

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ACALANES UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2012100025

ORDER RECONSIDERING PRIOR
ORDER ON PEREMPTORY
CHALLENGE AND DENYING
DISTRICT'S PEREMPTORY
CHALLENGE

Reconsideration

On February 1, 2013, the Office of Administrative Hearings (OAH) informed the parties that it had reassigned the due process hearing in this matter, set to begin on February 4, 2013, to Administrative Law Judge (ALJ) Rebecca Freie. The Acalanes Union High School District (District) filed a peremptory challenge as to ALJ Freie at approximately 3:45 p.m. on February 1, 2013. Student, soon thereafter, filed an objection asserting District's challenge was untimely. District filed a response in which District's counsel acknowledged that her office was informed of the reassignment at approximately 9:20 a.m. on February 1, 2013. The undersigned issued an order granting District's challenge.

However, upon further review of the pleadings from the parties, the undersigned has decided to reconsider the earlier ruling, *sua sponte*.

Peremptory Challenge

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).)

Specific to this matter, when a due process hearing is held at a site other than an OAH office, the peremptory challenge must be made no later than noon on the Friday prior to the

week in which the hearing is to commence. (Cal. Code Regs., tit. 1, § 1034, subds. (e).) In this matter, District was notified of the reassignment with sufficient time to comply with the requirement. Accordingly, District's challenge is untimely and is denied. To the extent that OAH's calendar has reassigned the matter to ALJ Ayoade, that reassignment is vacated and the matter is reassigned to ALJ Freie.

IT IS SO ORDERED

Dated: February 1, 2013

/s/

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