

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO UNION HIGH SCHOOL
DISTRICT AND SAN MATEO COUNTY
BEHAVIORAL HEALTH AND
RECOVERY.

OAH CASE NO. 2011080184

ORDER DENYING CHALLENGE OF
ADMINISTRATIVE LAW JUDGE FOR
CAUSE

Hearing in this matter is set to begin on January 30, 2012, for four days. On January 17, 2012, F. Richard Ruderman, attorney for Student, filed a challenge for cause seeking to disqualify Administrative Law Judge (ALJ) Adeniyi A. Ayoade from hearing this case. Student's challenge is made pursuant to Government Code section 11425.40.

On January 18, 2012, Kathryn E. Meola, attorney –at-law, filed as opposition to the challenge on behalf of both the San Mateo Union High School District and San Mateo County Behavioral Health and Recovery.

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.)

Government Code section 11425.40, establishes the criteria for disqualification of the presiding officer. Student's challenge for cause fails because it is not supported by any evidence, and Student provides no factual basis for his generalized allegation that the ALJ "has consistently demonstrated his bias against students and parents, including unrepresented parents, in rendering his decisions on behalf of OAH ...[and is] incapable of rendering a fair, nuanced decision."

The case law in this area is well established that, with certain exceptions, bias is not to be presumed and a factual showing of actual bias is required. (See *American Isuzu Motors, Inc. v. New Motor Vehicle Board* (1986) 186 Cal.App.3d 464; *Peters v. Kiff* (1972) 407 U.S. 493, 501 [33 L.Ed.2d 83, 93, 92 S.Ct. 2163.]) (3)); In *Andrews v. Agricultural Labor Relations Bd.* (1981) 28 Cal.3d 781, 792-794 [171 Cal.Rptr. 590, 623 P.2d 151], the Supreme Court reaffirmed that disqualification of a judicial or administrative law officer for bias cannot be based solely on expressed or crystallized political or legal views, even if those views result in an appearance of bias. A party must generally allege concrete facts that demonstrate the challenged judicial officer is contaminated with actual bias or prejudice; bias and prejudice are never to be implied. Student has alleged no such facts in this case.

Student's challenge for cause contains no evidence or facts by which actual bias can be discerned. It contains no affidavit or written declaration under oath, stating with particularity "legally sufficient facts demonstrating bias." Moving party must show "actual bias" not merely the appearance of bias. (*Andrews, supra.*) Further, Student has failed to provide any evidence that "...the judicial officer either has a personal or financial interest, has a familial relation to a party or attorney, or has been counsel to a party." Therefore, Student's challenge for cause is legally and factually deficient, and is denied.

ORDER

1. Student's challenge of ALJ Ayoade for cause is denied.
2. All dates previously set in this matter will remain on calendar.

Dated: January 18, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings