BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

MT. DIABLO UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2022120477

ORDER DENYING PEREMPTORY CHALLENGE

JANUARY 5, 2023

On January 5, 2023, Parent on behalf of Student, filed with the Office of Administrative Hearings, called OAH, a notice of peremptory challenge to Administrative Law Judge Cararea Lucier, the hearing judge assigned to this case. An Administrative Law Judge is called an ALJ. Student'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, or 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 after the hearing has started. 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).)

Student's peremptory challenge was filed after ALJ Lucier held the prehearing conference on December 30, 2022. Therefore, Student's peremptory challenge is untimely and is denied 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 Lucier is denied.
2. All dates previously set in this matter will remain on calendar.

IT IS SO ORDERED.

Tara Doss

Tara Doss
Presiding Administrative Law Judge
Office of Administrative Hearings