

THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
LANCASTER SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.
OAH CASE NUMBER 2023110700

ORDER DENYING CHALLENGE FOR CAUSE

JANUARY 23, 2024

On January 11, 2024, Student filed a challenge for cause seeking to disqualify Administrative Law Judge Charles Marson from hearing this case. The due process hearing had already commenced. The undersigned, after considering the motion and applicable law, denied the motion on the record. This is the written order detailing the ruling.

APPLICABLE LAW

An Administrative Law Judge 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 Administrative Law Judge 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 Administrative Law Judge 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 Administrative Law Judge 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

The due process hearing in this matter began on January 9, 2024. At the end of the next day, Parent, representing Student, moved to disqualify the undersigned on the ground of actual bias and filed a challenge for cause.

Parent's challenge arises from a series of adverse rulings. These primarily addressed vague, unclear, or incomprehensible questions Parent asked during cross-examination of an assistive technology expert. The questions provoked objections by Lancaster's counsel, witness saying that he did not understand the questions, and instructions, suggestions, or rulings by the ALJ. Many of the questions were also irrelevant to the issues and simply represented Parent's accumulated grievances against Lancaster. In her challenge, Parent implies that the ALJ and the school district were collaborating against her and pretending not to understand her questions. However, neither the ALJ nor the district representatives were collaborating or pretending.

In her challenge, Parent alleges that her right to cross-examine the expert witness was unduly restricted. The ALJ ended Parent's cross-examination at the close of the hearing day, after about an hour, because it had become unproductive. Parent did not then protest or request additional time for questioning. The witness returned the next morning for a brief redirect examination, and again Parent did not request additional time for cross-examination. Parent's objection was first made in the afternoon, after the witness was excused.

The ALJ made numerous other adverse rulings in response to Parent's motions and requests. A few of many examples were requests:

- To limit Lancaster's witnesses to a set period of time such as 30 seconds to begin answering a question;

- To prevent Lancaster's representatives from looking down while Parent was speaking;
- To investigate innocent physical movements by Lancaster representatives such as scratching an ear. Parent accused the special education director and the witness of secretly communicating by electronic device;
- To order the special education director to place her ear close to her computer's camera so Parent could inspect it for electronic communications equipment;
- To allow Parent to bring additional people to the hearing to watch for alleged misconduct by Lancaster's representatives; and
- To transfer the matter immediately to the federal district court.

Adverse rulings do not establish actual bias. "[J]udicial rulings alone almost never constitute [a] valid basis for a bias or partiality recusal motion." (*Liteky v. United States* (1994) 510 U.S. 540, 555 ([114 S.Ct. 1147, 127 L.Ed.2d 474] (citation omitted); see also *In re Focus Media, Inc.* (2004) 378 F.3d 916, 930 (California case).) This is the rule in California even if the rulings are erroneous. (*McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11 ("Erroneous rulings against a litigant, even when numerous and continuous, form no ground for a charge of bias or prejudice . . .")(citations omitted); *Rab v. Weber* (2023) 91 Cal.App.5th 1337, 1353; *Blakemore v. Superior Court (Avon Products, Inc.)* (2005) 129 Cal.App.4th 36, 59-60; *Dietrich v. Litton Industries, Inc.* (1970) 12 Cal.App.3d 704, 719.)

The ALJ denied the challenge for cause because Parent failed to demonstrate actual bias.

ORDER

Student's challenge for cause is denied.

Charles Marson

Charles Marson

Administrative Law Judge

Office of Administrative Hearings