Beach's website, specifically, a chart purporting to identify the continuum of placement options in the least restrictive environment. The chart depicts general education as a less restrictive placement than general education with push-in services. Next to that, the chart depicts

collaborative co-teaching for pre-kindergarten through third grade, with specialized academic instruction services for the duration of the day.

Student requests official notice of the chart as support for Student's argument that the collaborative co-teaching program constitutes a more restrictive environment than general education with specialized academic push-in services.

Student's request for official notice is denied for several reasons. First, the parties were required to exchange evidence five business days prior to the first day of hearing. (Evid. Code, § 56505, subd. (e)(7). At hearing, an administrative law judge, or ALJ, may bar evidence not timely disclosed. (Evid. Code, § 56505.1, subd. (f).) Student's motion did not include a declaration stating the reasons why the chart was not exchanged with Long Beach five business days before the first day of hearing. Neither did Student explain when the chart was discovered and why it could not have been produced during the hearing.

Second, Student did not move to reopen the hearing so that the chart could be considered through witnesses testifying under oath. Long Beach did not have the opportunity to explain or dispute authentication, foundation, or the meaning of what the chart purports to depict. For example, the chart specifically mentions specialized academic instruction in relation to collaborative co-teaching and pull-out services. The chart does not identify which general education push-in services Long Beach represents are less restrictive than collaborative co-teaching. Nor does the chart state the number of minutes or hours of push-in services that would make that placement less restrictive.

Third, the chart does not purport to state facts. The information contained in the chart is reasonably subject to dispute. The chart contains information not capable of

immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Fourth, the chart lacks evidentiary value. At hearing, witnesses from both parties provided their opinions on what they believed was the least restrictive placement appropriate for Student at the time Long Beach developed Student's 2023 annual individualized education program, or IEP. Student presented evidence and argument that push-in resource specialist services, or specialized academic instruction, was less restrictive than collaborative co-teaching with specialized academic instruction embedded in the program. Long Beach presented evidence and argument regarding the opposite.

Determination of what constitutes the least restrictive environment appropriate for any child depends on several factual determinations made at hearing analyzed within a particular legal framework. (See, 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114 & 300.116; Ed. Code, § 56361; 5 Cal. Code Regs. § 3042(a); *Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.) Such determination is not left to the opinions of the parties, however well intentioned.

Long Beach's chart reflects the opinion of the maker or makers, whoever they were, based on general information. The chart does not purport to be based upon Student's specific circumstances, which dictate the least restrictive environment appropriate for him at the time Long Beach developed the disputed IEP. Accordingly, information presented in the chart has no tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.

ORDER

Student's motion for official notice is denied.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings