

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

WEST SONOMA COUNTY UNION HIGH
SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2010110621

ORDER DENYING MOTION TO
VACATE ORDER GRANTING
PEREMPTORY CHALLENGE

On January 28, 2011, the Office of Administrative Hearings (OAH), through the undersigned Administrative Law Judge (ALJ), issued an order that granted the peremptory challenge made by the West Sonoma County Union High School District (District) against ALJ Rebecca Freie.

On January 31, 2011, Parents, on behalf of Student, filed with OAH an Objection to Order Granting District's Peremptory Challenge. In the Objection, Parents contend that counsel for the District did not properly serve upon them the peremptory challenge of ALJ Freie, and thereby gained an unfair advantage in this matter.

Also, on January 31, 2011, Parents filed with OAH a document entitled Respondent's Motion to Vacate OAH Order Granting Peremptory Challenge of OAH ALJ Rebecca Freie Due to Lack of Proper Service. In the Motion to Vacate, Parents further contend that counsel for the District committed a fraud upon OAH as regards the Peremptory Challenge of ALJ Freie.

There has been no fraud and no unfair advantage. The ability to disqualify, without cause, a hearing officer in a special education administrative due process proceeding is an important right and OAH normally grants such a request if timely made. (Gov. Code, § 11425.40, subd. (b).)

In fact, the right to exercise a peremptory challenge probably rises to the level of a procedural safeguard in special education matters, as the contract between OAH and the California Department of Education provides, in pertinent part: "A party to a special education due process proceeding is entitled to one peremptory challenge (disqualification without cause) of an ALJ assigned to the due process hearing." (OAH-CDE Interagency Agreement, June 25, 2008, ¶ D(2)(e).)

Based upon the foregoing authority, Student's Motion to Vacate the OAH order granting the District's peremptory challenge of ALJ Freie is denied.

IT IS SO ORDERED.

Dated: January 31, 2011

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings