BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SAN MATEO FOSTER CITY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018010197 ORDER DENYING CHALLENGE FOR CAUSE

On January 26, 2017, Student filed a challenge for cause, seeking to disqualify Administrative Law Judge Charles Marson from hearing this case, supported by a declaration signed by Student's Mother setting forth her reasons for the challenge.

An ALJ 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: 1) the ALJ 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) the ALJ 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 3) the ALJ 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 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.) For example, in order to be a basis for disqualification, the financial interest of the ALJ 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.) Similarly, personal involvement in the case by the ALJ 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

The ALJ previously ruled in favor of San Mateo-Foster City and against Student in a dispute involving different factual and legal issues. (*San Mateo-Foster City Sch. Dist. v. Student* (OAH, Dec. 10, 2014, No. 2014100402.) Mother's declaration is based solely on her

disagreement with several rulings made by the ALJ in and before the hearing in Case No. 2014100402, including a final decision adverse to Student.

The governing statute specifically provides that the fact that an ALJ "has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding" does not demonstrate bias and is not a ground for disqualification. (Gov. Code, § 11425.40, subd. (b)(2).) Nor is it an adequate showing of bias or ground for disqualification that an ALJ has previously ruled against one of the parties in litigation. (*County of San Diego v. Alcoholic Beverage Control Appeals Bd*. (2010) 184 Cal.App.4th 396, 406.)

Student's showing of actual bias is insufficient.

ORDER

Student's challenge of ALJ Charles Marson for cause is DENIED.

DATE: January 26, 2018

DocuSigned by:
Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings