

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT, ET AL.

OAH CASE NO. 2012020831

ORDER DENYING PEREMPTORY
CHALLENGE

On July 3, 2012, counsel for the Capistrano Unified School District (District) 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 the other parties in this matter have not filed with OAH a response to this 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, 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).)

Here, the District's peremptory challenge is not timely made, since on April 4, 2012, ALJ Kamoroff convened a prehearing conference in the matter. Therefore, the peremptory challenge is denied by the foregoing authority.

ORDER

1. The District's challenge of ALJ Paul Kamoroff is denied.
2. All dates previously set in this matter will remain on calendar.

Dated: July 05, 2012

/s/

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