

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL DISTRICT
& LOS ANGELES COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2011020489

ORDER GRANTING PEREMPTORY
CHALLENGE

On September 26, 2011, Los Angeles County Office of Education (LACOE) filed a peremptory challenge to ALJ June R. Lehrman, who was assigned to the hearing by OAH after the date of the prehearing conference. Student opposed the peremptory on the ground it was untimely. In a reply to the opposition, LACOE presented evidence that it had not received notification of the change of hearing ALJs until September 26, 2011. For the reasons set forth below, the peremptory challenge is granted and ALJ Clara Slifkin will be assigned for hearing.

A party is entitled to one peremptory challenge (disqualification without cause) to an ALJ assigned to an Office of Administrative Hearings (OAH) hearing. (Gov. Code, § 11425.40, subd. (d); Cal. Code Regs., tit. 1, § 1034, subs. (a) & (b).) 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).) For hearings scheduled to take place at locations other than OAH offices, peremptory challenges must be made no later than noon on Friday of the week before the hearing. (Cal. Code Regs., tit. 1, § 1034, subd. (e).)

Here, the peremptory challenge was timely. After the PHC was held, OAH re-assigned the hearing ALJ for operational reasons. LACOE established by declaration that it did not receive notice of the change until September 26, 2011 when it checked OAH's website. LACOE immediately filed the peremptory challenge to ALJ Lehrman upon learning of the change in assignments. Accordingly, LACOE's peremptory challenge must be granted pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034.

ORDER

1. LACOE's peremptory challenge of ALJ June R. Lehrman is granted.
2. All dates previously set in this matter will remain on calendar.
3. ALJ Clara Slifkin is assigned to this matter for hearing.

Dated: September 26, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings