

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SOUTH PASADENA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011110375

ORDER DENYING CHALLENGE FOR  
CAUSE

On January 24, 2012, Student filed a challenge for cause to Administrative Law Judge (ALJ) Stella Owens-Murrell (the undersigned). Specifically, Student contends that the ALJ should be removed from hearing this matter on the basis of bias because on November 7, 2011, Student's attorney sent a letter to the Presiding ALJ regarding the attorney's perception of a possible breach of mediation confidentiality. Student's attorney received a response that the Presiding ALJ would "investigate your concerns and take appropriate action if necessary." The Presiding ALJ discussed the letter with the ALJ in November of 2011. Student's attorney believes that the ALJ's knowledge of the November 7, 2011 letter would cause her to be biased toward Student's attorney in a hearing. Student's attorney also believes that because of this incident, the ALJ treated her differently when Student's attorney made oral motions at the prehearing conference for matters that generally are addressed prior to the time of the PHC by written motion. As discussed below, the motion is denied.

*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).)

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.)

Even the filing of a formal judicial misconduct complaint is not automatically evidence of bias. In *In re Focus Media* (9th Cir. 2004) 378 F.3d 916, 921, a party filed two motions to disqualify a bankruptcy judge for cause and subsequently filed a formal judicial misconduct complaint. On appeal, the party argued that the bankruptcy judge was biased based on the judge's rulings and the judge's reference to the judicial misconduct complaint during the course of the proceedings. (*Id.* at p. 929.) In rejecting the arguments that the judge was biased, the Ninth Circuit noted that without more, judicial rulings by themselves rarely constitute a basis for finding bias. (*Id.* at p. 930.) Further, the federal statute regarding judicial misconduct complaints required that the judge who was the subject of the complaint be provided a copy and that no bias could be inferred from the judge's reference to the complaint during the hearings because the complaint related to the proceedings themselves. (*Ibid.*) In determining that the judicial misconduct complaint did not support a finding of bias, the Ninth Circuit noted that "[a]bsent some evidence of real bias, we are not prepared to infer bias lest we open the door to misuse of the judicial misconduct complaint process as a means of removing a disfavored judge from a case." (*Id.* at p. 930.)

### *Analysis*

Here, Student's attorney contends that the ALJ's knowledge of an attorney complaint letter, plus her conduct at a pre-hearing conference, demonstrates some type of bias. Student's attorney bases this conclusion in part on her mistaken belief that her complaint letter was subject to some type of confidential procedure that would never be disclosed to the ALJ.

As an initial matter, it cannot be concluded that mere knowledge of a complaint letter to the Presiding ALJ establishes bias. If a federal statute provides that judges are required to be informed of formal complaints of judicial misconduct, and no bias was found even when a judge discussed a judicial misconduct complaint with all parties, without more, the ALJ's knowledge of the November 7, 2011 letter does not establish actual bias. (See *In re Focus Media, supra*, 378 F.3d at pp. 929-931.)

Further, Student's attorney makes much of the ALJ's denials of requests for a continuance, change of venue, and to tape record the hearing independently, all of which were made during the prehearing conference. However, the ALJ correctly characterized the motions for continuance and change of venue as "eleventh hour" as each of those motions ideally should have been made in writing before the prehearing conference. Rather than show bias or prejudice, the ALJ showed fairness by suggesting that Student's counsel renew the motions in writing, so that the respondent would at least have an opportunity to prepare a response. Similarly, to the extent Student's attorney complains that the denial of her motion to audio record the hearing was an expression of bias, Student's motion fails as well. An

attorney has no statutory right to make a separate audio recording of a hearing and given the risks of inappropriate disclosure to third parties, rulings on such requests are entirely at the discretion of the ALJ. The ALJ's denial of the motion to record the hearing does not amount to a showing of bias, particularly when the ALJ recalls denying a similar motion by Student's attorney in another matter prior to the November 7, 2011 letter. In sum, Student has failed to make the required showing of actual bias, such that the motion to disqualify for cause must be denied.

#### ORDER

Student's motion to disqualify ALJ Stella L. Owens-Murrell for cause is denied.

Dated: January 26, 2012

/s/

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STELLA L. OWENS-MURRELL  
Administrative Law Judge  
Office of Administrative Hearings