

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TAMALPAIS UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2011070787

ORDER GRANTING STUDENT'S
PEREMPTORY CHALLENGE,
REQUEST FOR CONTINUANCE, AND
SETTING PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On October 24, 2011, Student filed a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Adeniyi Ayoade 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). On October 24, 2011, Student made a motion to continue the prehearing conference (PHC) in this matter on the grounds that counsel for Student has a family emergency. The request to continue was heard via teleconference, wherein Margret M. Broussard, attorney at law, appeared on behalf of Student, and Jan E. Tomsy, attorney at law, appeared on behalf of the Tamalpais Union High School District (District). District did not oppose the request to continue the PHC. No continuance of the due process hearing was requested.

APPLICABLE LAW AND DISCUSSION

Peremptory 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 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 Code section 11425.40, subdivision (d), and California Code of Regulations, title 1, section 1034, subdivision (c). The matter has been reassigned to ALJ Charles Marson.

Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

OAH has reviewed the request for good cause and the request is granted. The PHC in this matter is continued to October 31, 2011, at 10:00 a.m. All other dates remain as calendared.

ORDER

1. Student's peremptory challenge is granted and this matter is reassigned to ALJ Marson.
2. Student's request to continue the PHC is granted and this matter is set as follows:

Prehearing Conference:	October 31, 2011, at 10:00 AM
Due Process Hearing:	November 7, 2011, at 1:30 PM, and November 8 – 10, 2011, at 9:30 AM

Dated: October 24, 2011

/s/

BOB VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings