BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. RIVERSIDE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015010862 ORDER DENYING CHALLENGE FOR CAUSE

On April 13, 2015, Student filed a challenge for cause seeking to disqualify Administrative Law Judge Judith L. Pasewark from hearing this case.

On April 15, 2015, the Riverside Unified School District filed an opposition to Student's motion. On April 16, 2015, Student filed a reply to District's opposition.

APPLICABLE LAW AND DISCUSSION

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 (OAH) 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 raised no peremptory challenge to ALJ Pasewark prior to, during, or immediately following the initial prehearing conference on this matter, held on March 9, 2015. In fact, ALJ Pasewark, as the named due process hearing ALJ, ruled on Student's motion to continue, and granted Student's request for continuance of this matter to its current hearing dates.

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.)

On September 6, 2014, ALJ Pasewark participated in a panel discussion of special education at a Special Education Fair open to the public. ALJ Pasewark was one of three panelists, the other two being special education attorneys. Questions were anonymously taken from the audience in writing, and were presented by a program monitor. Each panelist then responded to the question. The questions addressed a variety of generalized special education subjects. Moderator informed the audience the selected questions were not intended to address specific factual allegations of individual attendees.

Student did not file his request for due process until January 27, 2015. He provided no information as to any actual bias from an educational program presented four months prior to the filing of Student's complaint by ALJ Pasewark's participation in a public forum presenting generalized information on a variety of special educations issues and services. Further, by definition, special education ALJ's communicate their opinions and interpretations of factual and legal issues every day in their rulings and decisions. While disagreement with ALJ Pasewark's legal opinions may have given rise to Student's election of a peremptory challenge, Student did not opt to file such a request. Student has demonstrated no actual bias, therefore Student's challenge of ALJ Judith Pasewark is denied.

ORDER

1. Student's challenge of ALJ Judith L. Pasewark is denied.

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

DATE: April 17, 2015

/S/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings