BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

DOWNEY UNIFIED SCHOOL DISTRICT ,

and

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2022120336

OAH CASE NUMBER 2022120719

ORDER DENYING PEREMPTORY CHALLENGE

MARCH 20, 2023

On March 20, 2023, Downey Unified School District filed a notice of peremptory challenge to Administrative Law Judge T. Gilmartin in the above captioned matter. The 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 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. (Cal. Code Regs., tit. 1, § 1034, subd. (a).)

The peremptory challenge 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). There has already been one PHC in this matter and the ALJ has issued a decision on the expedited portion of this case already.

ORDER

1. The District's challenge of ALJ Gilmartin is denied.
2. All dates previously set in this matter will remain on calendar.

IT IS SO ORDERED.

Margaret Gibson

Margaret Gibson
Presiding Administrative Law Judge
Office of Administrative Hearings