

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT on behalf of STUDENT,	OAH CASE NO. 2008100188
v.	
YUBA CITY UNIFIED SCHOOL DISTRICT,	
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YUBA CITY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2008080878
v.	
PARENT on behalf of STUDENT.	ORDER GRANTING PEREMPTORY CHALLENGE

On June 17, 2009, Student filed a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Robert Helfand from hearing this case.

APPLICABLE LAW

Due process requires an impartial tribunal for administrative hearings. To help meet this requirement, the Administrative Procedure Act (Gov. Code, § 11400 et seq.) permits a party to seek disqualification of an ALJ or other presiding officer from hearing an administrative case. Government Code section 11425.40 establishes two methods by which a party can seek disqualification of an ALJ – peremptory challenge and challenge for cause.

Government Code section 11425.40, subdivision (d), and California Code of Regulations, title 1, section 1034, permit a party to make one peremptory challenge (disqualification without cause) of an ALJ assigned to an OAH hearing, provided that the challenge is timely made. To be effective, the peremptory challenge must be: (1) directed to the Presiding Administrative Law Judge; (2) filed by a party, attorney or authorized representative; (3) made in writing or orally on the record in substantially the form set forth in the regulation (Cal. Code Regs., tit. 1, § 1034, subd. (b)(3)); (4) served on all parties if made in writing; and (5) filed within the required time limits. (Cal. Code Regs., tit. 1, §1034.)

The time limits for making a peremptory challenge are set forth in California Code of Regulations, title 1, section 1034:

(c) 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.

(d) Except as provided in (c), if the Hearing is to be held at an OAH regional office, the peremptory challenge of the assigned ALJ shall be made no later than 2 business days before the Hearing.

(e) Except as provided in (c), if the Hearing is to be held at a site other than an OAH regional office, the peremptory challenge of the assigned ALJ shall be made by noon on Friday prior to the week in which the Hearing is to commence.

(Cal. Code Regs., tit. 1, § 1034, subs. (c), (d) & (e).)

A peremptory challenge is not allowed in proceedings involving petitions or applications for temporary relief or interim orders or in a proceeding on reconsideration or remand. In no event will a peremptory challenge be allowed if it is made after the hearing has commenced. (Cal. Code Regs., tit. 1, § 1034, subd. (a).)

In the instant case, Judge Helfand was assigned to the case after the prehearing conference convened by Judge Deidre Johnson on June 5, 2009. Furthermore, Judge Helfand has not ruled on any issues in the case. Therefore, the provisions of California Code of Regulations, title 1, section 1034, subdivision (c) are inapplicable. However, since the hearing was continued on motion of OAH until June 22, 2009, and the hearing will be held outside of an OAH regional office, the provisions of California Code of Regulations, title 1, section 1034, subdivision (e) are applicable and Student's peremptory challenge is timely.

OAH is not at this time ruling on Student's request that he be granted a second peremptory challenge in this matter. Student may renew his request upon the assignment of another judge to preside over the due process hearing.

ORDER

1. Student's peremptory challenge of ALJ Helfand is granted.
2. The hearing dates remain on calendar. OAH will contact the parties to schedule a status conference today, June 18, 2009 at 2:00 pm, regarding the hearing dates in this case.

Dated: June 18, 2009

/s/

DARRELL LEPKOWSKY
Acting Presiding Administrative Law Judge
Office of Administrative Hearings