

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

POWAY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2009040857

ORDER GRANTING PEREMPTORY  
CHALLENGE

On August 31, 2009, counsel for Parents and Students filed with the Office of Administrative Hearings, Special Education Division OAH), a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Susan Ruff from hearing this case.

OAH has not received a response to the peremptory challenge from Poway Unified School District.

Due process requires an impartial tribunal for administrative hearings. To help meet this requirement, the Administrative Procedure Act (Gov. Code, § 11400 et seq.) permits a party to seek disqualification of an ALJ or other presiding officer from hearing an administrative case. Government Code section 11425.40 establishes two methods by which a party can seek disqualification of an ALJ – peremptory challenge and challenge for cause.

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.)

Student's peremptory challenge of ALJ Ruff satisfies the foregoing standards, and shall be granted.

ORDER

1. Student's peremptory challenge of ALJ Susan Ruff is granted.

2. All dates previously set in this matter will remain on calendar.

Dated: August 31, 2009

/s/

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TIMOTHY L. NEWLOVE  
Presiding Administrative Law Judge  
Office of Administrative Hearings