

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRUITVALE SCHOOL DISTRICT, KERN
COUNTY SUPERINTENDENT OF
SCHOOLS AND KERN COUNTY SELPA.

OAH CASE NO. 2012030900

ORDER GRANTING PEREMPTORY
CHALLENGE

On April 25, 2012, Administrative Law Judge (ALJ) Adeniyi Ayoade convened a telephonic prehearing conference (PHC). The ALJ heard Student's motion to amend his complaint and granted the motion. Stacy L. Inman, attorney for the Fruitvale School District, Kern County Superintendent of Schools and Kern County SELPA (jointly referred to as "public agencies") then inquired whether the PHC had begun and if she could not longer use her peremptory challenge. ALJ Ayoade indicated he had not begun the PHC and Ms. Inman raised her peremptory challenge seeking to disqualify ALJ Ayoade from hearing this case.¹ The public agencies subsequently filed a written peremptory challenge to ALJ Ayoade. The public agencies' peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), and California Code of Regulations, title 1, section 1034, subdivision (c).

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).) 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).)

¹ Here, because the ALJ indicated he had not started the PHC, the Office of Administrative Hearings (OAH) is considering the public agencies' peremptory challenge timely. The parties are cautioned for the future that OAH considers the PHC to have begun once the case is called on the record.

The public agencies' 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 Rebecca Freie.

IT IS SO ORDERED.

Dated: April 30, 2012

/s/

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