

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

FOUNTAIN VALLEY SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NOS. 2011120391 and
2011110163

ORDER DENYING STUDENT'S
PEREMPTORY CHALLENGE

On March 12, 2012, Student, through his attorney, filed with the Office of Administrative Hearings (OAH) a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Paul Kamoroff from hearing this case. Counsel for Fountain Valley School District has not filed 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 Office of Administrative Hearings (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).)

Otherwise, a peremptory challenge must be made in a timely manner. Here, on Wednesday, March 7, 2012, OAH notified the parties by phone message that OAH had assigned ALJ Kamoroff as the hearing judge in this case. Thereafter, on Friday, March 9, 2012, ALJ Kamoroff ruled on a motion in the matter. The regulation that governs peremptory challenges of ALJ's provides that "if the Hearing is to be held at a site other than an OAH regional office, the peremptory challenge of the assigned ALJ shall be made by noon on Friday, prior to the week in which the Hearing is to commence." (Cal. Code Regs., tit. 1, § 1034, subd. (e).) Here, the hearing is to be held at the offices of the Fountain Valley School District. By the foregoing rule, Student had to challenge ALJ Kamoroff by noon on Friday, March 9, 2012, since the due process hearing in this matter was set to commence on Monday, March 12, 2012. This was not done; thus, Student's peremptory challenge was not timely made, and is denied.

IT IS SO ORDERED.

Dated: March 12, 2012

/s/

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