BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017060259 ORDER DENYING CHALLENGE FOR CAUSE

On July 25, 2017, Student filed a challenge for cause, seeking to disqualify Administrative Law Judge Penelope Pahl from hearing this case.

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 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 did not make a peremptory challenge to assignment of the undersigned at the beginning of the prehearing conference or before.

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).)

A party must allege concrete facts that demonstrate the challenged judicial officer is contaminated with actual bias or prejudice; bias and prejudice are never to be implied. Student has alleged no such facts in this case. Student's challenge for cause contains no evidence or facts by which actual bias can be discerned. It contains no affidavit or written declaration under oath , stating with particularity "legally sufficient facts demonstrating

bias." Moving party must show "actual bias" not merely the appearance of bias. (*Andrews v. Agricultural Labor Relations Bd.* (1981) 28 Cal.3d 781, 792-794 [171 Cal.Rptr. 590, 623 P.2d 151].) 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.)

Here, Student argues that the undersigned demonstrated bias in stating that there were procedures that would need to be followed in the course of the hearing specifically in disclosing evidence, preparing evidence for hearing and for service of documents. Student also alludes to concerns about the undersigned's suggestion that arrangements for any necessary accommodations for Student, who is a young child with disabilities and whom Mother has disclosed as a potential witness, should be made well in advance of the second phase of this hearing.

It is the duty of an administrative law judge to control the course of proceedings to ensure a fair hearing for all participants. Ensuring a fair hearing requires that an administrative law judge be responsible for enforcing certain prescribed procedures during the course of the fair hearing process. (Ed. Code §56505 and 56505.1; Ca. Code Regs. tit. 5 §3082). An explanation of hearing procedures is not a demonstration of bias but is, rather, one of the duties of an administrative law judge. Student has not established that the ALJ has bias, prejudice or interest in the matter to warrant disqualification.

ORDER

1. Student's challenge of ALJ Penelope Pahl is denied.

2. All dates previously set in this matter will remain on calendar.

IT IS SO ORDERED.

DATE: July 26, 2017

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings