BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

GREENFIELD UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2019100729

ORDER GRANTING GREENFIELD'S REQUEST FOR OFFICIAL NOTICE

On October 18, 2019, Greenfield Union School District filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, naming Student. The Office of Administrative Hearings is called OAH.

On October 28, 2019, Greenfield filed a Request for Judicial Notice of the OAH Decision in Case No. 2018021003, issued May 16, 2018. The Decision was the result of a due process hearing on the complaint Student filed against Greenfield on February 16, 2018.

Greenfield requested the Office of Administrative Hearings take judicial notice of the May 16, 2018 Decision under Evidence Code sections 450, 451 and 452, and Government Code section 11501 and 11515, relating to "official notice" of "any fact which may be judicially noticed by the courts of this State." Greenfield asserts judicial notice may be taken of "facts and propositions that are not reasonably be subject to

dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Greenfield contends the May 16, 2018 Decision "involved adjudicating the academic programming for the same Student at the District, and, as such, these past findings are relevant in determining if the current offer made in the Individual [*sic*] Educational Program dated August 30, 2019 is [a free appropriate public education] for Student."

Greenfield characterizes the May 16, 2018 Decision as a "decision of a judicial and/or state department of the United States and furthermore constitutes a record of a court," as contemplated by Evidence Code section 452, subdivisions (a), (c), and/or (d).

On October 29, 2019, Student filed a "['Response' to District 'Continuance Motion' for ['Judicial Notice.']" (*Sic.*) Student's response literally states, "Defendant {Parent} . . . hereby Formally requests that OAH take Judicial Notice California Evidence Code [11501] and [11515], [452(a)(c)]; [(d)(1)(2)(h)], [451(a)] and [Administrative Procedure Act (APA).] Concerning Due Process Case No. [201821003], 'Void' for reason of 'Concealment' of Breach '504 Plan' Code of Regulation 'Estoppel' unto District for Judicial Notice currently." (*Sic.*) Nothing else in Student's response addresses whether Student opposes or does not oppose Greenfield's request for judicial notice of the May 16, 2018 Decision in OAH Case No. 2018021003. During the telephonic prehearing conference on December 30, 2019, Parent stated the prior case is separate and should not be considered.

Greenfield stated bases for taking official notice of the May 16, 2018 Decision that are inapplicable. There are some things of which a court must take judicial, or in the case of administrative agency proceedings, official, notice, even in the absence of a request from a party: "the decisional, constitutional and public statutory law" of California and of the United States; and the provisions of any city charter, administrative

regulations of California and federal agencies, the Rules of Professional Conduct for members of the bar, the California Rules of Court, "[r]ules of pleading, practice and procedure prescribed by the United States Supreme Court" for federal courts, such as the Federal Rules of Civil Procedure, Bankruptcy Rules, etc., and the true significance of all English words and phrases and all legal expressions, and "universally known" indisputable facts. (Evid. Code, § 451, subds. (a)-(f).) An example of a "universally known," indisputable fact is the accuracy of radar as a scientific method for measuring the speed of a moving vehicle. (See *People v. MacLaird* (1968) 264 Cal.App.2d 972, 974-975.)

A court may, and "shall" if proper request is made, take judicial notice of the "decisional, constitutional, and statutory law" of any other state, "[r]egulations and legislative enactments issued by . . . any public entity in the United States," "official acts" of legislative, executive and judicial departments of the federal or any state government, the records of any federal or state court, court rules of any federal or state court, "[t]he law of an organization of nations and of foreign nations and public entities of foreign nations," "[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute," and "[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." (Evid. Code, § 452, subd. (a)-(h).)

The category 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" covers facts that may not be "of common knowledge" but still so easily verified that their accuracy is assured, such as the location of traffic signals on a particular highway, the rainfall during the preceding year, the

number of registered voters in a district, etc. For example, the distance between two locations is not reasonably subject to dispute and capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (*Monroy v. City of Los Angeles* (2008) 164 Cal.App.4th 248, 264 [court took judicial notice that a witness lived in Puebla, Mexico, more than 150 miles from the courthouse in Los Angeles].)

The May 16, 2018 Decision is not a fact or proposition that is not reasonably subject to dispute and is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy, such as "treatises, encyclopedias, almanacs, and the like" or "persons learned in the subject matter." (Evid. Code, § 452, Comment by Assembly Committee on Judiciary.)

However, Greenfield's reference to irrelevant law and categories of judicially or officially noticeable items does not preclude OAH from taking official notice of its own Decision. The May 16, 2018 Decision is contained within in the records of OAH, which can be subject to official notice under Evidence Code section 452, subdivision (d). Therefore Greenfield's request for judicial/official notice is granted.

This Order takes no position regarding the purposes for which the existence and content of the May 16, 2018 Decision in OAH Case No. 2018021003 may be used.

Further argument is required during the presentation of evidence and upon the conclusion of the due process hearing to support any specific use of the document.

IT IS SO ORDERED.

DATED: December 30, 2019

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Kara Hatfield
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Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings