BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

GATEWAY COLLEGE & CAREER ACADEMY.

OAH CASE NUMBER 2022080821

ORDER GRANTING PEREMPTORY CHALLENGE

JANUARY 13, 2023

On January 13, 2023, Student filed with the Office of Administrative Hearings, called OAH, a notice of peremptory challenge to Administrative Law Judge Sabrina Kong, the hearing judge assigned in 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, 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 if made 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 is timely made and is granted 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 Kong is granted.
2. ALJ Jennifer Kelly is assigned as the hearing judge in the case.
3. 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