

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR VALLEY UNION HIGH SCHOOL
DISTRICT,

OAH CASE NO. 2011080031 (Primary)

VICTOR VALLEY UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011080382

ORDER DENYING STUDENT’S
MOTION FOR RECONSIDERATION OF
ORDER DENYING STUDENT’S
MOTION FOR SANCTIONS; ORDER
DENYING STUDENT’S REQUEST FOR
PEREMPTORY CHALLENGE

On December 20, 2011, Administrative Law Judge (ALJ) Carla L. Garrett issued an order denying Student’s motion for sanctions against the Victor Valley Union High School District (District). On December 21, 2011, Student filed a pleading entitled “Plaintiff’s objection to order denying Sanction, and a request for Peremptory Challenge against Judge Carla Garrett.” Student contends that District failed to show that they fully complied with the stay put order dated August 18, 2011, in that District failed to include proof that it provided 10 hours of aide services from a nonpublic agency (NPA). In addition, Student argues that District failed to show that it provided the general education and special education classes set forth in the stay put order, and reiterated that District took three weeks to begin Student’s related services after the commencement of the new school year, which Student felt should have taken just one week. Finally, Student contends that ALJ Garrett was biased against Student, and, as such, has requested a peremptory challenge against ALJ Garrett.

For the purposes of this order, OAH will consider Student’s “objection” as a motion for reconsideration, and will also address Student’s peremptory challenge request.

///

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.) 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.)

Peremptory Challenge

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 Office of Administrative Hearings (OAH) hearing. (Cal. Code Regs., tit. 1, § 1034, subs. (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 AND ORDER

Student alleges no new facts, circumstances, or law in support of his request for reconsideration of the order denying Student's request for sanctions. Student simply states his disagreement with the order by reiterating or rearguing his contentions set forth in his motion for sanctions. Accordingly, Student's request for reconsideration is denied.

As for Student's request for peremptory challenge, statutory authority permits a party to exercise one peremptory challenge of an ALJ assigned to the hearing prior to the commencement of the hearing. In the instant matter, hearing has already begun with ALJ June Lehrman, who is the assigned hearing ALJ in this matter. ALJ Garrett is not the hearing ALJ, and therefore, not subject to peremptory challenge in this matter. Accordingly, Student's request for peremptory challenge is denied.

IT IS SO ORDERED.

Dated: December 21, 2011

/s/

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings