BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>STANISLAUS UNION SCHOOL DISTRICT,<br><br>v.<br><br>PARENTS ON BEHALF OF STUDENT. | OAH CASE NO. 2013050308<br><br>ORDER DENYING CHALLENGE FOR CAUSE |

On September 19, 2013, attorney Roger A. Greenbaum, on behalf of Student and Parents (Student), filed a challenge for cause, moving to disqualify Administrative Law Judge (ALJ) Deidre L. Johnson from hearing this case. The matter is set for hearing beginning on September 24, 2013.

On September 20, 2013, District filed a response opposing the motion.

APPLICABLE LAW

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).)

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 (*Haas*).) 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.)

Student's challenge is based on her dissatisfaction with the ALJ's conduct of two telephonic prehearing conferences (PHC's) in this matter on September 13, and 16, 2013, during which her attorney, Mr. Greenbaum, appeared by telephone. The ALJ's material rulings in those conferences were set forth in the orders following the PHC's issued on September 13, and 17, 2013, respectively, and in the order issued on September 18, 2013, denying Mr. Greenbaum's request to withdraw as Student's attorney of record without prejudice.

Student cites California Code of Civil Procedure sections 170.1, and 170.3 as authority for her request to disqualify the ALJ. Those statutes are not applicable in this administrative special education due process matter. As noted above, the applicable law in found in the general provisions of the Administrative Procedure Act. (Govt. Code, § 11425.40.)

Student's motion reflects her dissatisfaction with the ALJ's multiple rulings in connection with the PHC's, including but not limited to:

(1) Deciding to forego issuing an Order to Show Cause why sanctions should not be imposed for Student's failure to file her PHC statement not less than three business days prior to the PHC of September 13, 2013, in violation of prior OAH orders and, instead, continuing the PHC to the afternoon of September 16, 2013;

(2) Ordering a new deadline, by the morning of September 16, 2013, for Student to comply with OAH's prior PHC orders to submit a PHC statement disclosing her lists of witnesses and exhibits for hearing;

(3) Ordering a shortened time for the District to file a response to Student's continuance motion by the morning of September 16, 2013;[1]

(4) Denying, at the September 16, 2013, PHC, Student's third motion for a continuance of the hearing because Student did not make a substantial showing of good cause based on her reasons presented, and in light of her prior continuances and the absence of supporting evidence;[2]

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[1] Student's motion was not filed until at or after the start of the PHC on September 13, 2013, and consisted of four superseding versions filed sporadically through the morning of September 16, 2013.

[2] In her challenge, Student also argues that the ALJ demonstrated bias because she did not evaluate the question of prejudice to the District in connection with her continuance motion. To the extent this may also constitute a motion for reconsideration of the ruling, the

(5) Denying Student's attorney's request for permission to withdraw as her attorney of record, without prejudice, because he had not served Student with the motion;

(6) Granting Student's request to end the hearing at 4:00 p.m., prior to close of business each day, to accommodate her attorney's proposed commute travel, but denying his request to end at 3:00 p.m. daily; and

(7) Vacating the first day of the hearing on September 23, 2013, to accommodate Student's attorney's travel, but denying Student's repeated efforts to insist on a continuance of the hearing after the ALJ had denied the request.

The rulings were made after substantial discussions on the record at the PHC's among the attorneys for the parties and the ALJ. The fact that the ALJ ruled adversely to Student on these matters does not constitute the expression of an opinion on an issue in the case (which in any event does not itself establish prejudice), or reflect bias against Student as to the merits of her defenses to District's case. A party's dissatisfaction with previous rulings of an ALJ is not grounds for a disqualification for cause. Therefore, Student did not establish that the ALJ has bias, prejudice or interest in the matter to warrant disqualification.

ORDER

1. Student's challenge for cause of ALJ Deidre L. Johnson is denied.

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

Dated: September 23, 2013

/s/
DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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motion is denied. OAH will reconsider a ruling upon a showing of new or different information, which has not been made here. To the extent Student suggests that the burden must shift to the District to establish prejudice, even where a student has not established bona fide grounds for a continuance, the argument is rejected. However, the ALJ duly considered and weighed District's information regarding prejudice in light of Student's past lengthy continuances and District's right to a timely hearing.