

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EVERGREEN SCHOOL DISTRICT AND
SANTA CLARA COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2014010342

ORDER GRANTING DISTRICT AND
COUNTY'S PEREMPTORY
CHALLENGES

On April 21, 2014, Laurie E. Reynolds, attorney for the Evergreen School District (Evergreen) filed a notice of peremptory challenge to Administrative Law Judge (ALJ) Rebecca Freie in the above captioned matter. Evergreen'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.

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' hearing. (Cal. Code Regs., tit. 1, § 1034, subds. (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).)

Evergreen'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 was reassigned to ALJ Margret Broussard.

On April 21, 2014, the undersigned conducted a telephonic hearing regarding the parties' joint request to continue this matter.¹ During that hearing, the parties were informed that OAH was granting Evergreen's challenge and that ALJ Broussard would be assigned to the matter. At that time, Rodney L. Levin, attorney for the Santa Clara County Office of

¹ The ruling on the request to continue is addressed in a separate order.

Education (County) brought an oral peremptory challenge to ALJ Broussard. County's challenge was heard on the record, but County was asked to also file a written challenge.

County's challenge is also timely made and 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 Charles Marson.

IT IS SO ORDERED.

DATE: April 21, 2014

/s/

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