

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASO ROBLES JOINT UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011020014

ORDER GRANTING PEREMPTORY
CHALLENGE AND VACATING
APRIL 4, 2011 DUE PROCESS
HEARING DATE

On April 1, 2011, Andrea Marcus, attorney for Student, filed a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Gary A. Geren from hearing this case. Student's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), and California Code of Regulations, title 1, section 1034, subdivision (c).

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 (OAH) hearing. (Cal. Code Regs., tit. 1, § 1034, subs. (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).)

Student's peremptory challenge is timely made and is granted pursuant to Government section 11425.40, subdivision (d), and California Code of Regulations, title 1, section 1034, subdivision (c).¹ The matter has been reassigned to ALJ Adeniyi Ayoade.

¹ On March 28, 2011, ALJ Geren held a prehearing conference in this matter. At that time the parties were informed that ALJ Geren was not confirmed to be the ALJ who would preside over the hearing in this matter. Accordingly, Student's challenge is timely.

Furthermore, as then parties were informed on April 1, 2011, the first day of hearing, April 4, 2011, is vacated. The matter shall begin on April 5, 2011, at 9:30 a.m., and shall proceed as calendared.

IT IS SO ORDERED.

Dated: April 3, 2011

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings