

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014100496

ORDER DENYING STUDENT'S
PEREMPTORY CHALLENGE

On November 24, 2014, Tania L. Whiteleather, attorney for Student, filed a notice of peremptory challenge to Administrative Law Judge Sabrina Kong in the above-captioned matter. Student's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedure 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 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 scheduled prehearing conference in this matter commenced at 2:00 p.m. on November 24, 2014, and Student's counsel participated in the prehearing conference without making a peremptory challenge. The record reflects that Student's preemptory challenge was received by OAH on November 24, 2014, at 2:42 p.m., after the prehearing conference. Therefore, the peremptory challenge is untimely and is denied, pursuant to Government Code section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c).

ORDER

1. Student's peremptory challenge of ALJ Sabrina Kong is denied.
2. All dates previously set in this matter will remain on calendar.

DATE: December 3, 2014

/s/

ELSA H. JONES
Acting Presiding Administrative Law Judge
Office of Administrative Hearings