

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012040848

ORDER GRANTING STUDENT'S  
PEREMPTORY CHALLENGE

On August 20, 2012, LaJoyce L. Porter, attorney for Student, moved to disqualify Administrative Law Judge (ALJ) Adeniyi Ayoade from hearing this case. On August 20, 2012, the Oakland Unified School District (District) filed an opposition asserting that Student was merely seeking to delay the proceedings.

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, subds. (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 assertion may have some validity. Student's counsel failed to timely file a prehearing conference statement and Student's challenge was filed shortly before the prehearing conference was set to commence. However, Student's peremptory challenge is timely made and therefore, is granted pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c). This matter is reassigned to ALJ Theresa Ravandi.

IT IS SO ORDERED.

Dated: August 22, 2012

/s/

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BOB N. VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings