

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

ORDER FOLLOWING PREHEARING
CONFERENCE AND ORDER TO
SHOW CAUSE WHY EXPEDITED
ISSUES SHOULD NOT BE
DISMISSED

On November 6, 2015, a telephonic prehearing conference was held before Administrative Law Judge Lisa Lunsford, Office of Administrative Hearings. Steve Payne appeared on behalf of Delta Charter High School. David Thoming appeared on behalf of New Jerusalem Elementary School District. Margaret St. George appeared on behalf of the San Joaquin County Office of Education. Student's mother did not appear and was unavailable by telephone. The ALJ telephoned Mother several times at 10:00 a.m., the time scheduled for the PHC, and an automated recording stated that the customer was not available at this time and to try the call again later. There was no ability to leave a message. The ALJ attempted to telephone Mother two more times at 10:15 a.m. and reached the same recording. At 10:17 a.m., the PHC was convened with Mr. Payne, Mr. Thoming and Ms. St. George. The PHC was recorded.

Mr. Payne and Mr. Thoming indicated they had no alternative number for Mother. Student has failed to file a PHC statement, and the respondents affirmed that they have not received a PHC statement from Student. As a result of Student's failure to appear for the scheduled PHC, a complete PHC could not take place. Because Student filed this request for hearing, the ALJ deemed it inappropriate to review and clarify the expedited issues in the case or rule on San Joaquin's outstanding motion to be dismissed as a party. The matter remains scheduled for an expedited due process hearing on November 12, 2015.

ORDER TO SHOW CAUSE

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. §§ 300.510, 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) However, when a matter is filed as an expedited due process

hearing on a disciplinary matter, the hearing must occur within 20 school days of receipt of the due process complaint, and a decision must be issued within 10 school days of the expedited hearing. (20 U.S.C. § 1415(k)(4)(B).) Given the short time frames applicable to this case, it is critical that the parties follow orders issued by OAH and participate in advancing the matter to hearing.

Student is ordered to show cause in writing why the expedited issues in this matter should not be dismissed for his failure to participate in, prosecute or advance the expedited portion of this case for hearing. **Student is ordered to file a written response with OAH by not later than 12:00 p.m. on Tuesday, November 10, 2015.** Student's response shall address why Student did not file a PHC statement or appear for the PHC on November 6, 2015, and whether he intends to go forward with the expedited hearing. If Student seeks to move forward with the expedited hearing, the written response shall also include a PHC statement which must also be served on the respondents by noon on Tuesday. Any factual assertions will be disregarded unless they are made by declaration under oath.

Should Student fail, without excuse, to timely file a response as ordered above, showing adequate cause for his apparent failure to prosecute this matter, OAH may dismiss the expedited issues in this case without further notice.

IT IS SO ORDERED.

DATE: November 6, 2015

/s/

LISA LUNSFORD

Administrative Law Judge

Office of Administrative Hearings