

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010020849

ORDER GRANTING PEREMPTORY
CHALLENGE

On March 11, 2010, attorney for Student filed a notice of peremptory challenge to Administrative Law Judge (ALJ) Richard Breen in the above captioned matter. Student's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act (APA), and California Code of Regulations, title 1, section 1034.

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 or by the Friday before the hearing if the hearing is to be held at a site other than an OAH regional office. (Cal. Code Regs., tit. 1, § 1034, subd. (c)(e).)

Student's peremptory challenge to ALJ Richard Breen is timely made and is granted.

Dated: March 11, 2010

/s/

ANN F. MACMURRAY
Presiding Administrative Law Judge
Office of Administrative Hearings