BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FRESNO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015030220 ORDER OF NONACTION WITHOUT PREJUDICE

On March 3, 2015, Student filed the instant action naming the Fresno Unified School District as the respondent. On March 11, 2015, Fresno filed a motion to limit and motion to strike issues and resolutions in Student's complaint. On March 16, 2015, Student filed a document that was considered an opposition to Fresno's motion to strike or limit issues.

On March 20, 2015, Administrative Law Judge Darrell Lepkowsky issued an order granting in part and denying in part Fresno's original motion. Later in the day after the order was issued the Office of Administrative Hearings received additional documents opposing the motion. On March 25, 2015, Fresno submitted an opposition to the additional documents and factual clarification.

On March 26, 2015, Student sent a letter to OAH requesting that an administrative law judge other than ALJ Lepkowsky and ALJ Charles Marson, "review and rule on all current and future decisions, documents and evidence submitted to date to OAH regarding the issues in this case.

APPLICABLE LAW

Reconsideration:

The Office of Administrative Hearings 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.) Except in unusual circumstances, the ALJ who issued the original order is the ALJ who rules on the motion for reconsideration. Additionally, 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.)

Request to Disqualify ALJ:

Government Code section 11425.40 subdivisions (a) and (b) establish the criteria for disqualifying the presiding officer for cause. When a request to disqualify is made for cause the presiding officer is subject to disqualification for bias, prejudice, or interest in the proceeding but interest in the proceeding alone is not itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the presiding officer:

> (1) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group.
>
> (2) Has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding.
>
> (3) Has as a lawyer or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding.

Government Code section 11425.40, subdivision (d), establishes the criteria for disqualifying the presiding officer without case. 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).)

DISCUSSION

It is unclear whether or not Student seeks reconsideration of a specific or all prior orders in this case. It is also unclear if Student seeks to challenge ALJ Lepkowsky and ALJ Marson for cause in light of the statement that they, "have a history of ruling negatively against parents dispute relevant information and evidence presented before OAH." Alternatively, Student may have intended to use his single preemptory challenge to remove one ALJ without case. If Student seeks to utilize his preemptory challenge, he needs to designate which ALJ is being challenged.

As Student's requests are unclear and subject to different interpretation, no action is taken at this time. This notice of non-action is without prejudice. Student may file additional motions; however, Student is advised to follow the legal standards outlined above.

IT IS SO ORDERED

DATE: April 14, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings