BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

V.

CUPERTINO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2026010399

# ORDER DENYING STUDENT'S MOTION FOR ENTRY OF DEFAULT AND MOTION FOR SANCTIONS

MARCH 2, 2026

The expedited hearing in this matter began on February 3, 2026 and concluded on February 11, 2026. The parties were granted the opportunity to file a written closing brief, not to exceed 15 pages, by 5:00 PM, Tuesday, February 17, 2026.

On February 17, 2026, Student filed a closing brief. The filing also included a motion for entry of default and a motion for sanctions. This Order addresses the motions; the Expedited Decision will consider the final brief.

## STUDENT'S MOTION FOR DEFAULT

Parent on behalf of Student argued that a default should be issued against Cupertino Union School District because they did not appear and participate in the expedited hearing. Student asserted that all factual findings and Student's alleged issues should be found in Student's favor because of Cupertino's absence.

In support, Parent cites to code sections in the California Government Code, which are applicable to a special education expedited hearing under federal and state special education law.

In due process hearings, the party requesting the hearing is limited to the issues alleged in the complaint and, unless the other party consents, has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Here, Parent on behalf of Student filed a request for an expedited hearing under United States Code section 1415(k) and 34 Code of Federal Regulations part 300.530, et seq., which concern disciplinary removals of children with disabilities. Cupertino as the sole respondent. The pending Expedited Decision will constitute the written findings of fact and law required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Cupertino did not consent to relieving the petitioning Student from Student's burden of proof. And Cupertino's choice, not to participate in and appear at the expedited decision, did not relieve Parent on behalf of Student from the petitioner's burden of proof by a preponderance of the evidence. Despite Cupertino's absence,

Parent must still be found to have met Student's burden of proof regarding facts and the issues. Student is not entitled to a default judgment.

Student's motion for entry of default against Cupertino is denied.

## STUDENT'S MOTION FOR SANCTIONS

Parent on behalf of Student requested sanctions of default against Cupertino. Parent alleged that Cupertino interfered in a manner that resulted in "withheld testimony [that[ would have been unfavorable to District." Student was assumably referring to Cupertino's notice that it would not attend the expedited hearing and that it was not voluntarily producing witnesses at the hearing. In responding to the "meet and confer" communications, Cupertino indicated to Parent that it had already produced the information regarding the witnesses.

### APPLICABLE LAW

In certain circumstances, an administrative law judge, known as the ALJ, presiding over a special education proceeding is authorized to shift expenses from one party to another, or to the Office of Administrative Hearings. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge." ].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

Expenses may be ordered to be reimbursed either to OAH or to another party. With approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing may "order a party, the party's attorney or other

authorized representative, or both, to pay reasonable expenses, including costs of personnel" to OAH (as the entity that is responsible for conducting due process hearings) as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Cal. Code. Regs., tit. 5, § 3088, subds. (a) & €; see Gov. Code, § 11455.30, subd. (a).) An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"Actions or tactics" is defined as including, but not limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

## DISCUSSION

At the expedited PHC, Student asked that the hearing be continued because Parent wanted to subpoena witnesses. Parent was well aware of the subpoena process. For example, in Student's prior action, OAH Case Number 2025110210, Student requested, received, and issued 32 subpoenas for individuals to testify within five

business days of the complaint's filing. Here, Student filed the matter on January 12, 2026. On January 25, 2026, Cupertino gave notice that it would not participate in the expedited hearing. Still, Parent did not issue any subpoenas. As of the January 26, 2026 expedited PHC, Parent had not sought and issued subpoenas. Parent assumed that Cupertino would merely produce witnesses, as it did in a prior case, and that subpoenas would not be necessary. Student's request to continue, so Student could issue and serve subpoenas, was denied because the February 3, 2026 hearing date was set pursuant to mandatory statutory timelines applicable to expedited due process hearings. Parent's request to continue was inconsistent with Parent's motions and the complaint's contention that Student required immediate relief.

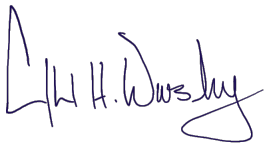
Cupertino was not required to produce witnesses or accept subpoenas, if the witnesses did not authorize them to do so. Cupertino affirmed that Parent had the information regarding the witnesses, but Parent chose not to obtain and serve subpoenas. At the expedited PHC, the ALJ reminded the Parent that, if Parent felt unable to prosecute the case at that time, Parent on behalf of Student could withdraw and dismiss the case, without prejudice. Parent chose to prosecute, proceeding to hearing on February 3, 2026.

Parent has failed to establish that Cupertino acted with bad faith, by actions or tactics that were frivolous or solely intended to cause unnecessary delay, which would entitle Student to sanctions against Cupertino. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) Student's request for sanctions is denied.

## ORDER

1. Student's motion for entry of default against Cupertino Union School District is denied.
2. Student's motion for sanctions against Cupertino Union School District is denied.

IT IS SO ORDERED.



Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings