

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAKESIDE UNION SCHOOL DISTRICT.

OAH Case No. 2016030643

ORDER DENYING PEREMPTORY
CHALLENGE

On April 21, 2016, Office of Administrative Hearings issued an Order granting the parties' joint request for a continuance. The Order set a prehearing conference for May 16, 2016 and assigned Administrative Law Judge Robert Martin to the prehearing conference and hearing. On May 16, 2016, the scheduled prehearing conference was held before ALJ Martin. On May 16, 2016, ALJ Martin issued an Order Following and Continuing Prehearing Conference and Hearing, granting Student's request for a second continuance. On June 1, 2016, District filed a peremptory challenge, seeking to disqualify ALJ Martin from hearing this case.

District's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act, 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 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 peremptory challenge is untimely. At the time of the scheduled May 16, 2016 prehearing conference, an ALJ was assigned to the Hearing, and no challenge to the assigned ALJ was made at the commencement of that prehearing conference. (Cal. Code Regs., tit. 1, § 1034, subd. (c).) The challenge is therefore denied.

IT IS SO ORDERED.

DATE: June 07, 2016

DocuSigned by:

June Lehman

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JUNE R. LEHRMAN

Presiding Administrative Law Judge
Office of Administrative Hearings