BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

DEL NORTE COUNTY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024110598

ORDER DENYING REQUEST TO REMOVE ADMINISTRATIVE LAW JUDGE

JANUARY 21, 2025

On January 16, 2025, Del Norte County Unified School District, called Del Norte, filed a "Motion to IMMEDIATEDLY Remove ALJ Lucier – OAH Case 2024110598." This request was filed at the beginning of the sixth day of the due process hearing and was not served on the opposing party. The Office of Administrative Hearings, known as OAH, provided Student's counsel with a copy the same day.

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, in order 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.)

Del Norte's request cites no legal authority, and it is unclear whether the request is intended as a peremptory challenge or as a challenge for cause.

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).)

DISCUSSION

Del Norte's request to remove the undersigned ALJ is based upon allegations that the ALJ is not properly managing objections, is biased in favor of Student, and is biased against Del Norte's attorney and representative due to a decision in OAH case number 2021120214.

Del Norte contends the ALJ has sustained 72.4 percent of Del Norte's objections within the first five days of the due process hearing. This argument does not support Del Norte's arguments that the ALJ is biased against it and further suggests Del Norte may be using artificial intelligence technology software to analyze its informal recording of the hearing, in direct defiance of the ALJ's Order at the commencement of the hearing. The participants and witnesses in this hearing have not consented to having their likeness fed into third-party, private artificial intelligence technology software which can be used to train the artificial intelligence and may also be sold or otherwise used in a way that may violate the privacy of the participants. Further, if Del Norte's attorney is using artificial intelligence, Del Norte has not established that the artificial

intelligence has appropriate legal training to determine whether the ALJ appropriately ruled on each objection.

The undersigned ALJ has considered Del Norte's request to immediately remove the ALJ. Del Norte did not include any relevant legal provisions to support its request. Del Norte has failed to demonstrate any probable or actual bias or prejudice on the part of the undersigned ALJ on behalf of Student or against Del Norte, its representative, and its attorney. Del Norte has failed to show the undersigned ALJ has a financial interest in the outcome of the hearing or any personal connection to any hearing participant in this matter. To the extent Del Norte is raising a peremptory challenge, such a challenge is untimely.

ORDER

Del Norte's request to remove the undersigned ALJ immediately is denied. All dates previously set in this matter are confirmed.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings