BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2025080032

ORDER DENYING STUDENT'S ADMINISTRATIVE LAW JUDGE CHALLENGE FOR CAUSE

AUGUST 15, 2025

On July 30, 2025, Parent, on behalf of Student, filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Cupertino Union School District as respondent. On August 14, 2025, Student's peremptory challenge to the assigned administrative law judge was granted, and the undersigned was assigned to this case. On August 14, 2025, Student filed a challenge for cause to the undersigned.

Student asserts that the undersigned should not be assigned to hear this case because of inherent bias, prior knowledge of this case's facts, and ALJ Pahl's "preconceived notion about the subject matter of the case." Student also mentions a

comment made by counsel for Cupertino which" alluded to her and F3law's prior relationship with ALJ Pahl."

Student also asserts that ALJ Pahl exhibited "problematic conduct" in a prior case which is described as failing to swear in a witness and failing to enable the recording of a portion of testimony in the prior case over which ALJ Pahl presided. Student asserts these errors should also constitute cause for challenging ALJ Pahl. Student offers no legal authority for his challenge for cause.

ONLY ONE PEREMPTORY CHALLENGE ALLOWED

Government Code section 11425.40, subdivision (d), establishes the criteria for disqualification of the presiding officer. A party is entitled to one peremptory challenge, also called 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).) Student exercised his peremptory challenge against the originally assigned ALJ in this case. When the peremptory challenge was granted, the Presiding Judge assigned ALJ Pahl to hear this matter.

ADMINISTRATIVE LAW JUDGE CHALLENGE FOR CAUSE

Disqualification of a California Administrative Law Judge for bias, prejudice or interest is governed by California Government Code section 11425.40. The applicable sections of that code section state:

> (a) The presiding officer is subject to disqualification for bias, prejudice, or interest in the proceeding.
> (b) It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the presiding officer:

> (1) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group.
> (2) Has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding.

Here, Student has not made clear what he means when he asserts ALJ Pahl is "inherently biased." No facts demonstrating bias were identified. Nor does Student explain what he means by the assertion that ALJ Pahl has a "preconceived notion" about the subject matter of the case. Nor does Student provide facts regarding his comment that Cupertino counsel "alluded to her and f3law's prior relationship with ALJ Pahl." The undersigned does not recall such a comment. That said, it is true that attorneys from the law firm of Fagen, Friedman and Fulfrost frequently appear before ALJ Pahl as their law firm handles many special education cases. Student offered no evidence that Fagen Friedman and Fulfrost's regular appearances before ALJ Pahl results in bias against Student.

To disqualify an ALJ for cause, a factual showing of actual bias or prejudice is required. (See, *American Isuzu Motors, Inc. v. New Motor Vehicle Board* (1986) 186 Cal.App.3d 464, 472.) While ALJ Pahl did preside over a prior case asserting issues similar to those raised in this case, Student has offered no facts as to how involvement with the prior case results in bias. ALJs assigned to the Special Education Division routinely preside over cases involving similar issues. ALJs also occasionally preside over cases involving the same parties and similar issues. Sometimes those cases involve consideration of facts or rulings from prior cases. The fact that a judge formed opinions

as a result of what they learned in earlier cases, does not establish either bias or prejudice. (See *Liteky v. United States*, (1994) 510 U.S. 540, 551; 114 S. Ct. 1147, 1157.)

Experience with a prior case can offer efficiencies to a subsequent one. The ALJ is familiar with the names of witnesses and legal concepts. However, each case is evaluated based on the evidence admitted in the case being heard. Student has offered no evidence that ALJ Pahl would be biased or would not consider this case on its individual merits.

STUDENT'S ASSERTION OF "PROBLEMATIC CONDUCT"

Student points to two errors made during the prior hearing involving Student as additional bases for disqualification. Student asserts the ALJ forgot to swear a witness in at the beginning of her testimony. The undersigned acknowledges this happened. The witness was given instructions for testifying, but was not immediately sworn. Approximately 40 minutes into the examination, it was determined that the witness had not been sworn in. The witness was immediately sworn in with an oath that stated all testimony given to that time had been true and correct, and that all future testimony would be true and correct. An oath is a promise. Student offers no evidence that the oath, as administered, prejudiced him in any way. Nor does Student demonstrate that such an error supports a finding of bias by this ALJ.

Student also notes that the undersigned forgot to turn the recording device on for a portion of testimony on one day in the prior hearing. The undersigned also acknowledges this happened. The error was discovered just as the hearing was breaking for lunch. Student had not completed examination of the witness involved. ALJ Pahl read her notes into the record and asked the parties if they were an acceptable substitute for the recording. Student did not want to substitute the ALJ's notes for

digitally recorded testimony of the witness. Neither of the parties were recording the proceedings, despite having permission to do so for notetaking purposes; so, no alternate recording of that portion of the hearing was available. Upon return from lunch, Student was offered the opportunity to reexamine the witness as to the topics covered previously, so that a digital recording of the examination could be made. Student has offered no facts establishing that this plan would have resulted in prejudice to him or that such a plan demonstrated bias.

Student disagreed with several of ALJ Pahl's rulings in the prior case. However, the fact that Student disagreed with ALJ Pahl's ruling does not automatically result in bias against Student. Parties frequently disagree with ALJs and have cases before the same ALJ subsequently. Nor does the fact that two errors occurred during the hearing result in grounds for ALJ Pahl's disqualification. Both errors were remediable.

Student has not established a basis for disqualification of ALJ Pahl. The undersigned believes she is capable of presiding over this case impartially. Student's challenge for cause is denied.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings