BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

SELMA UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2025040745

ORDER DENYING PEREMPTORY CHALLENGE AND NOTICE OF EX PARTE COMMUNICATION

APRIL 30, 2025

Parent filed three documents with the Office of Administrative Hearings, called OAH, related to assigned Administrative Law Judge Daniel Senter. They are a Request for Clarification Regarding Judicial Assignment, dated April 29, 2025; Request to Remove the Judge from My Case, dated April 30, 2025; and Supplement to Motion to Recuse dated April 30, 2025. None of these documents include a proof of service establishing Selma Unified School District was served.

In the three letters, Parent generally asserts that Division Chief Peter Paul Castillo was originally assigned to this case, ALJ Senter was subsequently assigned without notice, a request to know how and where parties were formally notified of the

reassignment, a request to have ALJ Senter removed, and that Division Chief Castillo be reassigned to restore due process and impartiality. These requests will be deemed both a peremptory challenge and a challenge for cause. This order addresses the peremptory challenge. The challenge for cause will be addressed by ALJ Senter under separate order.

A peremptory challenge can be 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).)

Division Chief Castillo was not assigned to hear this case. It appears Parent incorrectly thought he was assigned because his name appeared on the April 17, 2025, Scheduling Order, and other orders contemporaneously served clarifying procedures for mediation, electronic exhibit filing, prehearing conference, and joining videoconference hearings. The Scheduling Order itself, however, clarifies how to identify the assigned ALJ and explains the peremptory challenge process and timelines. Specifically, the section titled PEREMPTORY CHALLENGES states, "To determine the identity of the ALJ who will hear the case contact your case manager listed on the Scheduling Order or by

viewing the on-line calendar at https://www.applications.dgs.ca.gov/OAH/OAHCalendarWeb/SpecialEducation." ALJ Senter was assigned to this case and included in the on-line calendar on April 24, 2025, four days prior to the prehearing conference. The scheduling order further states, "A peremptory challenge must be directed to the Presiding ALJ, served on all parties if made in writing... If at the time of a scheduled prehearing conference, an ALJ has been assigned to the hearing, any challenge of the assigned ALJ must be made no later than commencement of the prehearing conference."

To the extent Student seeks to exercise a peremptory challenge to ALJ Senter, it is not timely made and is denied pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c).

NOTICE OF EX PARTE COMMUNICATION

Student filed the three documents discussed above with OAH without a proof of service. These documents are considered ex parte Communication. Additionally, the docket in this case includes a note from the assigned case manager on April 22, 2025, stating in part, "Spoke to parent, let her know we need a proof of service for docs submitted to OAH..."

Ex parte communications, communications from one side to the tribunal without service on the opposing party, are not permitted while a due process proceeding is pending. "[W]hile special education due process hearing proceedings are pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to a hearing officer from an employee or representative of a party or from an interested

person unless the communication is made on the record at the hearing." (Cal. Code. Regs., tit. 5, § 3084, subd. (a).)

The rule against ex parte communications "is, in essence, a rule of fairness meant to insure that all interested sides will be heard on an issue." (*Heavey v. State Bar of California* (1976) 17 Cal.3d 553, 559.) "[T]he right of a hearing before an administrative tribunal would be meaningless if the tribunal were permitted to base its termination upon information received without the knowledge of the parties." (*English v. City of Long Beach* (1950) 35 Cal.2d 155, 159.)

When ex parte communication is received, the administrative law judge presiding over the matter must disclose the communication to all parties, make it part of the record, and allow the parties an opportunity to address the matter within 10 days of receipt of the notification of communication. (Cal. Code. Regs., tit. 5, § 3084, subds. (c)-(e).)

Parent sought to communicate to an OAH administrative law judge in a special education matter without serving the other side. The letters are ex parte communications intended to affect the conduct of the hearing and the outcome in this matter and are unlawful communications unless timely served on the opposing party.

This notice discloses the communications to Selma and its attorneys. The ex parte communications shall be attached to this Order and shall be made part of the record in this matter.

Parent is advised that further communications to OAH shall be properly filed pursuant to OAH's scheduling orders and be accompanied by a proof of service. The proof of service must establish that a copy of the submitted document was provided to the other side, and the means by which it was provided and when.

Parent is ordered to review and abide by OAH's orders included in the scheduling order. Any further ex parte communications to OAH may result in monetary and other allowable sanctions and cost shifting. If Selma wishes to address this matter, it should provide written notice to OAH and it will be addressed on the first day of hearing.

IT IS SO ORDERED.

Joy Redmon

Joy Redmon
Presiding Administrative Law Judge
Office of Administrative Hearings