

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BEVERLY HILLS UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013060957

ORDER GRANTING/DENYING
PEREMPTORY
CHALLENGE/CHALLENGE FOR
CAUSE/REQUEST FOR RECUSAL

On [Date], [Name of party] filed a [peremptory challenge, challenge for cause, or request for recusal] seeking to disqualify Administrative Law Judge (ALJ) [Name of ALJ] from hearing this case.

[On [Date], [Name of party] filed a [response/opposition].

(IF THE CHALLENGE DOES NOT SPECIFY WHETHER IT IS PEREMPTORY OR FOR CAUSE. The following paragraph should be used if a party files a challenge to an ALJ but does not specify what type of challenge is made. If that happens, it is necessary to analyze both types of challenges.) [Name of party]'s challenge does not specify whether it is intended to be a peremptory challenge or challenge for cause. Looking first at the requirements for a peremptory challenge [the order should then proceed with a legal and factual analysis of the party's request according to the laws regarding both peremptory challenges and challenges for cause.]

("MOTION TO RECUSE" TREATED AS PEREMPTORY CHALLENGE OR CHALLENGE FOR CAUSE. The following paragraph should be used if a party files a "Request for Recusal" or "Motion for Recusal" of an ALJ.) The Request for Recusal cites no legal authority and it is unclear whether the request is intended as a peremptory challenge or as a challenge for cause. Looking first at the requirements for a peremptory challenge [the order should then proceed with a legal and factual analysis of the party's request according to the laws regarding both peremptory challenges and challenges for cause.]

[USE LAW BELOW FOR PEREMPTORY CHALLENGE]

SHORT FORM PEREMEPTORY

On [Date] , [Name of attorney], attorney for [Party], filed a notice of peremptory challenge to Administrative Law Judge (ALJ) [Name of ALJ] in the above captioned matter. Student's peremptory challenge is made pursuant to Government Code section 11425.40,

subdivision (d), of the Administrative Procedures Act (APA), and California Code of Regulations, title 1, section 1034.

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 (OAH) 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).)

Student's peremptory challenge is timely made and is granted pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c).

IT IS SO ORDERED.

[USE BELOW FOR CHALLENGE FOR CAUSE]

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.)

[ANALYSIS, CONCLUSION – are there facts showing actual bias?]

ORDER

1. [Name of party]'s challenge of ALJ [Name of ALJ] is [granted/denied].
2. [If the challenge is denied or if there is sufficient time to assign a different ALJ to the case, use this language.] All dates previously set in this matter will remain on calendar.
3. [If the challenge is granted and it is necessary to continue the matter to assign a new ALJ to the case, use this language.] The previously set [prehearing conference/hearing] date(s) are continued. A mandatory telephonic trial setting conference is set for [Date], at [Time] a.m./p.m. OAH will initiate the call.

Dated: November 22, 2013

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings