

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

vs.

TEMECULA VALLEY UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2009060691

TEMECULA VALLEY UNIFIED SCHOOL
DISTRICT,

vs.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009050559

ORDER GRANTING PEREMPTORY
CHALLENGE

On June 29, 2009, Justin R. Shinnfield, counsel for the District, filed a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Darrell Lepkowsky from hearing this case.

No opposition has been received.

APPLICABLE LAW

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.)

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.

DISCUSSION

The District has timely filed its peremptory challenge to disqualify ALJ Darrell Lepkowsky prior to the commencement of the prehearing conference scheduled for June 29, 2009 at 1:30 p.m.

ORDER

1. The District's challenge of ALJ Darrell Lepkowsky is granted.
2. The prehearing conference date of June 29, 2009 at 1:30 p.m. and hearing dates commencing July 7, 2009 shall remain as scheduled.

Dated: June 29, 2009

/s/

JUDITH PASEWARK
Acting Presiding Administrative Law Judge
Office of Administrative Hearings