BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. DELTA CHARTER HIGH SCHOOL, NEW JERUSALEM SCHOOL DISTRICT AND SAN JOAQUIN COUNTY OFFICE OF EDUCATION.	OAH Case No. 2015090690 AMENDMENT TO ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT; SCHEDULING ORDER AS TO EXPEDITED HEARING, PREHEARING AND MEDIATION

On September 8, 2015 Parent on behalf of Student filed with the Office of Administrative Hearings a pro se Due Process Hearing Request[1] (complaint) naming Delta Charter High School[2], New Jerusalem School District, and San Joaquin County Office of Education. The complaint is long-running with approximately ten pages of detailed facts and contentions. The complaint contains expedited hearing allegations regarding Student's order of expulsion in September 2015 and the October/November 2014 disciplinary order in addition to allegations involving other, non-expedited substantive violations of the Individuals with Disabilities Education Act.

On September 17, 2015, Delta filed with OAH a Notice of Insufficiency as to Student's complaint contending that the complaint "fails to include sufficient facts relating to the purported problem stated to establish a legal or factual issue with clarity for resolution in this forum." Delta also contends that the proposed resolutions are unclear "such that [Delta] is unable to determine if the relief is warranted.

On September 18, 2015, OAH, by the undersigned, issued an Order of Determination of Sufficiency of Due Process Complaint finding the entire complaint, both the expedited and non-expedited issues, not sufficient as to Delta, New Jerusalem and San Joaquin.

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

[2] In the NOI, the respondent identifies itself as Delta Charter School.

APPLICABLE LAW

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement,, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in Title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415. Indeed, there is insufficient time to complete the NOI process in expedited hearings.

The finding of insufficiency of Student's complaint can only involve those issues which do not relate to issues involving Student's contention that the September 2015 and October/November 2015 disciplinary findings were not appropriate as no legal authority exists to grant an NOI as to expedited issues for hearing. Thus, the NOI order of September 18, 2015 solely applies to allegations made against Delta, New Jerusalem and San Joaquin which do not relate to the expedited issues raised in Student's complaint.

ORDER

1. The NOI order of September 18, 2015 is rescinded as all issues which are expedited. The September 18, 2015 order will only apply to this issues that are not expedited.

2. Student will be allowed two weeks to file an amended complaint as to those issues that are not expedited relating to Delta, New Jerusalem and San Joaquin.

3. Accordingly, the mediation, prehearing conference and hearing dates are reinstated and shall be as follows:

EXPEDITED MEDIATION

DATE: **10/13/2015**
TIME: **9:30AM to 4:30PM**
PLACE: **New Jerusalem SD**
31400 South Koster Rd
Tracy, CA 95304

EXPEDITED PREHEARING CONFERENCE

DATE: **10/19/2015**
TIME: **3:00PM**
PLACE: **Telephonic – OAH will initiate the call**

EXPEDITED DUE PROCESS HEARING

DATE: **10/21/2015 - 10/22/2015**
TIME: **9:30AM on the first day and 9:00AM on all subsequent days**
PLACE: **New Jerusalem SD**
31400 South Koster Rd
Tracy, CA 95304

DATE: October 6, 2015

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings