

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BUENA PARK SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015010467

ORDER DENYING CHALLENGE TO
ADMINISTRATIVE LAW JUDGE

On July 2, 2015, Parent on behalf of Student filed a challenge seeking to disqualify Administrative Law Judge Marian Tully from deciding this case, and seeking the appointment of a new ALJ.

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.)

DISCUSSION

Parents state that they felt discrimination during the multi-day due process hearing recently conducted by ALJ Tully, citing specific rulings made at the prehearing conference on April 24, 2015 and the hearing on June 16, 2015. Parents' allegation appears to be based upon Parents' understanding of the evidence and exhibits admitted in the case, and upon their

objection to the manner in which the ALJ directed the witness and exhibit lists, the questioning of witnesses, and the allotment of time. All such matters regarding the conduct of the hearing, questioning of witnesses, time allotted, and evidentiary rulings, are within the ALJ's discretion and do not constitute grounds for an allegation of discrimination. (Gov. Code, §§ 11512, subd. (b) & 11513.) The challenge is denied.

ORDER

Parents' challenge of ALJ Marian Tully is denied.

DATE: July 2, 2015

/s/

JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings