BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ETIWANDA SCHOOL DISTRICT,	OAH Case No. 2018030111
ETIWANDA SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018030816 ORDER GRANTING CHALLENGE FOR CAUSE

On August 1, 2018, Student filed a challenge for cause, seeking to disqualify Administrative Law Judge Cole Dalton from hearing this case on the ground that on December 6, 2017, ALJ Dalton presided over a mediation involving the same parties and similar allegations at issue in the instant matter.

OAH has not received a response from Etiwanda School District.

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.)

Here, the instant matter differs from the matter the undersigned ALJ facilitated on December 6, 2017in the following aspects. First, Student's placement and Etiwanda's offer of placement is different than the placement at issue previously. Second, assessments at issue in this matter are completed assessments, which had not been done at the time of the December 2017 mediation.

Nonetheless, relevant background and historical information pertaining to prior individualized education programs and offers of a free appropriate public education, at issue here, will necessarily overlap the time period addressed in the mediation of December 2017. The likelihood of recalling, during the present hearing, specific facts and underlying party positions learned during the confidential mediation of December 2017 weighs in favor of granting Student's challenge for cause. Accordingly, erring on the side of caution and to avoid the appearance of impropriety, Student's challenge for cause is granted.

ORDER

1. Student's challenge of ALJ Dalton is granted.

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

IT IS SO ORDERED.

DATE: August 03, 2018

DocuSigned by:

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings