

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SWEETWATER UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2012050894

ORDER GRANTING MOTION FOR
RECUSAL OF ALJ LEPKOWSKY

On November 5, 2012, the undersigned Administrative Law Judge (ALJ) convened a prehearing conference in this case. Attorney Araceli Martinez appeared on behalf of Student. Attorney Justin Shinnefield appeared on behalf of the Sweetwater Union High School District (District).

At the outset of the prehearing conference, the ALJ informed the parties that she had mediated the last case filed by Student in OAH Case No. 2010080734 (First Case). The ALJ informed the parties that although the case had not settled at the mediation, she was aware that the case had settled prior to the hearing. The ALJ asked whether either party had a position on the ALJ continuing to hear the present matter.

Student indicated through counsel that he did not object to the ALJ hearing the instant case.

The District, through counsel, indicated that it had concerns regarding the ALJ's continued assignment to the case. The District stated that some of the issues in the instant case are related to the settlement agreement entered into by the parties in the First Case. The District believed there was a possibility that issues from the First Case could impact the resolution of the instant case. The District therefore made a motion to recuse the ALJ.

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.)

Some of the underlying allegations in the instant case are based upon the settlement of the First Case. There is a possibility that information or issues from the First Case may be raised, discussed, or analyzed during the hearing in the pending matter. Because the undersigned ALJ mediated the First Case, she potentially has been privy to information that she would not otherwise hear during the course of the hearing. The District's motion to recuse the ALJ is therefore granted.

ORDER

1. The District's challenge of ALJ Lepkowsky is granted.
2. The Office of Administrative Hearings will assign another ALJ to hear this matter.

Dated: November 5, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings