BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024020802

ORDER DENYING STUDENT'S PEREMPTORY CHALLENGE

APRIL 9, 2024

On April 8, 2024, Administrative Law Judge Judith Pasewark, from the Office of Administrative Hearings, called OAH, held a prehearing conference with Student and Fremont Union High School District. An Administrative Law Judge is called ALJ. Approximately 29 minutes into the 45-minute prehearing conference, Parent on behalf of Student verbally moved to exercise Student's peremptory challenge of ALJ Pasewark. ALJ Pasewark informed Parent the motion was untimely because the prehearing conference had already started, but that Parent should file a peremptory challenge with OAH and OAH would determine whether the challenge could succeed. Student filed a peremptory challenge with OAH after the prehearing conference concluded.

On April 9, 2024, Fremont filed an opposition to Student's peremptory challenge arguing the challenge was untimely because Student did not raise it until after substantive discussion at the prehearing conference occurred.

Student's peremptory challenge is made pursuant to 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, also called disqualification without cause, to an ALJ assigned to an OAH hearing. (Cal. Code Regs., tit. 1, § 1034, subds. (a) & (b); Gov. Code, § 11425.40, subd. (d).) A peremptory challenge is not allowed if made after the hearing starts. 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 must be made no later than the start of that prehearing conference. (Cal. Code Regs., tit. 1, § 1034, subd. (c).) A peremptory challenge is not allowed on reconsideration or remand. (Cal. Code Regs., tit. 1, § 1034, subd. (a).)

Student's peremptory challenge is untimely and therefore, is denied pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c). Parent did not attempt to exercise Student's peremptory challenge before the prehearing conference began or at the beginning of the prehearing conference. Instead, the parties participated in nearly 30

minutes of substantive prehearing discussion. ALJ Pasewark correctly denied Student's verbal challenge and Student's written challenge is also denied.

IT IS SO ORDERED.

Tara Doss

Tara Doss

Presiding Administrative Law Judge

Office of Administrative Hearings