

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013080695

ORDER GRANTING PEREMPTORY
CHALLENGE

On November 25, 2013, Student filed a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Charles Marson from hearing this case. Student's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act (APA), 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 (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 (PHC), an ALJ has been assigned to the Hearing, any challenge to the assigned ALJ shall be made no later than commencement of that PHC. (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).

ORDER

1. Student's challenge of ALJ Charles Marson is granted.

2. ALJ Margaret Broussard is assigned to this matter and will conduct the PHC on November 25, 2013, at 10:30 a.m. All dates previously set in this matter will remain on calendar.

Dated: November 25, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings