

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

HORICON ELEMENTARY SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015100515

ORDER DENYING DISTRICT'S
PEREMPTORY CHALLENGE

On October 22, 2015, Jennifer E. Nix, attorney for the Horicon Elementary School District, filed a notice of peremptory challenge to Administrative Law Judge Marian Mclean in the above captioned matter. The challenge is as to her role as a mediator.

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 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).)

The regulation does not apply to mediations. Mediators are assigned based on OAH's operational needs. Mediations are voluntary and a party may decline to participate in mediation if it so chooses. Accordingly, the challenge is denied.

IT IS SO ORDERED.

DATE: October 22, 2015

/s/

BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings