BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

MILLER CREEK SCHOOL DISTRICT AND

ANOVA CENTER FOR EDUCATION.

OAH CASE NUMBER 2022060347

ORDER DENYING MOTION TO UNEXPEDITE HEARING

JUNE 27, 2022

On June 13, 2022, Parent on behalf of Student filed a Due Process Hearing Request, known as a complaint, against Miller Creek School District, called Miller Creek, and Anova Center for Education, called Anova. On June 14, 2022, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as OAH, issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation, Scheduling Order. The Scheduling Order set this matter for expedited prehearing videoconference on July 1, 2022, at 10:00 am, and expedited hearing for July 12, 13 and 14, 2022.

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On June 21, 2022, Miller Creek filed a Motion to Unexpedite this matter and vacate the expedited dates. On June 22, 2022, Student filed an opposition to the request to unexpedite the hearing.

APPLICABLE LAW

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request, and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006.) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006.) The procedural right to an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, if the student withdraws the issues in the complaint that triggered the expedited hearing, or if the student elects to challenge the change of placement under title 20, section 1415, subdivision (b)(6)(A) and not subdivision (k). (*Molina v. Bd. of Educ. of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

DISCUSSION

Student's complaint alleges a disciplinary change of placement occurred. The complaint alleges Student is a child with autism who has a history of non-conforming behavior at home and in school. According to the complaint, Student periodically engaged in disruptive behavior during his enrollment at Anova between October 30,

2018 and February 2, 2022. The complaint alleges Student's teacher and special education service providers reported maladaptive behaviors by Student, including screaming and cussing and engaging in rebellious behavior, starting in December 2021, and continuing through January 2022. According to the complaint, Anova issued a 20-day notice of termination on February 4, 2022 based upon Student's behaviors. Although not artfully pled, Student contends this constituted a disciplinary change of placement. Student allegedly has remained out of school for more than ten days. Student's opposition brief confirms his belief the change of placement was based on his behavior.

Miller Creek seeks to vacate the expedited hearing dates on the basis Student's removal from his placement at Anova was based on a contractual 20-day notice to terminate and was not a disciplinary change of placement. Miller Creek's motion refers to various facts that occurred after Student's change of placement, including the results of investigative reports prepared by the California Department of Education.

Special education law does not provide for a summary judgment procedure. The basis for Student's change of placement is an issue of fact to be determined at a due process hearing. Further, the fact no current or pending disciplinary action against Student currently exist is not grounds to unexpedite the hearing. (*Molina*, *supra*, 157 F.Supp.3d 1064, 1070-1071 (rejecting "use it or lose it" argument concerning § 1415(k)'s expedited process and concluding a parent may appeal a placement decision under § 1415(k) within two years.)

Student's challenge to Anova's placement decision on the grounds it was premised on a violation of a code of student conduct triggered the requirement of an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) Accordingly, Miller Creek's Motion to Unexpedite the hearing dates is denied.

1. Miller Creek's Motion to Unexpedite the hearing dates is denied.
2. The expedited hearing shall proceed as scheduled on July 12, 13, and 14, 2022. The prehearing videoconference shall occur on July 1, 2022, at 10:00 am.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings