BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CAPISTRANO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015100209 ORDER DENYING STUDENT'S PEREMPTORY CHALLENGE OF MEDIATOR

On November 2, 2015, Kathleen M. Loyer, attorney for the Student, filed a notice of peremptory challenge to Administrative Law Judge Darrell Lepkowsky 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: November 2, 2015

/S/
PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings