BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PARLIER UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016080347 ORDER DENYING STUDENT'S PEREMPTORY CHALLENGE

On August 2, 2016, Student filed a due process hearing request with the Office of Administrative Hearings, naming the Parlier Unified School District. The hearing request raised both expedited and non-expedited issues. The matter was bifurcated and the expedited prehearing conference was held before Administrative Law Judge Cheryl Carlson on August 22, 2016. The expedited portion of this matter began on August 30, 2016 and is continuing. That matter is being heard by ALJ Carlson. There is a prehearing conference in the non-expedited portion of this matter on September 2, 2016 and the hearing in the non- expedited portion of the matter is set to begin on September 14, 2016. On September 1, 2016, Student filed a peremptory challenge seeking to disqualify Administrative Law Judge Cheryl Carlson from hearing the non-expedited portion of this case.

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 (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).)

Student's 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). Although bifurcated into two parts, the non-expedited and expedited portions of the hearing are both part of the same case. Therefore, a timely

peremptory challenge must have been made prior to the commencement of the prehearing conference in the expedited portion of this case.

IT IS SO ORDERED.

DATE: September 1, 2016

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Margaret Broussard
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MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings