

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

MILLER CREEK ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2024050820

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE DISMISSING EXPEDITED
ISSUE AND UNEXPEDITING CASE

JUNE 10, 2024

On June 10, 2024, Administrative Law Judge Judith Pasewark, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Parent appeared on behalf of Student. Attorney Jan Tomsy appeared on behalf of Miller Creek Elementary School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

DISMISSAL OF EXPEDITED ISSUE AND UNEXPEDITING CASE

Student's May 21, 2024 due process hearing request, called a complaint, alleged at Issue One that Miller Creek suspended Student seven times and removed Student to an alternate classroom location due to behavior issues. As remedy, Student requested Miller Creek hold a meeting to determine whether Student's behaviors were a manifestation of Student's disability. OAH identified this issue as requiring an expedited due process hearing within 20 school days of the complaint's filing date. OAH set the expedited hearing for June 18, 2024.

The complaint alleged two other issues no subject to an expedited hearing. At the PHC, Parent requested that the expedited portion of Student's complaint be dismissed. Miller Creek's attorney did not oppose Parent's request. Therefore, Issue One of Student's complaint is dismissed without prejudice and the expedited hearing dates are vacated. Student cannot raise issues at the non-expedited due process hearing related to title 20 United States Code section 1415(k), including Student's removal from a placement due to disciplinary reasons, or seek any remedies that would be awarded under that section.

Student's Issues Two and Three will move forward as scheduled on the non-expedited mediation and hearing dates, as follows:

MEDIATION: August 7, 2024, 1:30 pm to 5:00 pm.

PREHEARING CONFERENCE: August 12, 2024, at 10:00 am.

DUE PROCESS HEARING: August 20, 21, and 22, 2024.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ. conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.



Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings