BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024010524

ORDER DENYING CHALLENGE FOR CAUSE

SEPTEMBER 23, 2024

On January 16, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent, naming Los Angeles Unified School District, called Los Angeles Unified.

Pursuant to the parties' joint request, OAH continued the hearing from March 5 to July 2, 2024, so the parties could participate in mediation. At the June 21, 2024, prehearing conference, OAH continued the hearing to July 30, 2024 pursuant to Los Angeles Unified's motion. Parent appeared at that prehearing conference and did not oppose the motion.

At the July 19, 2024 prehearing conference, over District's objection, OAH granted Student's oral request to continue the hearing because Student had not

received all necessary records to prepare for the hearing. OAH set the hearing for August 27 and 28, 2024, and warned the parties that OAH did not contemplate any further continuances.

Administrative Law Judge Kara Hatfield held the prehearing conference on August 19, 2024, at which each of the issues for hearing was reviewed with the parties in addition to the other prehearing procedures, including the requirement of exchanging documents and witness lists at least five business days prior to the hearing. Parent requested a two-week continuance to become familiar with the requirements for exchanging exhibits and to pursue obtaining from OAH subpoenas and having them served. Parent also stated she planned on moving to amend. Judge Hatfield granted a continuance of the hearing to September 17 through 19, 2024, pursuant to the parties' stipulation to these dates. At the two-plus hour prehearing conference Judge Hatfield stated that no further prehearing conference would be held. On August 20, 2024, OAH issued an Order Following Prehearing Conference. The written order stated that OAH did not contemplate any further continuances and "would consider any further request for continuance with great scrutiny."

Administrative Law Judge Laurie Gorsline, called the ALJ, heard this matter by videoconference on September 17, and 20, 2024. Parent represented Student. Student did not attend the hearing. Attorney Brian Davenport represented Los Angeles Unified. Patrick Johnson, an administrator for Los Angeles Unified attended both hearing days on Los Angeles Unified's behalf.

On September 17, 2024, the first day of hearing, Student filed a "Request for Emergency Due Process Hearing and Amendment to the January 21, 2024 Complaint." Los Angeles Unified did not consent to amendment of the complaint. At the outset of the hearing on September 17, 2024, the ALJ denied Student's request to amend on the

grounds that the motion was untimely and that the case had been pending since January 2024.

At the hearing, Parent made an oral motion to continue the hearing for an unspecified period because Parent claimed she needed additional time to prepare for hearing. Parent had not registered for Case Center or otherwise provide Student's hearing exhibits to District despite that she had been sent an invitation to register in June 2024 and had been told at the August 19, 2024 prehearing conference and in the August 20, 2024 Order the parties needed to exchange their hearing documents no later than five business days before the first day of hearing. The ALJ denied Parent's oral motion to continue the hearing on the grounds Parent failed to demonstrate good cause for waiting until the first day of hearing to make the motion, failed to file any written motion to continue the hearing, and failed to demonstrate good cause for a continuance of the hearing. However, because Parent claimed she was not feeling well, the ALJ recessed the hearing for the day and resumed the hearing on September 18, 2024. The start time was set for 1:30 PM on September 18, 2024, so Parent could upload Student's exhibits/send them to District and participate in a meet and confer with District's attorney at 11:00 AM, as ordered by the ALJ.

The parties did not meet and confer on September 18, 2024, and Parent did not upload Student's exhibits into Case Center or otherwise send them to District. On September 18, 2024, at approximately 1:27 PM, Parent filed a Request for Continuance of Due Process Hearing and the Removal of Student's Image from All Exhibits. In the motion, Parent stated that on September 17 and 18, 2024, Parent had looked at all the documents she set aside and separated the documents to upload into Case Center. Parent argued she needed enough time to properly label the documents and upload them in an organized manner and argued that the case cut into her family vacation.

Parent stated she believed her prior lawyer had conflict of interest and asserted that her attorney agreed to continue the hearing from March to August 2024 without her consent. Parent argued when the ALJ denied the motion to amend, Parent did not have the manpower and resources to facilitate an expedited preparation and Parent had not been able to get through to OAH or they were of no help. Parent claimed she had been ill when she returned from vacation and had to go to urgent care on August 20, 2024, and that Student was scheduled to leave for school over the weekend of September 21-22, 2024, so Parent had much to do.

The hearing resumed at approximately 1:30 PM on September 18, 2024. The ALJ again reviewed the issues for hearing listed in the Order Following Prehearing Conference and determined that Issue 10 was missing a sub-issue and that Issues 4 and 6 should not have included the time periods they were limited to. The ALJ stated that a written Order Clarifying Issues would be issued. The ALJ also denied the request for continuance because Parent failed to demonstrate good cause for waiting until September 18, 2024 to file the request and because Student failed to demonstrate the requisite good cause for a further continuance of the hearing. At that point, Parent then stated words to the effect that she was "done" with the ALJ and wanted a new judge, and abruptly left the hearing. The ALJ, District' representative and its attorney waited for approximately 12 minutes for Parent to rejoin the hearing, but Parent never returned.

On September 18, 2024, OAH set an Order to Show Cause re Dismissal for September 20, 2024, at 10:00 AM and continued the hearing to September 20, 2024.

On September 19, 2024, the ALJ issued an Order Clarifying the Issues for Hearing.

On September 20, 2024, OAH held a hearing on the Order to Show Cause re Dismissal. Parent appeared and admitted that she intentionally left the due process

hearing on September 18, 2024. The ALJ ordered that Parent may not leave the hearing without permission and that if she did it again, Student's case could be dismissed. The ALJ explained that if Parent needed a break, she could ask permission to take a break from the hearing. The ALJ reminded Parent that as the filing party, Parent had an obligation to prosecute the case on the days scheduled for hearing, which dates she agreed to at the prehearing conference conducted on August 19, 2024. The ALJ again informed Parent that if she intentionally disconnects from the meeting again, the ALJ will assume that Parent does not want to prosecute Student's case. The ALJ stated that OAH was discharging the Order to Show Cause re Dismissal and that the hearing would proceed. The ALJ also denied the motion to remove Student's image from District's exhibits on the grounds that the hearing was closed and therefore was a confidential proceeding, and because Parent was unable to identify the documents which had Student's image on them. The ALJ told Parent that Parent could later look through the documents, and that the ALJ would revisit the issue if Parent could identify the documents at issue.

Parent indicated she wanted to make a motion to recuse ALJ Gorsline from hearing the case. The ALJ informed Parent she could make the motion orally. Parent orally made a motion challenging the ALJ for cause and is seeking to disqualify the ALJ from hearing this case on the grounds that the ALJ was prejudiced and has a conflict of interest. At hearing on September 20, 2024, Parent explained the basis of her prejudice/conflict of interest objection, which is summarized below.

Parent argues that the case has gone on longer than any other OAH cases, 248 days. Parent believes that "hanky-panky" has been going on in terms of how her case was previously "moved" since it was filed in January 2024, but it had nothing to do with the extension Parent asked for on August 19, 2024. Parent argues that the case conflicts

with the time that Student is going off to school. Parent argues the ALJ is prejudiced because when given a choice, the ALJ ruled every time against Student, including denying Parent's request to remove Student's image from the exhibit and denying the motion to amend. Parent also claims prejudice because of the "reductionist approach" that was implemented in how the issues were rewritten. Parent claims that her prior attorney pled the issues in the complaint in a sketchy confusing manner which demonstrates a conflict of interest, and then the issues were further reduced during the prehearing conference on August 19, 2024 by ALJ Hatfield, and that at hearing, ALJ Gorsline attempted to further reduce the issues to just the psychoeducational testing. Parent complains that the issues for hearing are a shell of the real issues. Parent complained that the psychoeducational assessment is not the biggest issue, but rather that Student was not assessed in all possible areas he could have been assessed. Parent objects that the ALJ refused to allow issues beyond the psychoeducational evaluation. Parent objects that in denying the motion to amend, the ALJ demonstrated she had already made up her mind because if the ALJ wanted Student to receive all his services, the ALJ would have allowed the motion to amend. Parent argues that the ALJ had the authority to allow the amendment and Parent did not see any action by the ALJ that demonstrated to Parent that the ALJ is interested in proceeding in an unbiased manner. Parent also contends that the ALJ was incorrect when she told Parent had she signed up for Case Center three months ago she could have reviewed Los Angeles Unified's exhibits. Parent argues that the documents were not uploaded until September 10, 2024, and that three months ago Parent was not obligated to register for Case Center or upload anything because she had an attorney. Parent objects to the order the ALJ made requiring Parent to give District's attorney the documents Parent intended to use at hearing so that District could upload them into Case Center. Parent stated she "did not like that order" because Parent contends that District has altered many documents.

Parent does not believe Student can get justice given everything else that has gone wrong with her child's education. Parent stated it was not only about ALJ Gorsline, but about the whole process.

The ALJ gave Los Angeles Unified until 5:00 PM to file opposition to the challenge for cause. The ALJ explained that ALJ Gorsline would rule on the motion, and that the hearing would resume at 9:30 AM on September 24, 2024, with ALJ Gorsline if the motion was denied, or with another ALJ if the motion was granted.

On September 20, 2024, Los Angeles Unified filed opposition to Parent's motion to recuse the ALJ for cause. District argues that the motion is untimely and improper, that there is no factual or legal basis to support Parent's claims of prejudice and conflict of interest, and that granting this motion will just cause a further delay, controverting the ALJ's prior rulings. District asserts that Parent's disagreements with the ALJ's rulings does not demonstrate bias. District argues Student's motion lacks specificity. It asserts that the ALJ's ruling regarding removing Student's image on documents does not demonstrate bias because the ALJ stated on the record that if Parent could identify a specific exhibit with Student's image, the ALJ would revisit the issue. District argues that Parent's real intent is to further delay the hearing and the cause expenditure of resources.

APPLICABLE LAW

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).)

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, in order 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

Student's challenge to the ALJ "for cause" based on Parent's disagreement with the ALJ's rulings is insufficient to demonstrate prejudice or a conflict of interest.

The ALJ did not make any of the prior rulings on the motions to continue the hearing. Parent agreed to all the prior continuances of the hearing or was the moving party seeking the continuance. Parent sought a continuance at the August 19, 2024 prehearing conference and agreed to the hearing dates of September 17 through 19, 2024. Thus, the fact that this case has been pending for as long as it has fails to demonstrate prejudice or a conflict of interest on the part of ALJ Gorsline.

Similarly, the denial of Student's motions to continue does not demonstrate prejudice or a conflict of interest on the part of ALJ Gorsline. This case was filed in January 2024 and has been continued multiple times. A due process hearing must be conducted, and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) Parent waited until the hearing commenced to seek a continuance and did not demonstrate good cause for the delay in filing the motion or for a further continuance. Parent did not demonstrate she was unaware of Student's school schedule at the time of the

August 19, 2024 prehearing conference when she agreed to the hearing dates. Parent was twice informed in writing that OAH did not contemplate further continuances. Parent did not demonstrate she has acted with diligence in prosecuting this case as further explained on the record during the hearing. For example, Parent did not register for Case Center until September 17, 2024, after the hearing began, despite having been sent an invitation to register three months ago. The ALJ does not have the discretion to continue the hearing when the requisite showing has not been made.

The denial of Student's motion to amend does not demonstrate prejudice or a conflict of interest on the part of ALJ Gorsline. An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Here, District did not consent to the amendment, and Parent filed the motion less five days prior to the hearing. In addition, as explained above, this matter was filed in January 2024, and any amendment of the complaint should have been sought earlier. Moreover, as further explained at hearing, the ALJ did not "amend the complaint" when the ALJ clarified the issues for hearing. The ALJ merely revised the issues in the prehearing conference Order so they would accurately capture the existing claims stated

in the complaint. Although Parent does not believe that the exiting issues fully reflect what she believes should be addressed, Parent could have but did not timely seek to amend the complaint. The ALJ has no power to consider issues beyond those in the complaint without consent from District.

The denial of Student's motion to remove Student's image from District's documents does not demonstrate prejudice or a conflict of interest on the part of ALJ Gorsline. Parent was unable to specify which documents had Student's image on them when Parent was asked. Parent should have been prepared with this information when the motion was heard. The ALJ told Parent that the matter would be revisited when Parent identified the documents at issue.

The fact that Parent does not "like" the ALJ's orders requiring Parent to provide Student's exhibits to District does not demonstrate prejudice or a conflict of interest on the part of ALJ Gorsline. Parent was previously notified Student had an obligation to exchange the hearing exhibits five business days before the first day of hearing. Parent failed to comply with this order, and later stated she had some issues using Case Center. The ALJ had the discretion to order Parent to send the documents to District to upload to Case Center so as not to further delay the hearing.

Parent misunderstood the ALJ's remarks about registering for Case Center. The ALJ was not suggesting that Parent could have reviewed District's exhibits three months ago had Parent registered. Rather, the ALJ meant that Parent would have been able to see District's exhibits in Case Center on September 19, 2024, had Parent registered sometime in the last three months. In any event, the ALJ remarks are insufficient to demonstrate prejudice or a conflict of interest.

Finally, Parent's issues with her prior lawyer, other judges, or the District does not demonstrate prejudice or a conflict of interest on the part of ALJ Gorsline.

ORDER

Parent's motion challenging ALJ Gorsline for cause and seeking to disqualify ALJ Gorsline from hearing this case is denied. All dates previously set in this matter are confirmed. The hearing will recommence on September 24, 2024, at 9:30 AM with ALJ Gorsline presiding.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings