BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. TEHACHAPI UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016110657 ORDER DENYING REQUEST FOR OFFICIAL NOTICE

The hearing in this matter concluded on February 16, 2017. A decision is still pending in the case.

At the conclusion of the hearing, at the parties' request, the Office of Administrative Hearings continued the hearing for written closing arguments and for Tehachapi Unified School District to file a written motion for official notice of a California Department of Education Investigation Report. Student was afforded time to submit a written response to any motion from District.

Concurrent with District's March 6, 2017 closing brief, District filed a request for official notice of a December 15, 2016 Investigation Report from the California Department of Education regarding a complaint from Mother regarding District's compliance with the orders issued in OAH Case No. 2015050839. District cited Government Code sections 11501 and 11515 and Evidence Code sections 451, subdivision (a), and 452, subdivision (b), as authority for the request. District contends the findings in the California Department of Education Investigation Report are "official acts of a state regulatory body" and also "within the specialized field of subject matter of special education due process hearings." District argues the Investigation Report's findings are relevant to this case because Student argued at the hearing that what OAH ordered in Case No. 2015050839 is what constituted a free appropriate public education for Student during the time period at issue in this case, and the Investigation Report indicates the California Department of Education found that District complied with the order in Case No. 2015050839 by providing Student a one-to-one aide trained in applied behavioral analysis and supervised by a Board Certified Behavior Analyst for all but two days at issue.

Although invited and afforded the opportunity to file a response, Student did not file any response to District's request for official notice.

Due process hearings authorized by the California Department of Education are not conducted pursuant the Government Code section 11500 et seq., and section 11515 is not

applicable to the cases OAH hears under the Education Code and related California Code of Regulations provisions. Also, Investigation Report findings by the California Department of Education are not "generally accepted technical or scientific matter within the agency's special field." Nor are they the "decisional, constitutional, and public statutory law of this state and of the United States and the provisions of any charter . . . ." (Evid. Code, § 451(a).) And they are not "[r]egulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." (Evid. Code, §452(b).)

The copy of the Investigation Report District attached to its request for official notice only contained the odd numbered pages of the December 15, 2016 Investigation Report. It therefore was not possible to conduct a complete examination of the document to consider the relevance of the document in the event any other subdivision of Evidence Code sections 451 or 452 regarding mandatory or permissive judicial/official notice might apply. For the incompleteness of the document alone, District's request for official notice is denied. But understanding from the first page of the Investigation Report that the question the California Department of Education investigated was whether District failed to comply with the orders of the Decision in Case No. 2015050839, any conclusions do not seem relevant to the determination of the issues in this case, which concern whether District denied Student a free appropriate public education by failing to offer Student a one-to-one aide trained in applied behavioral analysis and supervised by a Board Certified Behavior Analyst in the January 19, 2106 and March 4, 2016 IEPs, and by failing to file for a due process hearing when Parents did not consent to the January 19, 2016 IEP. District has not sufficiently explained how the Investigation Report has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of this action. (Evid. Code, § 210.) In this case, District presented testimonial evidence regarding the provision of aide and supervision services to Student from January 5, 2016 through the remainder of the 2015-2016 school year and the 2016 extended school year. District had a full and fair opportunity to present any evidence it felt necessary to establish what services it provided to Student and when. The December 15, 2016 Investigation Report was not relevant.

District's request for official notice is denied.

DATE: March 27, 2017

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings