BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SALINAS UNION HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013070582 ORDER GRANTING PEREMPTORY CHALLENGE

On August 9, 2013, Student filed a peremptory challenge seeking to disqualify Administrative Law Judge (ALJ) Charles Marson from hearing this case.[1] 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.

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 (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).) 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 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).

[1] The challenge is somewhat ambiguous. The caption reads "Student's Preemptory Challenge of Assigned ALJ Peter Charles Marson," the body states that Student "hereby exercises its right to a preemptory challenge in this matter of ALJ Marson, . . ." and the proof of service claims the document being served on the District is "Student's Pre-emptory Challenge of ALJ Castillo." Since ALJ Marson is currently assigned to conduct the prehearing conference (PHC) in this matter at 10:00 a.m. on August 12, 2013, it is inferred that Student is challenging him, and not ALJ Peter-Paul Castillo.

ORDER

1. Student's challenge of ALJ Charles Marson is granted.

2. All dates previously set in this matter will remain on calendar, although the prehearing conference currently set to begin at 10:00 a.m. on August 12, 2013, will now begin at 11:00 a.m. on the same date.

3. The case is now assigned to ALJ Peter-Paul Castillo.

Dated: August 12, 2013

/s/
REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings