

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014090112

ORDER GRANTING PEREMPTORY
CHALLENGE AND CONTINUING
THE PREHEARING CONFERENCE

On February 26, 2015, Student filed a notice of peremptory challenge to Administrative Law Judge Charles Marson in the above captioned matter. Student's peremptory challenge was made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act, and California Code of Regulations, title 1, section 1034. The Office of Administrative Hearings subsequently notified the parties that ALJ Rebecca Freie was assigned to hear this matter.

On February 26, 2015, Berkeley Unified School District filed a notice of peremptory challenge to ALJ Rebecca Freie in the above captioned matter. District'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 (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).) 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, an ALJ has been assigned to the Hearing, any challenge to the assigned ALJ shall be made no later than commencement of that prehearing conference. (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 and District's peremptory challenges were 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. District's challenge of ALJ Rebecca Freie is granted.
3. The matter is assigned for all purposes to ALJ Alexa Hohensee.
4. The previously set prehearing conference date is continued. The prehearing conference is now set for March 23, 2015, at 3:00 p.m. OAH will initiate the call.

DATE: March 23, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings