BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2024070763

ORDER DENYING CHALLENGE FOR CAUSE

AUGUST 13, 2024

On August 9, 2024, Parent on behalf of Student filed a challenge for cause, seeking to disqualify Division Chief Administrative Law Judge Peter Paul Castillo from hearing this case. Parent contends that Division Chief Castillo has a history of bias against parents and students in special education proceedings and is in cahoots with the law firm of Fagen, Friedman and Fulfrost, which represents Del Mar Union School District to deny all special education students and their parents their due process rights.

APPLICABLE LAW

An Administrative Law Judge may be disqualified for bias, prejudice, or interest in the proceeding. (Gov. Code, § 11425.40, subd. (a).) The following, without further

evidence of bias, prejudice, or interest, are not by themselves grounds for disqualification:

- The Administrative Law Judge is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group;
- The Administrative Law Judge 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; or
- The Administrative Law Judge has as a lawyer or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding. (Gov. Code, § 11425.40, subd. (b).)

In other words, to disqualify an Administrative Law Judge 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.) For example, to be a basis for disqualification, the financial interest of the Administrative Law Judge in the outcome of the case must be direct, personal, and substantial, rather than slight. (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1031.) Personal involvement in the case by the Administrative Law Judge or familial connections may warrant disqualification based solely on the probability of bias. (See *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170-1173.) However, in most other cases, including claims of bias arising from the hearing officer's personal or political views, disqualification will not occur absent a showing of actual bias. (*Haas*, *supra*, at p. 1032.)

DISCUSSION

Parent's motion to disqualify Division Chief Castillo is based on convoluted factual and legal contentions. Parent objects to the rulings of the Office of Administrative Hearings in this case and prior cases between Student and Del Mar Union based on assertions of a conspiracy between OAH, Division Chief Castillo and the attorneys for Del Mar. Parent bases her contention on alleged undisclosed relationships, billing invoices from the law firm of Fagen, Friedman and Fulfrost, a $257 penalty notice from the California Fair Political Practices Commission concerning a Joyce Dalessandro, internet articles about Howard Fulfrost, and citations to a 2022 Report, by unknown authors, about OAH.

Parent made a similar challenge against United States District Court Judge Anthony J. Battaglia in their appeal of the July 13, 2021 Order Dismissing Case with Prejudice in OAH Case Number 2020120692. (*N.R. v. Del Mar Unified School Dist.* (S.D. Cal. Sept. 12, 2023, Case No.: 21-cv-01759-AJB-WVG) 2023 WL 5964746.) In rejecting Parent's challenge, Judge Battaglia found:

> Aside from sheer speculation, Plaintiff makes no showing that would lead a reasonable person to conclude that the Court's impartiality might be questioned in this case. Plaintiff's motion suggests, without a reasonable factual basis, some conspiracy between the Court, Defendant, and Defendant's counsel. Nothing in the record supports Plaintiff's attack on the integrity of the Court. No attempt is made here to address the unfounded allegations, although some will be highlighted to illustrate the point that sheer speculation is all that is asserted here.

(*N.R. v. Del Mar Unified School Dist., supra,* 2023 WL 5964746, *2.)

Judge Battaglia then goes on in his order to disprove, one by one, each of Parent's grounds to disqualify him. Judge Battaglia concludes that:

> It would thus be an untenable stretch for a reasonable person with knowledge of the all the facts of this case to question the Court's impartiality. Indeed, a reasonable person in this context means "a well-informed, thoughtful observer as opposed to a hypersensitive or unduly suspicious person." *Clemens v. U.S. District Court for the Central District of Ca.*, 428 F.3d 1175, 1178 (9th Cir. 2005) (citations and internal quotations omitted). Plaintiff's showing does not meet the reasonable person standard. See *Hernandez*, 109 F.3d at 1453. Simply put, there is no demonstrated bias or prejudice requiring recusal in this case.

(*N.R. v. Del Mar Unified School Dist., supra,* 2023 WL 5964746, *2-3.)

Similar to Parent's challenge to Judge Battaglia, Parent's disagreements with Division Chief Castillo's rulings in this case and others are not grounds to disqualify Division Chief Castillo. (*See Liteky v. United States* (1994) 510 U.S. 540, 555; "Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.") None of Parent's purported evidence establishes any relationship with Del Mar Union or its legal counsel with Division Chief Castillo. Parent cites to an unverified article "OAH Special Education Accountability Report 2022" which has no authors listed or any proof that any reputable organization prepared and issued this report. In a stream of consciousness manner, Parent attaches a series of internet articles and other material in an attempt to attack the veracity of the law firm that represents Del Mar Union, none of which show any relationship between that law firm and Division Chief Castillo, who has never worked for any law firm that has represented school districts.

Parent fails to present any rational evidence that would establish that a reasonable person who was aware of all of the facts would determine that Division Chief Castillo's impartiality might reasonably be questioned. For the recusal analysis, Parent's contentions are looked at if they are from a "reasonable person [which] in this context means a well-informed, thoughtful observer, as opposed to a hypersensitive or unduly suspicious person." (*Clemens v. U.S. Dist. Ct. for Cent. Dist. of California* (9th Cir. 2005) 428 F.3d 1175, 1178.) And as Judge Battaglia noted in denying Parent's third attempt to disqualify him for cause, Parent's contentions here, as in the District Court matter, do not meet the reasonable person standard because:

> Plaintiff continues to hurl baseless accusations of bias and prejudice against the Court based on tenuous associations between the Court and attorneys working at the District's counsel's firm. (Doc. No. 107 at 4–5.) Nothing in the record substantiates what Plaintiff perceives to be collusion between the Court and the District or its counsel. Indeed, Plaintiff's attempt at weaponizing coincidental connections and sheer speculation to make a case for recusal is exactly the type of claim the Ninth Circuit has recognized as insufficient to require recusal. See *Clemens*, 428 F.3d at 1178–79 (9th Cir. 2005) (listing various matters "not ordinarily sufficient" for recusal, including "[r]umor, speculation, beliefs, conclusions, innuendo, suspicion, opinion, and similar non-factual matters ... prior rulings in the proceeding, or another proceeding, solely because they were adverse ... mere familiarity with the defendant(s) ... baseless personal attacks on or suits against the judge by a party.").

(*N.R. v. Del Mar Unified School Dist.* (S.D. Cal. April 15, 2024, Case No.: 21-cv-01759-AJB-WVG) 2024 WL 1626334, *3.)

In conclusion, Parent's unsubstantiated speculations are not evidence and are not grounds for disqualification of Division Chief Castillo as Parent did not establish that a reasonable person would find that Division Chief Castillo's is impartiality in question. (*American Isuzu Motors, Inc. v. New Motor Vehicle Board* (1986) 186 Cal.App.3d 464, 472; Cal. Code Regs., tit. 5, § 3099, subd. (b).)

ORDER

Parent's challenge of Division Chief Administrative Law Judge Castillo is denied.

IT IS SO ORDERED.

Peter Paul Castillo

Peter Paul Castillo
Division Chief Administrative Law Judge
Office of Administrative Hearings