BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

JURUPA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024010623

ORDER DENYING PEREMPTORY CHALLENGE

MAY 13, 2024

On May 13, 2024, Student filed a notice of peremptory challenge with the Office of Administrative Hearings, called OAH, to Administrative Law Judge Claire Yazigi. An Administrative Law Judge is called ALJ. Student's 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.

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).)

The prehearing conference in this matter was conducted by ALJ Chris Butchko on May 3, 2024. Thereafter, ALJ Butchko became unavailable for this due process hearing. Before noon on Thursday, May 9, 2024, the matter was reassigned to ALJ Yazigi. OAH's public calendar is official notice of the change; however, at noon on May 9, 2024, OAH provided a courtesy telephone call to the parties notifying them of the changed assignment. Student's peremptory challenge was not filed by noon the Friday before the hearing, but on Monday, May 13, 2024, the day before. Student acknowledges the motion is untimely but asserts that equity and fairness dictate it should be granted. Student's counsel was out of the country and did not receive the email from his office's calendar clerk notifying counsel of the changed assignment. Upon return, counsel reviewed ALJ Yazigi's other issued decisions and concluded the challenge is "appropriate and necessary if Plaintiff is to receive a fair hearing of the issues in this case." Counsel further asserted that to receive a fair hearing, Student's case must be heard, "…before an ALJ who has not previously expressed bias and preconceptions about the competence of students with cognitive challenges such as those caused by his disability."

Student's peremptory challenge was not timely. There is no exception in the law governing peremptory challenges to the timeliness requirement based on vacation schedules or claimed equity. Accordingly, Student's peremptory challenge is denied pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c). As noted, Student's motion referred to bias and preconceptions. Nothing in this order prevents Student from seeking to challenge ALJ Yazigi for cause should Student so choose. A motion seeking to disqualify ALJ Yazigi for cause would be made directly to ALJ Yazigi for ruling.

Student's peremptory challenge is DENIED. The case remains with ALJ Yazigi and all scheduled dates remain on calendar.

IT IS SO ORDERED.

Joy Redmon

Joy Redmon
Presiding Administrative Law Judge
Office of Administrative Hearings