

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FULLERTON ELEMENTARY SCHOOL  
DISTRICT.

OAH CASE NOS. 2011061318 and  
2011061012

ORDER DENYING PEREMPTORY  
CHALLENGE

On November 30, 2011, counsel for Student in these consolidated matters filed with the Office of Administrative Hearings (OAH) a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Susan Ruff from acting as the hearing judge. Counsel for Fullerton Elementary School District has not filed with OAH a response to the challenge.

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

Here, on September 21, 2011, ALJ Ruff convened a prehearing conference with the attorneys for both Student and the District, and Student did not exercise her peremptory challenge at that time. Accordingly, Student's peremptory challenge is not timely, and is denied.

IT IS SO ORDERED.

Dated: November 30, 2011

/s/

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