

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009060085

ORDER GRANTING THE DISTRICT'S
PEREMPTORY CHALLENGE

On June 22, 2009, Arionna S. Whitaker, attorney for the District, filed a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Susan Ruff from hearing this case.

No opposition has been filed by Student.

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.

DISCUSSION

The Prehearing Conference on this matter is set for June 22, 2009. The parties did not become aware of ALJ Ruff's assignment to this matter until 10:00 a.m. on June 22, 2009. Counsel for the District, immediately notified ALJ Ruff of the District's intent to file a Peremptory Challenge. Further Counsel for the District filed a written Peremptory Challenge within an hour of her oral notice.

ORDER

1. The District's challenge of ALJ Susan Ruff is granted.
2. ALJ Rebecca Freie shall conduct the Prehearing Conference on June 22, 2009, at 1:00 p.m. All dates previously set in this matter will remain on calendar unless vacated by ALJ Freie or continued by noticed motion.

Dated: June 22, 2009

/s/

JUDITH PASEWARK
Acting Presiding Administrative Law Judge
Office of Administrative Hearings