

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012040379

ORDER GRANTING STUDENT'S
PEREMPTORY CHALLENGE

This matter was set for hearing on October 9 through 11, 2012. On October 8, 2012, the Office of Administrative Hearings (OAH) granted the Sacramento City Unified School District's peremptory challenge, vacated and continued the first day of hearing, and reassigned this matter to Administrative Law Judge (ALJ) Charles Marson. On October 9, 2012, Brian A. Gonsalves, attorney for Student, filed a peremptory challenge to prevent ALJ Marson from hearing this matter.

APPLICABLE LAW AND DISCUSSION

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).)

While OAH does not permit a party to make a peremptory challenge to a particular ALJ after commencement of the PHC, when OAH reassigns the matter subsequent to the PHC, a party who has not yet exercised a peremptory challenge may do so prior to the commencement of the due process hearing. Student's peremptory challenge is timely made and is granted pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c). The matter is reassigned to ALJ Peter Paul Castillo.

ORDER

1. Student's peremptory challenge is granted.
2. This matter is reassigned to ALJ Peter Paul Castillo.
3. The hearing will begin at 10:00 a.m. on October 10, 2012.
4. Parties should be prepared to discuss, with ALJ Castillo, the addition of October 12, 2012, as a final day of hearing in order to efficiently dispose of this matter.

Dated: October 9, 2012

/s/

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