

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VISTA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011061131

ORDER DENYING PEREMPTORY
CHALLENGE

On January 11, 2012, Student filed a peremptory challenge, seeking to disqualify Administrative Law Judge (ALJ) Carla L. Garrett from hearing this case.

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, ALJ Carla L. Garrett was assigned to conduct the hearing on its original date on August 18, 2011, and conducted the first prehearing conference on August 10, 2011. Although ALJ Garrett ultimately granted a continuance during the course of the prehearing conference, the August 10, 2011 prehearing conference was a prehearing conference for purposes of determining the timing of a peremptory challenge. Notably, all parties, including Student, had filed prehearing conference statements and the reason the hearing was continued was based on a new development with Student's whereabouts. Accordingly, Student's peremptory challenge is not timely and must be denied by operation of California Code of Regulations, title 1, section 1034, subdivision (c).

IT IS SO ORDERED.

Dated: January 12, 2012

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings