

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012020778

ORDER DENYING CHALLENGE FOR  
CAUSE

On May 21, 2012, Mother, on behalf of Student, filed a challenge for cause seeking to disqualify Administrative Law Judge (ALJ) Peter Paul Castillo from hearing this case as Student contends that ALJ Castillo and counsel for the District, Sang-Jin Nam, had ex parte communications about Student's proposed witnesses for hearing before the May 11, 2012 Prehearing Conference (PHC). The District did not file a response. However, it did not appear that Mother served a copy of the challenge for cause on the District.

APPLICABLE LAW AND DISCUSSION

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.)

While a special education due process hearing proceeding is pending, the ALJ shall have "no communication, direct or indirect, regarding any issue in the proceeding, to a hearing officer from an employee or representative of a party or from an interested person unless the communication is made on the record at the hearing." (5 C.C.R. § 3084, subd. (a).) Ex parte communication by the ALJ may be grounds to disqualify the ALJ from continuing with the due process hearing proceeding. (5 C.C.R. § 3084, subd. (f).)

Student presumes that ALJ Castillo and Mr. Nam spoke before May 11, 2012 PHC, because ALJ Castillo started the PHC with a discussion about Student's 35 proposed witnesses, and that according to Student's PHC statement most of the proposed witnesses did not appear to have relevant evidence as to the issues alleged in Student's complaint. Mr. Nam and ALJ Castillo had no discussion prior to the beginning of the PHC. ALJ Castillo began the PHC with a discussion about Student's proposed witnesses because he had concerns about the number and relevancy of Student's proposed witnesses. Mr. Nam brought up the issue of requesting a protective order because Mother had recently subpoenaed the District Superintendent and Trustees at a recent District Board meeting. Student's motion to disqualify ALJ Castillo is denied because no ex parte communication occurred between ALJ Castillo and Mr. Nam.

#### ORDER

Student's challenge of ALJ Peter Paul Castillo is denied.

Dated: May 25, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings