BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

v.

GRANITE MOUNTAIN CHARTER SCHOOL,

OAH CASE NUMBER 2023010119

OAH CASE NUMBER 2022080567

ORDER DENYING CHARTER'S CHALLENGE TO ALJ ARDEN

February 22, 2023

On February 21, 2023, Granite Mountain Charter School, referred to as Granite Charter, filed a document with the Office of Administrative Hearings, called OAH, titled both "Objection to Order Following PHC" and "Peremptory Challenge to ALJ Arden." This Order addresses only Granite Charter's challenge to Administrative Law Judge Christine Arden. Granite Charter's objection to Order Following PHC will be addressed in a separate Order.

APPLICABLE LAW

An Administrative Law Judge, called 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:

- 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 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.) 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.)

Even though Granite Mountain's filing was titled "peremptory challenge" it was actually a challenge for cause seeking to disqualify ALJ Arden from continuing to hear this case on the ground that ALJ Arden "… did not exercise sound judgment and showed her bias against Charter and" its attorney by dismissing certain of Granite Charter's

issues at the Prehearing Conference held on February 17, 2023. (Quoting Granite Mountain's Peremptory Challenge, p. 2, at Conclusion.)

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, called a PHC. (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

ALJ Arden presided over the PHC in this case on February 17, 2023. A preemptory challenge to an ALJ must be made with OAH before the PHC starts. (Cal. Code Regs., tit. 1, § 1034, subd. (c).) In this case, Granite Charter's challenge to ALJ Arden was filed four days after the PHC occurred. Therefore, Granite Charter's peremptory challenge to ALJ Arden is denied as untimely.

Granite Charter's challenge to ALJ Arden "for cause" is based solely on its disagreement with ALJ Arden's ruling at the February 17, 2023 PHC dismissing certain of Granite Charter's' issues because they are outside of OAH's limited subject matter jurisdiction. ALJs have authority to dismiss issues outside of OAH's limited jurisdiction without a pending motion filed by a party, sometimes called acting sua sponte. *Wyner*

ex rel. Wyner v. Manhattan Beach Unified School Dist. (9th Cir. 2000) 223 F.3d 1026, 1029.

Granite Charter's challenge for cause fails to identify any facts which would support the conclusion that ALJ Arden is biased against either Granite Charter or its attorney. Granite Charter failed to establish with a factual showing that ALJ Arden has an actual bias, prejudice, or interest in the proceeding against it or its attorney. (*American Isuzu Motors, Inc. v. New Motor Vehicle Board* (1986) 186 Cal.App.3d 464, 472.)

ALJ Arden has never presided over a hearing in which Granite Charter was a party, or its attorney was representing a party. Granite Charter claims that, because ALJ Arden dismissed certain of Granite Charter's issues sua sponte that she is biased against it and/or its attorney. Granite Charter fails to raise any facts that would support its assertion. There is no evidence, and Granite Charter provides no authority, to support its contention that ALJ Arden dismissed certain of its issues as outside OAH's limited jurisdiction because she was biased or prejudiced against either Granite Charter or its attorney, or that she has a personal interest in this case.

ORDER

Granite Mountain Charter School's challenge to ALJ Christine Arden as the presiding hearing officer over this case is denied. All dates previously set in this matter are confirmed.

IT IS SO ORDERED.

Christine Arden

Christine Arden
Administrative Law Judge
Office of Administrative Hearings