BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040377 ORDER GRANTING STUDENT'S PEREMPTORY CHALLENGE

On August 23, 2013, a prehearing conference was held before Administrative Law Judge (ALJ) Margret Broussard. On August 26, 2013, the matter was reassigned to ALJ Charles Marson. On August 27, 2013, Student filed a notice of peremptory challenge to ALJ Marson in the above captioned matter.[1]

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 is timely made and is 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 Broussard.

[1] There is no proof of service to indicate if the motion was served upon the Oakland Unified School District (District). However, because the motion is timely, Student is entitled to one peremptory challenge, a response from District would not prevent the granting of the motion. If District believes there is a ground upon which the peremptory challenge should be denied, District may submit a request for reconsideration.

With respect to Student's failure to serve District with the motion, Student is ordered to serve District with all documents filed with OAH.

IT IS SO ORDERED.

Dated: August 27, 2013

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings