

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DIXIE ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2011040921

ORDER GRANTING SCHOOL
DISTRICT'S PEREMPTORY
CHALLENGE

On September 7, 2011, Jan Tomsy, attorney for the Dixie Elementary School District (District), filed a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Rebecca Freie from hearing this case. District's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), and California Code of Regulations, title 1, section 1034, subdivision (c).

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).)

District's peremptory challenge is timely made and is granted pursuant to Government Code section 11425.40, subdivision (d), and California Code of Regulations, title 1, section 1034, subdivision (c). The matter has been reassigned to ALJ Michael Barth.

IT IS SO ORDERED.

Dated: September 7, 2011

/s/

BOB VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings