

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN BRUNO PARK SCHOOL DISTRICT.

OAH Case No. 2015080500

ORDER GRANTING STUDENT'S
PEREMPTORY CHALLENGE

On September 28, 2015, before the prehearing conference started in this matter, Student made an oral peremptory challenge seeking to disqualify Administrative Law Judge Charles Marson from hearing this case. Student claimed that a written request was sent to the Office of Administrative Hearings that morning, but no such request was received by OAH. Student was advised to resend the written request so that the record would be complete, the motion was granted and the matter reassigned to ALJ Joy Redmon. Subsequently, Student failed to appear for the rescheduled PHC with ALJ Redmon and the matter was reassigned to ALJ Andrea Miles.

Student filed the written peremptory challenge on October 5, 2015. Student's peremptory challenges was 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 (OAH) 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).)

Student's peremptory challenge was timely made and was 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 Andrea Miles.

IT IS SO ORDERED.

DATE: October 8, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings