

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012020842

ORDER DENYING PEREMPTORY
CHALLENGE

On February 22, 2012, Student filed a request for due process hearing (complaint) against the Fresno Unified School District (District). In the complaint, Student raised issues that required an expedited hearing under title 20 U.S.C. § 1415, subdivision (k)(4)(B), and issues that required a non-expedited hearing. Accordingly, the Office of Administrative Hearings (OAH) set the matter for a dual hearing calendar. On March 14, 2012, Administrative Law Judge (ALJ) Charles Marson conducted a prehearing conference for the expedited hearing. Subsequently, the matter was reassigned to ALJ Peter Paul Castillo, who presided over the expedited hearing on March 21 through 23, 2012; and, issued a written decision on April 16, 2012.

On April 30, 2012, Sang-Jin Nam, attorney for District, filed a peremptory challenge seeking to disqualify ALJ Castillo from presiding over the non-expedited hearing in this case. District's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), and California Code of Regulations, title 1, section 1034. On May 1, 2012, Student filed an opposition.

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).)

While this matter has dual hearings, it is one case. The expedited portion is merely bifurcated from the non-expedited portion of the case. District fails to provide any legal authority that the expedited and non-expedited portions should be treated as two separate

cases. Accordingly, District's right to a peremptory challenge to ALJ Castillo should have been brought prior to the ALJ presiding over the expedited hearing. Therefore, District failed to timely raise a peremptory challenge to ALJ Castillo and District's peremptory challenge is denied.

IT IS SO ORDERED.

Dated: May 2, 2012

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings