

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CLOVIS UNIFIED SCHOOL DISTRICT, | OAH CASE NO. 2012070992 |
| CLOVIS UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT. | OAH CASE NO. 2012080216 ORDER DENYING PEREMPTORY CHALLENGE |

On November 7, 2012, Administrative Law Judge (ALJ) Deidre L. Johnson conducted a prehearing conference (PHC) in this matter. All parties participated in the PHC and the proceedings were recorded. Following the PHC, Cynthia D. Vargas, attorney for the Clovis Unified School District (District) filed a notice of peremptory challenge to ALJ Johnson. District's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act, and California Code of Regulations, title 1, section 1034.

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).)

District contends that on November 6, 2012, it was informed that ALJ Johnson had been assigned to hear this matter. District fails to provide any information as to why it did not submit a written challenge prior to the November 7, 2012 PHC, or raise the challenge verbally at the commencement of the PHC. Accordingly, District's challenge is not timely.

District's peremptory challenge is denied pursuant to California Code of Regulations, title 1, section 1034, subdivision (c).

IT IS SO ORDERED.

Dated: November 8, 2012

/s/

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