

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 DISTRICT'S
PEREMPTORY CHALLENGE

On October 3, 2012, a prehearing conference (PHC) was held in this matter before Administrative Law Judge (ALJ) Theresa Ravandi. Following the PHC, the matter was reassigned to ALJ Adeniyi Ayoade. On October 4, 2012, the Office of Administrative Hearings (OAH) issued a PHC order, which notified the parties that the matter had been reassigned. On October 8, 2012, near the end of the business day, OAH received a telephone call from Daniel A. Osher, attorney for the Sacramento City Unified School District (District). Mr. Osher spoke to the undersigned and informed OAH that he had been unaware of the reassignment and District was raising a peremptory challenge to ALJ Ayoade. Because this is a peremptory challenge a response from Student is not required prior to ruling. The undersigned requested that Mr. Osher put the challenge in writing, but that the verbal challenge would be considered in the meantime.

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. District'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).

On October 8, 2012, the parties were informed, via telephone, of the undersigned ruling. They were further informed that first day of hearing would be vacated, and the matter would be continued and reassigned to ALJ Charles Marson. The parties were told that a written order would follow.

ORDER

1. District's peremptory challenge is granted.
2. This matter is reassigned to ALJ Charles Marson.
3. The first day of hearing, October 9, 2012, is vacated and the matter is continued to October 10 through October 11, 2012. The hearing will begin at 10:00 a.m. on October 10, 2012.
4. Parties should be prepared to discuss, with ALJ Marson, 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