BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: REDLANDS UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013120507 ORDER DENYING STUDENT'S REQUEST FOR OFFICIAL NOTICE

District filed the Due Process Hearing and Mediation Request on December 13, 2013 (DPH). OAH granted a continuance on December 24, 2013. A prehearing conference was held on February 7, 2014. The prehearing conference order specifically advised the parties that compliance with Education Code section 56505, subdivision (e)(7), regarding the prehearing exchange of documents was expected. At the hearing, the ALJ received sworn testimony and documentary evidence. At the close of the hearing on February 26, 2014, the ALJ granted the parties' request for a continuance to file written closing arguments by 10:00 a.m. on March 24, 2014. On March 14, 2014, after the close of hearing and submission of evidence Student filed a Request for Judicial Notice (Request) requesting OAH take official notice of the VB-MAPP Guide, Mark Sundberg's power point presentation, California Department of Education's information regarding functional behavioral analysis, adaptive physical education, and assistive technology, the National Association of School Psychologists guide regarding assessments, and the American Speech-Language Hearing Association Information (collectively referred to as, Information). No response was received from District.

APPLICABLE LAW

Under the due process procedures applicable to special education hearings, the ALJ has discretion to bar introduction of evidence not disclosed to the other party at least five business days prior to the hearing. (Ed. Code, § 56505, subd. (e)(7); Ed. Code, § 56505.1, subd (f).)

Both the Administrative Procedure Act (APA) and California Evidence Code provide guidance as to the admissibility of evidence at due process hearings. (See Gov. Code, §§ 11501, 11515.) The APA provides that, "[i]n reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State." (Gov. Code, § 11515.) Certain matters may be subject to judicial notice when they pertain to facts and propositions that are of such common

knowledge within the territorial jurisdiction of the court that they cannot reasonably be subject to dispute, or 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. (g) & (h), and § 451, subd. (f) (matters that must be judicially noticed); see *Lightfoot v. Mathews* (N.D. Cal. 1977) 430 F. Supp. 620, 621 [In a disability case, the Secretary of Labor was not permitted to rely on "administrative notice" to establish that a claimant can perform certain work and that such work exists. That would inappropriately enable the Secretary to avoid the burden of proof placed on him.])

DISCUSSION

In accordance with Education Code section 56505, subdivision (e)(7), the ALJ stated in the February 7, 2014 Order Following Prehearing Conference in this matter that any exhibit not disclosed in the exhibit lists, and not previously exchanged, shall not be admitted into evidence except for good cause shown. The Information is essentially documents that should have been exchanged prior to hearing. Student provided no good cause in his Request for why he did not disclose the Information on his exhibit list, or why he did not exchange the Information at least five business days prior to hearing. Thus, Student's request is denied for failure to exchange the Information with District prior to hearing under Education Code sections 56505, subdivision (e)(7) and 56505.1, subdivision (f).

Further, although the ALJ could take official notice that the Information existed, that is not what Student is requesting. Instead, Student is asking that the ALJ presume that it has been established that the Information is directly relevant to determining whether special education assessments had been properly conducted and is seeking to have the ALJ draw conclusions about how the Information applied to the facts at hearing. Student has not established that the Information sets the standards for special education assessments or that its application is not subject to dispute and debate within the professional community. While OAH could take notice of the availability of the Information, its application to the question of whether certain assessments met special education law requirements is not subject to official notice.

For the foregoing reasons, Student's Request is denied.

IT IS SO ORDERED.

DATE: March 21, 2014

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings