

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FALLBROOK UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2013100130

ORDER DENYING DISTRICT'S
PEREMPTORY CHALLENGE

A prehearing conference (PHC) was calendared in this matter for March 28, 2014, at 3:00 p.m., before Administrative Law Judge (ALJ) Paul H. Kamoroff. ALJ Kamoroff convened the PHC, for which Sharon A. Watt, counsel for the Fallbrook Union High School District, did not appear.¹ The PHC proceeded without Ms. Watt. Subsequently, at 3:34 p.m., the Office of Administrative Hearings received a notice of peremptory challenge to ALJ Kamoroff from Fallbrook. Fallbrook's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act (APA), and California Code of Regulations, title 1, section 1034.

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).)

Fallbrook's peremptory challenge is not timely and is denied pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c). Here, counsel's failure to appear at the scheduled and noticed PHC did not forestall the commencement of the PHC. The PHC in this matter proceeded and

¹ The specifics as to ALJ Kamoroff's attempts to contact Ms. Watt and conference her into the PHC are set out in more detail in a separate PHC order issued by the ALJ. Ms. Watt's failure to appear will also be addressed by the undersigned in an Order to Show Cause that shall issue separately.

Fallbrook's peremptory was filed both after the time set for the PHC and the commencement of the PHC. Accordingly, the peremptory challenge is denied.

IT IS SO ORDERED.

DATE: March 28, 2014

/s/

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