

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BURBANK UNIFIED SCHOOL
DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009040479

ORDER DENYING PEREMPTORY
CHALLENGE

On July 20, 2009, Parent on behalf of Student filed a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Glynda Gomez from hearing this case.

APPLICABLE LAW

Government Code section 11425.40, subdivision (d), and California Code of Regulations, title 1, section 1034, permit a party to make one peremptory challenge (disqualification without cause) of an ALJ assigned to an OAH hearing, provided that the challenge is timely made. To be effective, the peremptory challenge must be: (1) directed to the Presiding Administrative Law Judge; (2) filed by a party, attorney or authorized representative; (3) made in writing or orally on the record in substantially the form set forth in the regulation (Cal. Code Regs., tit. 1, § 1034, subd. (b)(3)); (4) served on all parties if made in writing; and (5) filed within the required time limits. (Cal. Code Regs., tit. 1, §1034.)

The time limits for making a peremptory challenge are set forth in California Code of Regulations, title 1, section 1034:

(c) 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.

(d) Except as provided in (c), if the Hearing is to be held at an OAH regional office, the peremptory challenge of the assigned ALJ shall be made no later than 2 business days before the Hearing.

(e) Except as provided in (c), 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, subds. (c), (d) & (e).)

DISCUSSION

In this case, the prehearing conferences were held on May 4, 2009 and July 17, 2009 by ALJ Gomez who at that time was also assigned to the hearing. Therefore, Student's peremptory challenge to ALJ Gomez is not timely made and is denied pursuant to Government section 11425.40, subdivision (d), and California Code of Regulations, title 1, section 1034, subdivision (c).

ORDER

Student's challenge of ALJ Glynda Gomez is *denied*. All dates previously set in this matter will remain on calendar.

Dated: July 21, 2009

/s/

ANN F. MACMURRAY
Presiding Administrative Law Judge
Office of Administrative Hearings