

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAGUNA BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016030723

ORDER DENYING PEREMPTORY
CHALLENGE

On Monday June 13, 2016, at 2:24 PM, Student filed a peremptory challenge, seeking to disqualify Administrative Law Judge Laurie Gorsline from hearing this case, set to begin the following day, Tuesday June 14, 2016, at 9:30 AM. Student's peremptory challenge was 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).)

The timeliness of the challenge is governed by the California Code of Regulations. Specifically, if the hearing is to be held at a site other than an OAH regional office, the peremptory challenge of the assigned ALJ shall be made by noon on Friday prior to the week in which the Hearing is to commence. (Cal. Code Regs., tit. 1, § 1034, subd. (e).)

Student's peremptory challenge is untimely made and is denied pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (e).

The hearing is to be held at a site other than an OAH regional office. The preemptory challenge was not made by noon on Friday prior to the week in which the Hearing is to commence. The assignment of ALJ Gorsline to preside over the hearing was made at approximately 10:30 AM on Friday, June 10, 2016, and was publicized via the calendar on OAH's website. Student was presumptively and actually aware of the assignment on Friday, June 10, 2016. Rather than filing a timely preemptory challenge on that day, Student instead filed a "Motion for Clarification" on the morning of Monday, June 13, 2016, which revealed that Student's counsel had in fact been aware of the assignment of ALJ Gorsline as of Friday June 10, 2016. Student's preemptory challenge was nevertheless not filed until Monday, June 13, 2016, and indeed was not filed until 2:24 PM on June 13, 2016, for a hearing set to begin the following day. It is therefore denied as untimely.

IT IS SO ORDERED.

DATE: June 13, 2016

DocuSigned by:

June Lehrman

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JUNE R. LEHRMAN

Presiding Administrative Law Judge
Office of Administrative Hearings