

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RIVERSIDE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2015050155

ORDER GRANTING REQUEST FOR
RECONSIDERATION; ORDER
DENYING PEREMPTORY
CHALLENGE

On August 5, 2015, Riverside Unified School District filed a notice of peremptory challenge to Administrative Law Judge Paul Kamoroff in the above captioned matter. District's peremptory challenge was made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act, and California Code of Regulations, title 1, section 1034. The Office of Administrative Hearings granted the motion on August 6, 2015. The same day, Student made a request for reconsideration.

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Government Code section 11425.40, subdivision (d), establishes the criteria for disqualification of the presiding officer. A party is entitled to one peremptory challenge (disqualification without cause) to an ALJ assigned to an OAH hearing. (Cal. Code Regs., tit. 1, § 1034, subds. (a) & (b); Gov. Code, § 11425.40, subd. (d).) In no event will a peremptory challenge be allowed if it is made after the hearing has commenced. In addition, if at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge to the assigned ALJ shall be made no later than commencement of that prehearing conference. (Cal. Code Regs., tit. 1, § 1034, subd. (c).) A peremptory challenge is not allowed on reconsideration or remand, and cannot be made after a hearing has begun. (Cal. Code Regs., tit. 1, § 1034, subd. (a).)

Student's request for reconsideration sets forth that ALJ Kamoroff conducted the May 18, 2015 prehearing conference in this matter and thus District's peremptory challenge was not timely made as District made the request after the commencement of the prehearing conference in which ALJ Kamoroff was assigned. District had notice of ALJ Kamoroff's assignment to this matter at the time of May 18, 2015 prehearing conference, but did not

challenge ALJ Kamoroff. Therefore, District's peremptory challenge is DENIED pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c).

ORDER

1. Student's motion for reconsideration is granted.
2. District's challenge of ALJ Kamoroff is denied.

DATE: August 6, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings