BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2025041265

ORDER DENYING PEREMPTORY CHALLENGE

MAY 30, 2025

On May 29, 2025, Student filed a notice of peremptory challenge with the Office of Administrative Hearings, called OAH, to Administrative Law Judge Pathi. An Administrative Law Judge is called ALJ. The peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act, and California Code of Regulations, title 1, section 1034. Student's motion is titled a peremptory challenge. Student requests an ALJ with prior experience hearing cases regarding TK or Kindergarten students or, alternatively, ALJ Arden be assigned. This request is interpreted as a peremptory challenge and not a challenge for cause.

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).)

If the hearing is to be held at an OAH regional office, the peremptory challenge must be made no later than two business days before the hearing. (Cal. Code Regs., tit. 1, § 1034, subd. (d).) If the hearing is to be held at a site other than an OAH regional office, the peremptory challenge must be made by noon on the Friday before the hearing. (Cal. Code Regs., tit. 1, § 1034, subd. (e).)

ALJ Arden conducted the prehearing conference in this matter. ALJ Arden subsequently became unavailable for hearing. The matter was assigned to ALJ Pathi on May 22, 2025. The OAH calendar is official notice of the ALJ change; however, the docket confirms courtesy calls were made to both parties shortly after noon that day informing them of ALJ Pathi's assignment.

This hearing is conducted virtually so a timely challenge would have needed to be made by noon the Friday before the hearing commenced on Wednesday, May 28, 2025. Moreover, Student's peremptory challenge was made after the due process hearing commenced. Under all provisions governing peremptory challenges in special education due process hearings, the challenge is untimely.

Student's peremptory challenge of ALJ Pathi is untimely and DENIED. All scheduled dates remain on calendar.

IT IS SO ORDERED.

Joy Redmon

Joy Redmon
Presiding Administrative Law Judge
Office of Administrative Hearings