

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLACERVILLE UNION ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2010041366

ORDER DENYING CHALLENGE OF
ADMINISTRATIVE LAW JUDGE FOR
CAUSE

On May 6, 2010, District filed a challenge for cause seeking to disqualify Administrative Law Judge (ALJ) Bob Varma from serving as the mediator or presiding at the hearing in this case.

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 April 30, 2010, the Office of Administrative Hearings (OAH) sent the parties notice that mediation was scheduled for June 2, 2010, and ALJ Bob Varma was the mediator. District contends that ALJ Varma is prejudiced against it because he has previously represented petitioners in matters against school districts represented by the law firm

representing District and the attorney representing District in this matter when she was in private practice.

As a practice, OAH reassigns a mediator upon request of either party. In addition, once an ALJ has been assigned a mediator, that ALJ will not be assigned to conduct the prehearing conference or hearing. Accordingly, ALJ Deidre L. Johnson is assigned to be the mediator in this matter. ALJ Bob Varma shall not be assigned to conduct the prehearing conference or hearing. Therefore, District's motion to disqualify ALJ Varma for cause is moot and is denied.

IT IS SO ORDERED.

Dated: May 6, 2010

/s/

JUDITH A. KOPEC
Presiding Administrative Law Judge
Office of Administrative Hearings