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 FOLLOWING EXPEDITED PREHEARING CONFERENCE FOR EXPEDITED HEARING BY VIDEOCONFERENCE

JANUARY 26, 2026

On January 26, 2026, Administrative Law Judge Clifford H. Woosley, 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.

Father appeared on behalf of Student. No one appeared on behalf of Cupertino Union School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

EXPEDITED HEARING DATES, TIMES, AND LOCATION

DISMISSAL OF PARTY RESPONDENTS

Student's complaint is on OAH's optional form Request for Due Process Hearing Only, which refers to a 74-page attachment entitled Parent's Request for Expedited Due Process Hearing. The attachment contains Student's allegations. In the OAH form complaint, Student identified Cupertino as a party to be named. No other responding parties are identified in the OAH form complaint. However, the Complaint's attached Request for Expedited Due Process names the YMCA of Silicon Valley and Cupertino Union School District Board of Education as respondents, not in the caption, but in the body of the allegations.

Student named the YMCA and Cupertino's school board as respondents, in previous due process hearing requests. In these, OAH issued Orders dismissing the YMCA and Cupertino's school board because OAH does not have jurisdiction over either party. Student filed two complaints against the YMCA and OAH dismissed YMCA in both. The first, OAH case number 2025080037, filed July 31, 2025, was dismissed August 18, 2025 in its entirety due to lack of jurisdiction over YMCA. The second, OAH case number 2025090579, filed September 15, 2025, was dismissed September 25, 2025, also for lack of jurisdiction over YMCA.

Student filed OAH case number 2025090763 against Cupertino Union School District Board of Education, only. OAH dismissed the case in its entirety on September 23, 2025 due to lack of jurisdiction over the Cupertino Union School District Board of Education. On an October 1, 2025 reconsideration, pursuant to Student's request, OAH reconsidered the order and confirmed dismissal of the complaint. The order also

included a warning that sanctions might be imposed if further complaints were filed against Cupertino Union School District's Board of Education.

Here, Student's attached Request for Expedited Hearing does not make any additional or amended allegations which would provide OAH jurisdiction over the YMCA and Cupertino's School Board. At the prehearing conference, Student agreed that the due process request should not include the YMCA and Cupertino's School Board.

Therefore, as determined in the prior OAH orders, YMCA of Silicon Valley and Cupertino Union School District Board of Education are hereby dismissed as respondents, because OAH does not have jurisdiction over either entity.

RESPONDENT CUPERTINO UNION SCHOOL DISTRICT'S PARTICIPATION

Student filed his request for expedited due process hearing on January 13, 2026, naming Cupertino Union School District. On January 15, 2026, Cupertino filed notice of representation. On January 22, 2026, Cupertino filed Notice regarding its intended case participation, along with the declaration of its attorney, Jennifer Nix. Cupertino informed OAH that it will not be appearing at prehearing conferences or for hearing, and that Cupertino expects that OAH will proceed with the hearing without Cupertino's presence or participation.

Cupertino acknowledged that Parent of Student has the right to file special education due process complaints under federal and state law. However, Cupertino contended that Parent does not have the right to force Cupertino to attend serial hearings on the same issues, oppose renewed frivolous motions, or to expend public resources to continue to lend credence to Parent's frivolous contentions. Cupertino contended that Parent continues to assert, in this due process, that his child faced

disciplinary removals, despite having never been able to produce any documentary or testimonial evidence of such removal, in multiple due process proceedings and motions.

EXPEDITED DUE PROCESS HEARING

The expedited hearing will take place on February 3, 4, and 5, 2025 and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. Student anticipates the hearing will take 25 days to complete. Student is cautioned that expedited hearings pertain to discrete issues, expeditiously heard over a matter of days, not weeks. The hearing dates will be discussed with the ALJ during the hearing.

EXPEDITED HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

EXPEDITED ISSUES AND PROPOSED RESOLUTIONS

Student alleged, in his complaint, Issues 1 through 21 and 54 through 70, which were clarified at the PHC as being Issues for the expedited portion of the hearing. Student's allegations contain contentions regarding removal or preclusion from classes, after school programs, educational interventions, and extracurricular activities between April 11, 2025 and November 5, 2025, when Student filed his complaint. These included, for example, the Expanded Learning Opportunities Program, reading, writing, and math interventions, physical education, social activities, and student-parent school activities. These contentions constitute underlying factual allegations Student may seek to prove at the expedited hearing. The legal issues related to those contentions are set forth below and constitute the issues for expedited hearing.

EXPEDITED ISSUES

1. Did Cupertino remove Student from his current school setting, including after school programs, because Student violated a code of student conduct, for more than 10 school days, between November 5, 2025 and January 13, 2026?
2. If so, did Cupertino have a basis of knowledge, between November 5, 2025 and January 26, 2026, that Student was a child with a disability before the behavior that precipitated the alleged disciplinary actions occurred?
3. If so, did Cupertino violate Title 20 United States Code section 1415, subdivision (k), by failing to conduct a manifestation determination review before removing Student from his current school setting, including afterschool programs, for more than 10 school days between November 5, 2025 and January 13, 2026?

EXPEDITED PROPOSED RESOLUTIONS

The resolutions requested by Student include returning Student to his placement and services.

OAH has not received a copy of Cupertino's response to Student's complaint. Cupertino shall file its response with OAH within three business days from the date of this PHC. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

EXHIBITS

The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision (e)(7). The parties shall upload their exhibits electronically according to the Order Setting Procedures for Filing Exhibits Electronically. Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence in compliance with Education Code section 56505, subdivision (e)(7). If further assistance is needed, please contact OAH at OAHSEOps@dgs.ca.gov.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged as required by Education Code section 56505, subdivision (e)(7) shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

IDENTIFYING EXHIBITS AND PAGE NUMBERS

Each exhibit must be identified by a letter and number. Student must use the letter S before the number to identify Student's exhibits. Cupertino must use the letter D before the number to identify its exhibits. For example, S-1 means Student's exhibit 1

and D-1 means Cupertino's exhibit 1. A cover sheet with this identifying letter and number should be the first page of each exhibit. The electronic evidence program will automatically number the exhibits and additional page numbering or bates stamping should not be added.

CONTENT

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be in chronological order.

Parties should include resumes or curriculum vitae for each witness expected to testify as an expert.

Cupertino's exhibits must include a copy of the school calendar for each school year in question.

Electronic copies of exhibits filed with OAH shall be filed by 5:00 PM at least five business days before the first day of hearing. Please refer to the General Order OAH issued with the Scheduling Order that contains the Order Setting Procedures for Filing Exhibits Electronically. It includes instructions for how to file exhibits electronically. Beginning three business days before the hearing, the electronic evidence system will not allow parties to upload exhibits unless permitted by the ALJ during the hearing at the ALJ's discretion.

WITNESSES

The parties shall serve their list of witnesses on each other in compliance with Education Code section 56505. No party shall be permitted to call any witnesses not

timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Parties are responsible for ensuring that all participants are familiar with and follow the Instructions for Joining the Online Due Process Hearing provided with this Order. Participants who have not previously used the Zoom application, may find informative instructions on at by visiting, Getting Started with Zoom at https://support.zoom.us/hc/en-us/categories/200101697.

The parties are responsible for ensuring that witnesses join the virtual hearing room at the designated date and time to testify. Witnesses are required to join the due process hearing by computer and appear by videoconference unless they do not have the necessary computer equipment. If a witness does not have the necessary equipment, the ALJ may permit the witnesses to appear by audio only or by telephone. "Audio only" means using a computer without video. A witness's inability to attend the hearing by videoconference will be discussed at the start of the hearing.

The parties are responsible for producing their own witnesses unless otherwise ordered by the ALJ. Parties shall make witnesses under their control reasonably available. The parties must schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order.

The ALJ has discretion to limit the number of witnesses and the time allowed for testimony. Education Code, section 56505.1, subdivision (h), empowers the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties are ordered to meet and confer no later than 5:00 PM, January 29, 2026, to discuss scheduling witnesses and how much time each witness will take. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any. The parties should attempt to eliminate duplicate exhibits from their hearing exhibits. The parties shall discuss whether they can produce a written stipulation as to pertinent facts, contentions, resolutions and the authenticity and admissibility of documents to shorten the length of time needed for the hearing.

As part of the meet and confer process, Cupertino shall inform Student which proposed witnesses are District employees. Cupertino shall also identify the witnesses on Student's list that require a subpoena. Cupertino may agree to accept service for a witness under its control or provide Student with the witness's most recent contact information.

PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information on the Participant Information Form filed with OAH and shall file an updated Form as necessary. The Participant Information Form is not served upon the opposing party. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party(s) at least five business days prior to hearing.

The parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the first day of hearing.

Any contact information provided shall be used for the limited purpose of issuing subpoenas or for contacting a witness to attend the hearing. Any contact information shall not be disclosed to any other person.

EVIDENCE PRESENTATION

In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case Student requested the hearing and bears the burden of proof. Student's case-in-chief shall be presented first, followed by Cupertino unless otherwise ordered.

