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 2025110210

ORDER DENYING MOTION FOR STAY PUT REGARDING AFTERSCHOOL PROGRAM

DECEMBER 16, 2025

On December 11, 2025, Student filed a motion for stay put called "Urgent Student Motion for Stay Put In ELO-P," labeled "Time-Sensitive Emergency Request for Expedited Ruling on Motion for Stay Put," regarding his afterschool program, the Extended Learning Opportunities Program, also called ELOP or ELO-P. On December 15, 2025, Student filed a document called "Urgent Request for Emergency Ruling on Student Motions for Stay Put," which concerned both Student's November 24, 2025 motion for stay put regarding the school day, and his December 11, 2025 motion for stay put regarding the afterschool program. Student's motion for stay put regarding the school day is ruled upon by separate Order.

Cupertino Union School District did not file an opposition to Student's motion for stay put regarding the afterschool program.

With respect to the afterschool program, Student argues his placement at the time Student's complaint was filed, November 5, 2025, included the afterschool program called ELOP operated on the same campus Student attends during the school day. Student asserts Cupertino intentionally impeded Parent from participating in the expedited due process hearing by unilaterally changing Student's placement after school on December 10, 2025, effective December 11, 2025, by prohibiting Student and his sibling from attending the afterschool program. Student requests an order requiring Cupertino to put Student back into the afterschool program.

Student attached the December 10, 2025 letter from Cupertino that described the circumstances leading to Cupertino's decision that Student and his sibling would no longer be permitted to attend the afterschool program effective immediately. The letter referred to a prior letter, dated November 19, 2025, which Student also attached. The November 19, 2025 letter stated:

> Over an extended period, you [referring to Parent] have repeatedly engaged in conduct that is disruptive, confrontational, verbally abusive, and intimidating toward District and YMCA employees. Your behavior has interfered with program operations, disrupted the safety and stability of the environment, and caused staff to fear for their personal safety. These incidents have occurred despite multiple warnings, three temporary stay-away directives, and repeated opportunities for you to correct your conduct.

The November 19, 2025 letter offered one option for Student's continued participation in the afterschool program, contingent on Parent's compliance with four guidelines and with the final warning, "Any additional incidents of verbal abuse, intimidation, or interference with staff will result in immediate removal of your children from the program." Alternatively, if Parent would not agree the four conditions, Student and sibling would immediately denied participation in the afterschool program.

The December 10, 2025 letter stated:

> On November 19, 2025, the District provided you [Parent] with final written notice regarding your behavior expectations with regard to the ELOP program. The District was clear that your behavior towards District and YMCA employees in the afterschool program was disruptive, confrontational, verbally abusive, and intimidating in violation of law and District policy. You were given strict rules for your behavior in order for your children to continue to participate in the ELOP program. … The letter notified you that if you engaged in any further incident involving unsafe, uncivil, or disruptive conduct, the District would remove your children from ELOP. This [November 19, 2025] letter followed numerous other written notifications to you regarding your uncivil conduct, and the consequences of this conduct.

The December 10, 2025 letter revoking Student's permission to attend the afterschool program explained:

> On Friday, December 5, 2025, you engaged in behavior that was unsafe, uncivil, and disruptive, in violation of the District's BP 1313 and AR 5148.2. … You came inappropriately close to these staff members, pointed your finger in their faces, and threatened them with subpoenas. Your conduct was inappropriate, uncivil, harassing, and intimidating. With these actions, you have violated the conduct requirements described in the District's November 19, 2025 letter and set by the District's Board for your children's continued involvement in the ELOP afterschool program.
>
> Due to your conduct, your children will not be permitted to attend the ELOP program effective Thursday, December 11, 2025.
>
> To be clear, [Student] and [sibling] are no longer permitted to attend ELOP because of your continued refusal to follow civility rules. Neither [Student] nor [sibling] engaged in any behavior or conduct that would warrant dismissal.

In Student's motion for stay put regarding the afterschool program, Parent denied he engaged in any inappropriate behavior on December 5, 2025, and offered a timeline of events that date that Parent asserted defeats the possibility he could have done the things Cupertino accused him of doing.

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the last agreed-upon and implemented individualized education program, called IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Board of Educ.* (6th Cir. 1990) 918 F.2d 618, 625, as informed by later federal definition of term "placement" in 34 C.F.R. § 300.116 (2006); see *N.W. ex rel. J.W. v. Boone County Board of Educ*. (6th Cir. 2014) 763 F.3d 611, 617.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

When a child violates the student conduct code and school personnel seek a placement change exceeding ten school days, the local educational agency, the parent, and the relevant IEP team members shall determine if the conduct was a manifestation of the child's disability. A child's parent may appeal the manifestation determination and request an expedited due process hearing. In such cases, "the State or local education agency shall arrange for an expedited hearing." (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c) (2006).)

The expedited hearing shall occur within 20 school days of the hearing request. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c) (2006).) While the appeal is pending, the child shall remain in the interim alternative educational setting, often called IAES, pending the hearing officer's decision or until IAES placement expires after 45 school days, whichever is first, unless the parent and the local education agency agree

otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. §1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533 (2006).)

School personnel may remove a student to an IAES for not more than 45 school days even if the behavior is a manifestation of the student's disability if the student:

- carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
- knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or
- has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(20 U.S.C. § 1415(k)(1)(G); see also 34 C.F.R. §§ 300.530(j) (2006).)

Student's November 5, 2025 request for due process hearing, called a complaint, seeks a determination that Cupertino removed Student from his school day placement and from his afterschool program for more than 10 days by "removing, suspending, or expelling" him as disciplinary actions but failed to conduct a manifestation determination as required by title 20 United States Code section 1415(k) both during the 2024-2025 school year and the 2025-2026 school year.

OAH timely set Student's challenge to the alleged failure to conduct any manifestation determination for an expedited due process hearing to begin on December 9, 2025. Student requests to continue attending the afterschool program during the pendency of, at least, the expedited due process hearing.

The June 27, 2025 Expedited Decision in OAH case number 2025041265 involving Student and Cupertino determined Parents fully revoked their consent for Student's special education eligibility on November 19, 2024, and Student became a general education student without an IEP. One aspect of the expedited due process hearing currently in progress is a determination of whether Student, who was a general education Student at all times after Parents revoked consent for special education eligibility in November 2024, was entitled to the protections of title 20 United States Code section 1415(k), specifically a manifestation determination after disciplinary removals totaling more than 10 days, because Cupertino had what is legally defined as a "basis of knowledge" that the student had a disability before the behavior prompting the disciplinary action occurred. (20 U.S.C. § 1415(k)(5)(B) & (C).)

Student contends Cupertino had that "basis of knowledge" based on a common sense understanding of the term but also under title 20 United States Code section 1415(k)(5)(B)(i) and (ii). Cupertino contends it did not have that "basis of knowledge" because of the exception of title 20 United States Code section 1415(k)(5)(C), under which a school district shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has refused special education services, as Parents did when they revoked consent for special education services in November 2024. Cupertino argues it cannot be deemed to have that legally defined "basis of knowledge" again until Parents consented to an IEP again, which Parents have not yet done.

Regardless of the outcome on the determination of whether Cupertino had a "basis of knowledge" regarding Student's disability, with respect to Student's request for stay put regarding the afterschool program, Student failed to establish that the

afterschool program constitutes a "placement" to which Student has any entitlement to "stay put" under the Individuals with Disabilities Education Act.

As analyzed and decided in the June 27, 2025 Expedited Decision in OAH case number 2025041265, California provides children enrolled in kindergarten through sixth grade access to comprehensive afterschool and intersessional expanded learning opportunities. (Ed. Code, § 46120, subds. (a) & (b).) This program is called the Expanded Learning Opportunities Program. (Ed. Code, § 46120, subd. (a)(2).)

ELOP does not change the length of a student's school day. Specifically, "'[e]xpanded learning opportunities' does not mean an extension of instructional time, but rather, opportunities to engage pupils in enrichment, play, nutrition, and other developmentally appropriate activities." (Ed. Code, § 46120, subd. (g)(1).)

