BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015010344 ORDER GRANTING STUDENT'S PEREMPTORY CHALLENGE, VACATING HEARING DATE AND SETTING DUE PROCESS HEARING

On April 9, 2015, the Office of Administrative Hearings informed the parties that Administrative Law Judge Charles Marson had been assigned to the hearing set to start on April 13, 2015. On April 11, 2015, Student filed a notice of peremptory challenge to ALJ Marson in the above captioned matter. Student's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act (APA), and California Code of Regulations, title 1, section 1034. On April 13, 2015, the Oakland Unified School District filed an opposition.

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 OAH 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).) Furthermore, if a hearing is to be held at an OAH regional office, the challenge must be made no later than two business days prior to the commencement of the hearing. (Cal. Code Regs., tit. 1, § 1034, subd. (d).) 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 parties were informed late in the afternoon of April 9, 2015, that OAH was reassigning the matter. Student's peremptory challenge was filed less than two business days before the commencement of this hearing. Oakland contends the challenge is untimely. However, the reassignment by OAH was done less than two business days prior to the commencement of the hearing, and Student could not meet the requirements of the regulation. Therefore, the challenge may not be denied simply on the grounds that it failed to meet the requirements of the regulation. Oakland also asserts that Student could have filed the challenge on April 10, 2015. Oakland's contention is well taken and Student could have

filed the challenge on April 10, 2015. However, based upon the facts in this case, OAH will grant the challenge.

The due process hearing date of April 13, 2015 is vacated. The hearing is reassigned to ALJ Rebecca Freie. The matter will commence on April 14, 2015, at 9:30 a.m. All other dates are confirmed.

IT IS SO ORDERED.

DATE: April 13, 2015

/s/

BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings