BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021120672

ORDER DENYING PEREMPTORY CHALLENGE

MAY 3, 2022

On May 2, 2022, Chino Valley filed a notice of peremptory challenge to Administrative Law Judge Rita Defilippis in the above captioned matter. Chino Valley'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. Chino Valley represented it was only made aware of the ALJ change when invitations to attend the virtual hearing were sent on May 2, 2022. Chino Valley's representation is not supported by the record.

The matter was originally assigned to ALJ Tiffany Gilmartin. The matter was reassigned to ALJ Defilippis on April 26, 2022. OAH's public calendar was updated on that date. A courtesy call was made to the parties on that date notifying them of the ALJ change and inquiring regarding the likelihood the matter would proceed to hearing.

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 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 the hearing is to be held at an OAH office, the preemptory challenge shall be made no later than two business days prior to the hearing, and if held at other than in an OAH regional office, the preemptory challenge shall be made no later than noon the Friday before the hearing. (Cal. Code Regs., tit. 1, § 1034, subds. (d) and (e).) A peremptory challenge is not allowed on reconsideration or remand. (Cal. Code Regs., tit. 1, § 1034, subd. (a).)

Chino Valley's peremptory challenge is untimely made and is denied. The matter shall proceed with ALJ Defilippis presiding.

IT IS SO ORDERED.

Joy Redmon

Joy Redmon
Presiding Administrative Law Judge
Office of Administrative Hearings