WITNESS LISTS

The parties must provide a joint proposed witness schedule to the ALJ on the first day of hearing. The list should include the first and last name of the witness, their title, which party(s) are calling the witness to testify, and include dates and time estimates of each witness' expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. The parties must have witnesses available in case there is no agreement.

At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses. The ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony each witness.

SCOPE OF WITNESS EXAMINATION

Each witness will be called to testify only once, except for rebuttal purposes. All parties must examine a witness on all issues when the witness is first called to testify. Requiring a witness to appear only once takes priority over the order in which parties present their case-in-chief.

AUDIO ONLY OR TELEPHONIC TESTIMONY

Whether a witness may appear by audio only or telephone instead of videoconference is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by audio only or telephone shall request permission to do so before the hearing. Any party seeking to present a witness who cannot access exhibits electronically must inform the ALJ at the beginning of the hearing.

ELECTRONIC RECORDINGS

AUDIO RECORDING

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon certain conditions. The conditions are:

1. the OAH recording is the only official recording;
2. the parties shall turn their recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;

3. operation of the party's recording mechanism will not be allowed to delay the hearing;
4. a party's recording may not be given, provided or played to a witness, or potential witness;
5. the recording is subject to the same confidentiality as the due process hearing;
6. participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording; and
7. the parties shall not use an artificial intelligence application or program to record the hearing.

Student's request to audio record is granted, subject to these conditions.

VIDEO RECORDING

No party, witness or anyone else may make any video recording of any part of the proceedings or stream live through any means.

RECORDINGS AS EXHIBITS

Student contemplates proposing and uploading audio and video recordings as evidence. Recordings may not be uploaded electronically without the due process hearing ALJ's permission. The ALJ has discretion to admit or exclude evidence in the form of a recording. Any request to submit a recording shall be considered at the time of hearing.

The ALJ may grant or deny the request or grant the request subject to certain conditions. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording

requested or have the party offering the recording to provide an exact identifiable portion of the recording the party seeks to admit. The identities of any person speaking on the portion of the tape being introduced must be established. An ALJ may allow the opposing party to offer additional portions of a recording to establish the context, or to rebut, the recording.

COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, typically consisting of invoices, billings, and proofs of payment, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

MOTIONS

Student has brought numerous motions in this action. On January 22, 2026, Student filed a Motion to Continue, which OAH denied on January 22, 2026, because an expedited proceeding has strict time requirements which do not allow the continuance of an expedited hearing before it begins. As of the date of this expedited PHC Order, the following motions were still outstanding: Student's January 20, 2026 Motion for Sanctions, which concerns a resolution session; Student's January 22, 2026 Motion for Stay Put; and Student's November 25, 2025 Emergency Request for Ruling to Enforce Stay Put and Maintain Settlement Agreement. Student had filed the same motions in prior expedited due process proceedings involving Cupertino, involving the same expedited claim that Student was the subject of a disciplinary proceeding, for violating a

code of student conduct, and was removed from her educational setting for more than 10 days in the school year.

Other than the above, no prehearing motions pertaining to the expedited claims are pending or contemplated. Any motion that was not filed three business days before the expedited PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

STIPULATIONS

Stipulations to pertinent facts, contentions, resolutions and authenticity and admissibility of documents are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing prior to the start of the hearing.

CONDUCT OF COUNSEL AND HEARING ROOM DECORUM

All participants to the videoconference should observe the same decorum as in an in-person due process hearing. Participants must conduct themselves in a professional and courteous manner at all times. Cellular phones, telephones and computer notifications must be shut off or set to silent during the hearing unless the ALJ grants permission otherwise. Counsel, parties, and witnesses should appear from a private location, unless otherwise ordered. Participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Use of virtual background images are at the discretion of the ALJ. Witnesses are prohibited from reading exhibits, documents, notes, text messages, telephones or computers while testifying, unless permitted to do so by the ALJ. Parties, counsel and witnesses are prohibited from passing notes to, exchanging electronic messages with, or signaling the witness in any way while the witness is testifying.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

The parties are unaware of any hearing participant that requires an interpreter or reasonable accommodations.

A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Accommodations-at-OAH.

HEARING CLOSED TO THE PUBLIC

The hearing is closed to the public. Special education hearings are closed to the public unless a student requests the hearing to be open to the public.

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 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

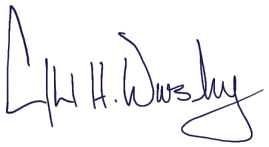
The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

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.



Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings