BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: CASTRO VALLEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018010312
PARENT ON BEHALF OF STUDENT, v. CASTRO VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017120881 ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING CASTRO VALLEY'S PEREMPTORY CHALLENGE

On July 16, 2018, the undersigned presiding administrative law judge issued an order denying Castro Valley Unified School District's peremptory challenge as untimely. On July 16, 2018, Castro Valley filed a request for reconsideration of that order. Student filed an opposition to the motion for reconsideration on July 16, 2018.

APPLICABLE LAW

The Office of Administrative Hearings generally reconsiders a ruling if the moving party demonstrates 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.)

DISCUSSION

Reconsideration

Castro Valley asserted the new fact that it allegedly did not receive notice that the matter was reassigned to ALJ Pahl until its counsel checked OAH's external calendar website on the afternoon of July 16, 2018, after which she immediately submitted the challenge. In support of this position, Castro Valley submitted the declaration confirming the forgoing from its counsel. Castro Valley further submitted a declaration from Natalie Romero, counsel's assistant who declared she did not receive a telephone call from OAH notifying counsel of the reassignment to ALJ Pahl. Based upon the new facts, reconsideration is granted.

Peremptory Challenge

As noted in the July 17, 2018, order denying Castro Valley's peremptory challenge, the deadline to request a peremptory challenge expired on Friday, July 13, 2018, at noon. The undersigned reassigned the matter to ALJ Pahl on July 10, 2018, at approximately 2:20 p.m. At the time the reassignment was made, the undersigned manually added ALJ Pahl to the matter which immediately showed the reassignment on OAH's external calendar. That constitutes notice to the parties of the ALJ change. As an additional courtesy, OAH typically calls the parties to notify them of an ALJ change if it occurs after the prehearing conference. OAH's electronic casefile confirms that at 2:23 p.m. the undersigned emailed the case manager instructing her to make a courtesy call to the parties notifying them the matter was reassigned to ALJ Pahl. At 2:34 p.m., the case manager inserted a note confirming the call was made to both parties informing them of the change.

The weight of the evidence establishes Castro Valley's counsel's office was notified of the change via telephone on July 10, 2018. However, even had no such courtesy notification been made, the change was visible on OAH's external website on July 10, 2018, thereby constituting notice of the ALJ change. Castro Valley's counsel confirmed she viewed the external calendar on the afternoon of July 17, 2018, which prompted her to file the challenge. There is no assertion that Castro Valley's counsel's office conferred with the external calendar at any time between reassignment on July 10, 2018, up to the afternoon of July 17, 2018, which was after the ALJ challenge deadline of July 13, 2018. Accordingly, Castro Valley's peremptory challenge is DENIED.

ORDER

Motion for Reconsideration is GRANTED.

Having reconsidered Castro Valley's peremptory challenge, the motion remains DENIED as untimely.

IT IS SO ORDERED.

DATE: July 17, 2018

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Joy Redmon
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JOY REDMON
Presiding Administrative Law Judge
Office of Administrative Hearings