BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. UPLAND UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018120463
UPLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018120181 ORDER DENYING STUDENT'S PEREMPTORY CHALLENGE

On January 22, 2019, Student filed a peremptory challenge seeking to disqualify Administrative Law Judge Alexa Hohensee from hearing the above captioned matter. District'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).)

On December 5, 2018, Upland Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2018120181, naming Student. On December 13, 2018, Student filed a Request for Due Process Hearing in OAH case number 2018120463, naming Upland. On December 21, 2018, ALJ Hohensee convened a prehearing conference in Upland's Case, in which she

granted Upland's request for a continuance. On January 17, 2019, OAH granted Upland's motion to consolidate those cases (Consolidate Case).

Because this is a Consolidated Case, Student's peremptory challenge is denied pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c) as Student failed to make a peremptory challenge of ALJ Hohensee before the December 21, 2018 prehearing conference.

ORDER

1. Student's challenge of ALJ Hohensee is denied.

2. All dates previously set in this matter will remain on calendar.

DATE: January 23, 2019

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings