BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FREMONT UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018090670 ORDER DENYING PEREMPTORY CHALLENGE

On November 13, 2018, Student filed a notice of peremptory challenge to Administrative Law Judge Tiffany Gilmartin.

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. Additionally, 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 prehearing conference was scheduled for November 2, 2018. ALJ Gilmartin convened the PHC, reached Fremont Union High School District's counsel, and made two unsuccessful attempts to reach Parent. Thereafter, ALJ Gilmartin issued an Order to Show Cause as to why the matter should not be dismissed for failure to prosecute. Parent responded to the OSC, and ALJ Gilmartin issued an order permitting the matter to proceed. At the time of the PHC, ALJ Gilmartin was assigned to the hearing and called the matter on the record. Parent's failure to appear does not render this peremptory challenge timely. Accordingly, Student's ALJ challenge is untimely and is DENIED.

IT IS SO ORDERED.

DATE: November 13, 2018

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Joy Redmon
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JOY REDMON
Presiding Administrative Law Judge
Office of Administrative Hearings