

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

UKIAH UNIFIED SCHOOL DISTRICT,

and

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2024010195

OAH CASE NUMBER 2023100750

ORDER DENYING UKIAH'S MOTION FOR RECONSIDERATION

JANUARY 22, 2024

On January 12, 2024, Administrative Law Judge Penelope Pahl held a prehearing conference, called PHC, with Student's and Ukiah Unified School District's attorneys. The Administrative Law Judge is called ALJ. Prior to the PHC, at approximately 10:30 AM, OAH informed the parties that Student's peremptory challenge as to ALJ Deborah Myers-Cregar was granted and that ALJ Pahl was assigned to the case. ALJ Pahl convened the PHC at 1:00 PM. ALJ Pahl informed the parties they were on the record for a PHC and the parties identified themselves. ALJ Pahl asked the parties if there were any preliminary matters to discuss before proceeding with the PHC. The parties did not raise any preliminary matters and ALJ Pahl moved on to discuss Ukiah's pending Motion to Consolidate. After discussion, ALJ Pahl granted Ukiah's Motion to Consolidate and

continued the PHC and due process hearing dates. The PHC ended at approximately 1:10 PM.

On January 16, 2024, the undersigned Presiding ALJ issued an Order Granting Student's Peremptory Challenge and Denying Ukiah's Peremptory Challenge. Ukiah's peremptory challenge, filed at 1:09 PM on January 12, 2024, was denied because it was filed after the PHC started and therefore, was untimely pursuant to California Code of Regulations, title 1, section 1034, subdivision (a).

Also, on January 16, 2024, Ukiah filed a Motion for Reconsideration regarding the denial of its peremptory challenge to ALJ Pahl. Ukiah argues its attorney mistakenly believed they had until the end of the day on January 12, 2024, to file a peremptory challenge against ALJ Pahl. Ukiah further argues it has another opportunity to file a peremptory challenge in its due process case against Student because no judge has been assigned yet. Finally, Ukiah argues its late-filed peremptory challenge should be excused because they "substantially complied with the timeline."

On January 18, 2024, Student filed an opposition to the Motion for Reconsideration on the grounds that Ukiah failed to offer new or different facts and Ukiah's attorney's misunderstanding of the law is not grounds 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, generally within 10 days. (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.)

Ukiah's Motion for Reconsideration is denied. Ukiah failed to offer any persuasive new facts, circumstances, or law to support reconsideration. California Code of Regulations, title 1, section 1034, subdivision (a), clearly sets the deadline for challenging the assigned ALJ. Ukiah had more than two hours before the January 12, 2024 PHC, to challenge ALJ Pahl after OAH informed them of the assignment. Further, Ukiah could have challenged ALJ Pahl on the record before the PHC started. Instead, Ukiah proceeded with the PHC and did not raise the peremptory challenge when ALJ Pahl asked the parties if there were any preliminary matters to discuss. Only after the PHC ended did Ukiah file the peremptory challenge with OAH. Ukiah's attorney's misunderstanding of the law does not negate the untimeliness of their challenge and is not grounds for reconsideration. Further, Ukiah does not have the opportunity to file a peremptory challenge in its case against Student because ALJ Pahl granted their request to consolidate the cases during the PHC.

ORDER

Ukiah's Motion for Reconsideration is denied. ALJ Pahl remains assigned to the case.

Tara Doss

Tara Doss

Presiding Administrative Law Judge

Office of Administrative Hearings