

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2016031038

v.

MORGAN HILL UNIFIED SCHOOL  
DISTRICT,

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MORGAN HILL UNIFIED SCHOOL  
DISTRICT,

OAH Case No. 2016030186

v.

PARENT ON BEHALF OF STUDENT.

ORDER PERMITTING WITHDRAWAL  
OF PEREMPTORY CHALLENGE; CASE  
ASSIGNMENT

On March 28, 2016, Student filed a notice of peremptory challenge to Administrative Law Judge Alexa Hohensee in OAH Case No. 2016030186, which was consolidated with OAH Case No. 2016031038 on March 29, 2016. After the Office of Administrative Hearings granted consolidation, Student withdrew the consolidation request. Student's peremptory challenge was 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 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).)

Student's withdrawal of the peremptory challenge is timely made and is granted as OAH had not yet granted Student's challenge.

ORDER

1. Student's withdrawal of the challenge to ALJ Hohensee is granted. This case will remain assigned to ALJ Hohensee.
2. The matter will proceed as previously scheduled.

DATE: March 29, 2016

DocuSigned by:  
*Peter Paul Castillo*  
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PETER PAUL CASTILLO  
Presiding Administrative Law Judge  
Office of Administrative Hearings