

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

MILLER CREEK SCHOOL DISTRICT.
OAH CASE NUMBER 2021110153

ORDER DENYING MOTION TO VACATE EXPEDITED
HEARING DATES AND GRANTING MOTION TO VACATE
NON-EXPEDITED HEARING DATES

DECEMBER 02, 2021

On November 4, 2021, Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Miller Creek School District. Student asserted both expedited issues arising from Miller Creek's alleged failure to hold a manifestation determination review within 10 days of recommending Student's expulsion, and non-expedited issues arising from Miller Creek's alleged failure to identify Student as a child with a disability requiring special education. OAH set the expedited issues for hearing on December 7, 8, and 9, 2021, and the non-expedited issues for hearing on December 28, 29, and 30, 2021.

On December 2, 2021, Student filed a Notice of Settlement and request to vacate both the hearing dates for both the expedited and non-expedited issues. Student's Notice of Settlement stated the parties had reached a settlement of all issues, subject to approval of the settlement by Miller Creek's school board on December 14, 2021.

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).) The procedural right to an expedited due process hearing is mandatory, and OAH is not authorized to make exceptions or grant continuances of expedited matters. (*Ibid.*) A hearing can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, if the student dismisses 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.) The student may dismiss the expedited issues without prejudice.

ORDER

EXPEDITED HEARING DATES: Student's request to vacate the hearing dates for expedited issues in this matter is denied. The expedited issues remain set for hearing on December 7, 8, and 9, 2021.

NON-EXPEDITED HEARING DATES: Student's request to vacate the hearing dates for non-expedited issues in this matter is granted. The hearing dates for non-expedited issues are vacated, and the non-expedited issues will be dismissed 30 days after the scheduled December 14, 2021 board meeting. If the settlement is not considered or

approved at the scheduled board meeting, the parties are to promptly notify OAH.
Otherwise, OAH will close the case and issue a notice of dismissal

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert G. Martin". The signature is written in a cursive, flowing style with a prominent initial "R" and a long, sweeping underline.

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings