BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024010738

ORDER GRANTING DISTRICT'S PEREMPTORY CHALLENGE

FEBRUARY 26, 2024

On February 23, 2024, at approximately 2:50 PM, the Office of Administrative Hearings, called OAH, informed the parties that the case was reassigned to Administrative Law Judge Chris Butchko. An Administrative Law Judge is called ALJ. On February 26, 2024, Mountain View Whisman School District filed a notice of peremptory challenge to ALJ Butchko, 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, also called 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 if made after the hearing starts. 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).)

If the hearing is to be held at an OAH regional office, the peremptory challenge must be made no later than two business days before the hearing. (Cal. Code Regs., tit. 1, § 1034, subd. (d).) If the hearing is to be held at a site other than an OAH regional office, the peremptory challenge must be made by noon on the Friday before the hearing. (Cal. Code Regs., tit. 1, § 1034, subd. (e).)

Here, Mountain View Whisman filed its peremptory challenge on the Monday before the hearing, which would typically be untimely. However, because OAH did not inform Mountain View Whisman of ALJ Butchko's assignment to the case until after noon on the Friday before hearing, the peremptory challenge is deemed timely, and is granted. The case is now assigned to ALJ Rommel Cruz, and all scheduled dates remain on calendar.

IT IS SO ORDERED.

Tara Doss

Tara Doss
Presiding Administrative Law Judge
Office of Administrative Hearings