This definition mirrors other definitions of afterschool programs under the Education Code. (Ed. Code, § 8482.1 ["'Expanded learning' means before school, after school, summer, or intersession learning programs that focus on developing the academic, social, emotional, and physical needs and interests of pupils through hands-on, engaging learning experiences … expanded learning programs are pupil-centered, results driven, include community partners, and complement, but do not replicate, learning activities in the regular school day and school year"].) Thus, afterschool programs, such as ELOP, are not part of the school day, and a child is not required to attend. (See Ed. Code, §§ 46111 through 46115, and 46117 through 46119.)

Afterschool programs may be part of a child's special education program, if the child's IEP team determines such a service is necessary to provide a free appropriate public education, called a FAPE. (See *K.D. ex rel. C.L. v. Dept. of Educ. of Hawaii*

(9th Cir. 2011) 665 F.3d 1110, 1125; see also *B.B. ex rel. J.B. v. Dept. of Educ. of Hawaii* (D.Hawaii) 483 F.Supp.2d 1042, 1055-56.)

The June 27, 2025 Expedited Decision included the legal conclusion that the afterschool program is not part of the school day, a child is not required to attend, and that absent an IEP team determination a special education student required the afterschool program to receive a FAPE, it was not part of such a special education Student's school day, and that Student did not prove the afterschool program was part of his school day such that he was entitled to the protections of title 20 United States Code section 1415(k). During the expedited due process hearing on December 9, 2025, Student argued that the statutes or regulations regarding ELOP had changed after the timeframe at issue in that Expedited Decision and therefore the legal conclusion of that Expedited Decision should not impact this current due process case.

The undersigned Administrative Law Judge, called an ALJ, afforded Student the opportunity to present information regarding that alleged change in the statutes or regulations after April 29, 2025, to avoid the conclusive effect of the legal conclusion of the June 27, 2025 Expedited Decision, which Student had not timely appealed to a court of competent jurisdiction. On December 10, 2025, Student uploaded to the Witness Schedules section of Case Center a draft document that did not identify any change in the statutes or regulations after April 29, 2025, regarding ELOP. Student only argued ELOP was a "school-sponsored activity" and therefore disciplinary removals from it entitled a participating student to the protections of title 20 United States Code section 1415(k), and an alleged failure to comply with the procedures of title 20 United States Code section 1415(k) was within OAH's jurisdiction.

The ALJ stated Student had been afforded the opportunity to provide citations to or evidence of any change in the statutes or regulations after April 29, 2025, regarding

ELOP, but had not done that. Student only attempted to argue the final Expedited Decision was wrong. Student requested and was granted more time to locate information about the alleged changes in the statutes or regulations after April 29, 2025, regarding ELOP.

On December 11, 2025, Student did not provide information about the alleged changes in the statutes or regulations after April 29, 2025, regarding ELOP. Parent reported he had been unable to do more research because of the December 10, 2025, letter terminating his children's participation in the afterschool program, coping with the impact that would have on his participation in and representation of Student in the expedited due process hearing due to the time he would need to leave home to pick up the children immediately when school let out, and preparing to file this written motion for stay put regarding the afterschool program.

Student's December 15, 2025 Urgent Request for Emergency Ruling on Student Motions for Stay Put also fails to provide information about the alleged changes in the statutes or regulations after April 29, 2025, regarding ELOP. Student only argued ELOP is a "school-sponsored activity" because it satisfies some "7-factor test under California law" for which Student provides no citation or source. While this might relate to Student's expedited claim and whether a student's disciplinary removals from ELOP entitled a participating student to the protections of title 20 United States Code section 1415(k), it does not support ELOP being a "placement" from which Student cannot be removed during the pendency of a special education due process hearing based on Parent's alleged bad conduct.

Student has not established that as of November 5, 2025, he had an IEP in place, let alone an IEP that obligated Cupertino to provide Student with afterschool services as part of his school day. Student also did not establish that the afterschool program is, in

the absence of an IEP that determined access to and participation in ELOP was necessary for Student to receive a FAPE, a "placement" to which Student has any right under the IDEA to continue attending during the pendency of either the expedited or non-expedited due process hearings.

Student's motion for stay put regarding the afterschool program is denied.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings