

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HAYWARD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012050508

ORDER DENYING DISTRICT'S
PEREMPTORY CHALLENGE

On October 15, 2012, Administrative Law Judge (ALJ) Adeniyi Ayoade convened a prehearing conference (PHC) in this matter. Attorney James Meeker appeared on behalf of the Hayward Unified School District (District). The PHC and the due process hearing were continued, upon District's motion. On October 16, 2012, Mr. Meeker filed a peremptory challenge to prevent ALJ Ayoade from hearing this matter on the grounds that District was entitled to a peremptory challenge because a PHC had not been conducted. District's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act (APA), and California Code of Regulations, title 1, section 1034. As discussed below, Mr. Meeker's contention is not persuasive and District's peremptory challenge is denied.

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).)

The October 15, 2012 PHC proceedings were recorded and the undersigned has reviewed the recording in its entirety. ALJ Ayoade convened the proceedings at approximately 3:00 p.m. on October 15, 2012. Mr. Meeker repeatedly interrupted the ALJ to object to the PHC being conducted at 3:00 p.m. instead of the originally scheduled 1:30 p.m., because Mr. Meeker was unavailable later in the afternoon. Mr. Meeker in essence sought a continuance, a motion which was heard and decided by ALJ Ayoade. ALJ Ayoade allowed

Student's counsel to provide her position regarding the request to continue prior to granting the continuance of the PHC and the due process hearing.

A PHC, akin to any pre-trial conference, covers many aspects of the impending due process hearing, including any motions related to calendaring. Mr. Meeker's motion to continue was a matter suitable for consideration at the PHC and was appropriately heard and decided by ALJ Ayoade. Mr. Meeker's repeated interruptions, in order to terminate the proceedings, do not support his contention that a PHC did not occur. ALJ Ayoade appropriately convened the PHC, considered Mr. Meeker's motion and decided the motion.

Furthermore, during the PHC, Mr. Meeker admitted that he was notified earlier in the day that ALJ Ayoade had been assigned to this matter. Mr. Meeker had sufficient time to either file a written peremptory challenge or to make a verbal challenge at the PHC itself. Accordingly, a PHC was convened, District failed to make a timely peremptory challenge and District's peremptory challenge is denied.

IT IS SO ORDERED.

Dated: October 21, 2012

/s/

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