

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014070309

ORDER GRANTING CHALLENGE
FOR CAUSE

On August 11, 2014, Student, through her attorney Leticia N. Whetstone, orally made at the outset of a prehearing conference a challenge for cause seeking to disqualify the undersigned, Administrative Law Judge Charles Marson, from hearing this case.

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, 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.)

In this matter Ms. Whetstone properly pointed out that the undersigned ALJ served as a mediator in a previous due process matter involving Student and another school district. On review of OAH records, it appears that the undersigned ALJ did have substantive conversations with the parties and acquired confidential information concerning Student, knowledge of which would be inconsistent with assignment to the prehearing conference and

the due process hearing as an impartial trier of fact. The challenge for cause is therefore granted.

ORDER

1. Student's challenge of ALJ Charles Marson is granted.
2. All dates previously set in this matter will remain on calendar. The prehearing conference will be held at 1:00 p.m. on August 11, 2014, and will be conducted by ALJ Joy Redmon. OAH will initiate the call. OAH will assign another ALJ to conduct the hearing.

DATE: August 11, 2014

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings