

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011010174

ORDER DENYING PEREMPTORY
CHALLENGE TO MEDIATOR

On January 12, 2011, Student filed a peremptory challenge purporting to exercise a peremptory challenge to ALJ Carla Garrett, who was assigned to this matter for mediation only. As discussed below, peremptory challenges do not apply to mediation.

Government Code section 11425.40, subdivision (d), establishes the criteria for disqualification of the presiding officer at a hearing. 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).)

Here, although timely, Student seeks to extend the peremptory challenge right to mediation. However, mediation is not an “adjudicative proceeding” or “hearing” within the meaning of Government Code section 11425.40, subdivision (d) or California Code of Regulations, title 1, section 1034, subdivision (a). Accordingly, the peremptory challenge is denied. Student may contact OAH to request a discretionary change of mediator, subject to OAH operational and calendaring needs.

Dated: January 25, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge (acting)
Office of Administrative Hearings