BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

WILLITS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023020384

# ORDER GRANTING STUDENT'S REQUEST TO UNEXPEDITE CASE, DISMISSING THE EXPEDITED ISSUE, AND VACATING EXPEDITED HEARING DATES; AND CLARIFICATION OF THE REMAINING ISSUE FOR THE UNEXPEDITED HEARING

MARCH 14, 2023

On February 10, 2023, Parent on Student's behalf filed a due process hearing request that included a request for an expedited hearing. The expedited hearing request was based upon alleged suspensions of Student by Willits Unified School District, called Willits, in violation of title 20 United States Code section 1415(k). The expedited matter was set for hearing on March 14, 2023. On the first day of the scheduled expedited hearing, March 14, 2023, Parent asked for a continuance of the expedited hearing.

Suspension or expulsion of special education students is governed by title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.350 (2006) et seq. (See Ed. Code, § 48915.5.). The parent of a student with a disability who disagrees with either a school's decision to change the student's educational placement as a disciplinary measure, or the school's decision in a manifestation determination review meeting may appeal by requesting an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A), (k)(4)(B); 34 C.F.R. § 300.532(c) (2006).) An expedited hearing shall be held within 20 school days of the date the hearing is requested. A decision shall be made by the hearing officer within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B).).

There is no provision authorizing a continuance of an expedited due process hearing request. In contrast, a special education due process hearing regarding issues other than discipline must otherwise 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. § 300.515(a) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).).

Upon consultation with an attorney, Parent requested that the hearing be un-expedited and proceed only on the remaining un-expedited issue as scheduled by OAH. The ALJ explained to Parent that un-expediting the hearing meant that Student would be foregoing allegations that Willits violated his rights under title 20 United States Code section 1415(k) and 34 Code of Federal Regulations, part 300.534(b). The ALJ also explained that Student could no longer seek the remedy of ordering Willits to overturn a manifestation review, or to hold a new manifestation determination review in an un-expedited hearing. Parent confirmed that she understood, and filed a request to un-expedite the hearing on March 14, 2023, which OAH interprets as a request to dismiss

the expedited claim. Accordingly, the expedited issue is dismissed, and the expedited hearing dates set for March 14, 15, and 16, 2023, are vacated.

At the March 6, 2023 PHC, ALJ Chris Butchko found that the allegations and issues regarding whether the manifestation determination Willits held under Section 504 of the Rehabilitation Act of 1973 was properly conducted, or wrongly decided, were outside of OAH's jurisdiction.

The purpose of the IDEA is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Because OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973, ALJ Butchko dismissed them on March 6, 2023, and ALJ Butchko's findings and dismissal of matters outside of OAH's jurisdiction are clarified and memorialized as dismissed in this Order.

Pursuant to discussions with the parties at hearing on March 14, 2023, the only issue that remains for the non-expedited hearing is:

> Did Willits deny Student a free appropriate public education by failing to assess Student in violation of its child find obligations?

The sole non-expedited issue shall remain. All matters regarding the non-expedited hearing will be discussed at the March 20, 2023 prehearing conference. The hearing dates set for the non-expedited portion of this case are confirmed. Parties shall file their non-expedited prehearing conference statements in compliance with the February 13, 2023 Scheduling Order.

IT IS SO ORDERED.

*Sabrina Kong*

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings