

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013080296
v.	
MANTECA UNIFIED SCHOOL DISTRICT,	
MANTECA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013050805
v.	
PARENT ON BEHALF OF STUDENT.	ORDER DENYING CHALLENGE FOR CAUSE

On August 30, 2013, the undersigned Administrative Law Judge (ALJ) conducted a prehearing conference (PHC) in this matter and, on September 3, 2013 filed an Order Following Prehearing Conference. Among other things, that order defined the issues to be addressed in the upcoming due process hearing. On September 4, 2013, Student filed a challenge seeking to disqualify the undersigned from hearing this case. Also on September 4, 2013, the Manteca Unified School District filed an opposition to the challenge.

Student's challenge has aspects of both a peremptory challenge and a challenge for cause. On September 4, 2013, Presiding Judge Bob Varma denied the challenge insofar as it was a peremptory challenge, and referred the challenge for cause to the undersigned.

APPLICABLE LAW

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.)

Student's challenge is based on his dissatisfaction with the way one of the issues to be heard is described in the Order Following Prehearing Conference filed on September 3, 2013. That description was written after substantial discussion at the PHC among the parties and the ALJ, and constitutes a ruling on the nature of the issue to be heard. A party's dissatisfaction with a previous ruling of an ALJ is not ground for a disqualification for cause.

ORDER

1. Student's challenge for cause of ALJ Charles Marson is denied.
2. All dates previously set in this matter will remain on calendar.

Dated: September 6, 2013

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings