BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

CASE NO. 2025041265

EXPEDITED DECISION

JUNE 27, 2025

On April 29, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student naming Cupertino Union School District. The complaint contained expedited and non-expedited hearing claims. OAH set the expedited and non-expedited matters for separate hearings. The expedited claims proceeded to hearing with no continuances. This Decision addresses only the expedited claims.

Administrative Law Judge Ashok Pathi heard this matter by videoconference on May 28, and June 3, 4, 5, 10, and 17, 2025. The Administrative Law Judge is called ALJ.

Parent represented Student and attended all hearing days. Student did not attend the hearing. Attorney Jennifer Nix represented Cupertino. Jennifer Willis, Cupertino's Director of Special Education, attended all hearing days on Cupertino's behalf. OAH provided Parent simultaneous interpretation between English and Farsi.

On June 17, 2025, the last day of hearing, the record was closed, and the matter was submitted for decision. The ALJ allowed the parties to file closing arguments by June 20, 2025, but did not continue the matter. Both parties filed closing arguments.

CLARIFICATION OF EXPEDITED ISSUES

STUDENT'S COMPLAINT AND DISCUSSION AT THE EXPEDITED PREHEARING CONFERENCE

Student's due process complaint contained a single expedited issue: "[h]as the [Cupertino Union School] District violated Title 20 United States Code section 1415(k), and 34 Code of Federal Regulations?" OAH convened an expedited prehearing conference, called a PHC, on May 19, 2025. Another ALJ conducted that PHC.

Following a discussion with the parties, that ALJ issued an order following the PHC, dated May 19, 2025, which OAH served on the parties on May 20, 2025. At various times, this order was referred to as either the PHC Order or the May 20, 2025 Order. The PHC Order reflected the expedited issues as clarified by that ALJ. The PHC Order instructed the parties to file a written objection if they believed an expedited issue was misstated or improperly omitted.

CUPERTINO'S OBJECTION TO THE CLARIFIED ISSUES

On May 21, 2025, Cupertino filed such an objection, asserting that the ALJ improperly added an issue not included in the complaint. Cupertino also asserted that the clarified issues were not reflected in Student's complaint, such that Cupertino had the required legal notice of the issues. On May 22, 2025, Student filed a response asserting that the PHC Order properly reflected the clarified expedited issues.

The undersigned ALJ heard further argument and discussion regarding Cupertino's objection on June 3, 2025, prior to the start of any witness testimony in this matter. Following that discussion, the undersigned ALJ further clarified the expedited issues, as allowed by the holdings in *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].) No change in substance was made. Below is a summary of the undersigned's oral order on the record.

The undersigned ALJ overruled Cupertino's objections related to Expedited Issue 1. Expedited Issue 1 relates to the applicability of disciplinary protections for a student not currently eligible for special education. This is a threshold question embedded in Student's issue regarding whether Cupertino violated Student's rights pursuant to title 20 United States Code section 1415, subdivision (k).

However, Expedited Issue 1, as reflected in the PHC Order, did not specify the relevant timeframe for this issue. The issues raised in Student's complaint do not specify the relevant timeframe for the expedited issues. Student's complaint contains allegations that begin on April 11, 2025, and he filed his complaint on April 29, 2025.

Student asserted that the issues should be evaluated in light of all of Student's multiple filings, such as motion pleadings and responses, not just the complaint. However, the party requesting the hearing is limited to the issues alleged in their complaint unless the other party has consented to hear additional issues at hearing. (20 USC § 1415(f)(3)(b); Ed. Code § 56502, subd. (i).) Therefore, Student's argument is not persuasive. On the record, Cupertino explicitly opposed any additional issues not included in Student's complaint. Therefore, the relevant timeframe for Student's Expedited Issue 1 is April 11, 2025, through April 29, 2025. Student's complaint provided Cupertino with the required notice of this issue, as clarified by the ALJ.

The undersigned overruled Cupertino's objections to Expedited Issue 2. Student's complaint put Cupertino on notice of Student's allegation that he was removed from cooking and Stegel "classes", as well as the last hour, between 4:30 p.m. and 5:30 p.m. of the Expanded Learning Opportunities Program, referred to by the parties as ELOP. Expedited Issue 2, as clarified in the PHC Order, is within the scope of claims a student can bring under title 20 United States Code section 1415, subdivision (k).

However, Expedited Issue 2, as reflected in the PHC Order, did not specify the relevant timeframe for this issue. Following a discussion with the parties, the undersigned determined that the relevant timeframe for Student's Expedited Issue 2 is April 11, 2025, through April 29, 2025.

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Therefore, the issues in this expedited hearing were further clarified as follows:

EXPEDITED ISSUES FOR HEARING

1. Did Cupertino Union School District have a basis of knowledge, between April 11, 2025, and April 29, 2025, that Student was a child with a disability before the behavior that precipitated the disciplinary action occurred?

2. Did Cupertino Union School District violate Title 20 United States Code section 1415, subdivision (k), between April 11, 2025, and April 29, 2025, by failing to hold a manifestation determination review of Student prior to removing Student from cooking class, Stegel class, and the last hour, between 4:30 p.m. and 5:30 p.m., of the Expanded Learning Opportunities Program for more than 10 school days?

STUDENT'S MOTION FOR RECONSIDERATION

On June 4, 2025, prior to the start of the third day of the expedited due process hearing, Student filed a motion for reconsideration regarding the undersigned's order on the relevant timeframe for Issues 1 and 2.

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within 10 days. (See e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be

required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Student failed to demonstrate any new or different facts, circumstances, or law justifying reconsideration. Therefore, the undersigned denied Student's motion on the record and the issues remained as stated above.

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All references to the Code of Federal Regulations are to the 2006 version, unless otherwise specified. The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected.

(20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq., govern the discipline of special education students. (Ed. Code, § 48915.5.) A student receiving special education services may be suspended or expelled from school as provided by federal law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, school personnel may remove the student from their educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3).)

A parent of a special education student may appeal a school district's determination that particular conduct resulting in a disciplinary change of placement was not a manifestation of the child's disability by requesting an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. 300.532(a) & (c).) The hearing must be conducted within 20 school days of the date an expedited due process hearing request is filed and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. 300.532(c)(2).) The rules for a due process hearing under title 20 United States Code section 1415(k), must be consistent with those for other IDEA hearings. (34 C.F.R. § 300.532(c)(1)(a).)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and 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, Student filed the complaint and had the burden of proof. The factual statements in this Expedited Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was five years old and in transitional kindergarten, called TK, at the time of the hearing. Student resided within Cupertino's geographic boundaries at all relevant times. During the relevant timeframe of this Expedited Decision, Student was not eligible for special education. Student had previously been eligible for special education, but Parents revoked their consent for special education in writing on November 19, 2024.

ISSUE 1: DID CUPERTINO UNION SCHOOL DISTRICT HAVE A BASIS OF KNOWLEDGE, BETWEEN APRIL 11, 2025, AND APRIL 29, 2025, THAT STUDENT WAS A CHILD WITH A DISABILITY BEFORE THE BEHAVIOR THAT PRECIPITATED THE DISCIPLINARY ACTION OCCURRED?

Student argued that Cupertino had a basis of knowledge that he was a child with a disability at all relevant times. During the hearing, Cupertino conceded that it had a basis of knowledge that Student was a child with a disability from April 11, 2025, through April 29, 2025.

The child find laws are not generally applicable to disciplinary procedures where a general education pupil commits a violation of law or school rules before he has been assessed for special education unless the local education agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(a).)

A public agency is deemed to have knowledge if:

1. a parent of the child expressed concern in writing to the agency or to a teacher, that the child was in need of special education or services before the behavior occurred, or requested an evaluation, or

2. a teacher or other personnel, expressed specific concerns about the child's pattern of behavior to the director of special education, or other supervisory personnel of the agency.

(20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if:

1. the parent of the child has not allowed an evaluation of the child pursuant to title 20 United States Code section 1414, or has refused special education services, or

2. the child has been evaluated and determined not to be a child with a disability under the IDEA.

(20 U.S.C. § 1415(k)(5)(C); 34 C.F.R. § 300.534(c).)

For children who are not eligible for special education, the determination of whether a local educational agency has a basis of knowledge is a threshold question regarding that child's entitlement to behavior protections under special education law.

(20 U.S.C. § 1415(k)(5).) Said another way, if a child has not been found eligible for special education, and the local education agency does not have the required basis of knowledge, the child may not assert special education behavior protections. (20 U.S.C. § 1415(k)(5)(D); 34 C.F.R. § 300.534(d).)

The record established that Student had been found eligible for special education in January 2023. However, Parents revoked their consent for special education on November 19, 2024. Parent confirmed this revocation in email, "the parents are compelled to revoke their consent to the IEP dated 1/25/2023. [Student] is now a general education student." In that same email, Parent added, "[c]an you please confirm that you have cleared him to attend McAuliffe [Elementary School] as he is no longer a special education student?" Thus, Parents clearly and unambiguously revoked their consent for Student's special education eligibility.

The record established that Student was subsequently referred for assessment for special education eligibility. Cupertino had developed an initial assessment plan dated March 17, 2025. The record also established Parents consented to the assessment plan, and the assessments were underway during the relevant timeframe for this Expedited Decision.

Cupertino conceded on the record that it had the required basis of knowledge during the relevant timeframe for this Expedited Decision. The undersigned confirmed this with Cupertino's counsel on the record, and Cupertino subsequently utilized its

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concession while raising evidentiary objections. Nevertheless, Cupertino dedicated a portion of its closing brief to the argument that it did not have a basis of knowledge. Cupertino cannot argue a different position than it conceded at hearing.

Therefore, Cupertino had a basis of knowledge that Student was a child with a disability from April 11, 2025, through April 29, 2025.

ISSUE 2: DID CUPERTINO UNION SCHOOL DISTRICT VIOLATE TITLE 20 UNITED STATES CODE SECTION 1415, SUBDIVISION (K), BETWEEN APRIL 11, 2025, AND APRIL 29, 2025, BY FAILING TO HOLD A MANIFESTATION DETERMINATION REVIEW OF STUDENT'S BEHAVIORS PRIOR TO REMOVING STUDENT FROM COOKING CLASS, STEGEL CLASS, AND THE LAST HOUR, BETWEEN 4:30 P.M. AND 5:30 P.M., OF THE EXPANDED LEARNING OPPORTUNITIES PROGRAM FOR MORE THAN 10 SCHOOL DAYS?

Student argued that between April 11, 2025, and April 29, 2025, he was improperly removed from portions of his school day; specifically cooking class, Stegel class, and the last hour of the Expanded Learning Opportunities Program, which lasted between 4:30 p.m. and 5:30 p.m. Student also argued that these removals constituted a pattern of removal that resulted in a change in Student's placement. Student further argued that his removals were disciplinary in nature and due to Student displaying behaviors related to his disabilities.

Cupertino argued that Student has never been subjected to disciplinary measures, such as suspensions or expulsions. Cupertino also argues that it has not changed Student's placement. Cupertino further argues that special education behavior protections do not apply to ELOP, because it is not part of Student's school day. Finally, Cupertino argues that language included in an April 10, 2025 settlement agreement waived all of Student's special education claims through that date, and there were not enough school days at issue to have triggered Cupertino's duty to conduct a manifestation determination.

A special education student's placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to him. (Cal. Code Regs., tit. 5, § 3042, subd. (a).) The removal of a special education student from the student's placement for more than 10 consecutive school days constitutes a change of placement. (34 C.F.R. § 300.536(a)(1).) A series of removals may also constitute a change of placement if those removals constitute a pattern. (34 C.F.R. § 300.536(a)(2).) Under either calculation, any removals must be for longer than 10 school days before they constitute a change in placement. (34 C.F.R. § 300.536(a).)

However, a local educational agency may discipline a special education student for violating the code of student conduct, such as through a suspension, for no more than 10 school days in a school year, to the same extent it may discipline a general education student. (34 C.F.R. § 300.530(b)(1).)

When a school district seeks to discipline a child with a disability for violating a code of student conduct, and such discipline results in a change of placement, it must convene a meeting to determine whether the child's conduct was a manifestation of

the child's disability. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.530(e).) This is known as a manifestation determination, or a manifestation determination review. The manifestation determination must be made by the school district, the parents, and relevant members of the IEP team, as determined by the parents and the school district. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e).)

An ALJ may order a school district to conduct a manifestation determination under section 1415(k) if the ALJ determines the school district failed to do so. (20 U.S.C. § 1415(k)(3)(A) & (B)(1); 34 C.F.R. 300.532(a) & (c).) Section 1415(k)(3) does not limit a hearing officer from awarding other equitable remedies to craft appropriate relief. (20 U.S.C. § 1415(k)(3); *Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.)

EFFECT OF APRIL 10, 2025 SETTLEMENT AGREEMENT

The parties were previously involved with three due process proceedings regarding Student during the 2024-2025 school year. OAH assigned these matters OAH Case Nos. 2024100966, 2024110522, and 2025040244. The undersigned took official notice of the official records for all three matters. (Evid. Code § 452, subd. (c); *Hogen v. Valley Hospital* (1983) 147 Cal. App. 3d, 119, 125.) The parties resolved all three due process matters through a settlement agreement, dated April 10, 2025. This document will be called the Settlement Agreement.

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686 [citing *Adams v. Johns-Manville Corp*. (9th Cir. 1989) 876 F.2d 702, 704].)

"Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties' expressed objective intent, not their unexpressed subjective intent, governs." (*Id.* at p. 686.)

OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unif. Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to hear claims waived by a prior settlement agreement. (See *Y.G. v. Riverside Unif. Sch. Dist.* (C.D.Cal. 2011) 774 F.Supp.2d 1055, 1059-62; see also *N.P. v. Kenton County Public Schools* (E.D.Ky., Feb. 8, 2023, No. CV-20-142-DLB-EBA) 2023 WL 1822833, at p. *2 [finding a waiver that bars claims under the IDEA prevents a court from reviewing those claims].) If a party seeks to invalidate, or set aside, a settlement agreement, it must seek relief from a court of competent jurisdiction, such as a state or federal court. (*Y.G., supra,* 774 F.Supp.2d at pp. 1061-62.)

The Settlement Agreement contained a clear and unambiguous waiver of claims against Cupertino, and an accompanying waiver of Civil Code § 1542 protections. This waiver included, "all past, present, and future, known and unknown claims, damages, liabilities, rights, and complaints arising from, or related to, Student's education through the Effective Date of this Agreement..." The Settlement Agreement defined the "Effective Date" as the date all parties signed the agreement. All parties signed the Settlement Agreement on April 10, 2025. Therefore, Parents waived claims through April 10, 2025.

The waiver included in the Settlement Agreement affects the issues in this Expedited Decision for multiple reasons. First, it provides an independent rationale that establishes the relevant timeframe for the issues to April 11, 2025, through April 29, 2025. Second, the waiver resets the count of school days that contribute to or constitute a change of placement. (34 C.F.R. § 300.536(a).) For example, if Student

had been removed from school for five school days prior to April 10, 2025, and was removed from school on April 11, 2025, the April 11, 2025 removal would count as day one and not day six, unless the agreement specifically carved out this disciplinary issue. The Settlement Agreement did not include such a carve out.

Student specifically alleges he was removed from three specific activities. These are the Expanded Learning Opportunities Program, referred to by the parties as ELOP, cooking, and Stegel. Each is discussed below.

EXPANDED LEARNING OPPORTUNITIES PROGRAM

Student argued that his dismissals from ELOP at 4:30 p.m. each day were disciplinary removals and constituted a change of placement. Student also argued that Cupertino's failure to provide ELOP over the spring break week were additional removals. Student argued that these removals lasted more than 10 school days, thus triggering Cupertino's obligation to conduct a manifestation determination.

Cupertino argued that ELOP is not part of the school day and special education disciplinary protections do not apply to ELOP. Cupertino also argued that Student was not removed from ELOP during the relevant period for this Expedited Decision.

California provides children enrolled in kindergarten through sixth grade with 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).)

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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 & 46117 through 46119.)

Afterschool programs may be part of a child's special education program, if a child individualized education program, called 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 record established that Student was not eligible for special education between April 11, 2025, and April 29, 2025. Thus, he did not have an IEP in place, let alone an IEP that obligated Cupertino to provide Student with afterschool services as part of his school day. The record established that, during the relevant timeframe, Student generally attended ELOP from approximately 2:45 p.m. to 4:30 p.m. This was after the end of the regular school day. The record also established that ELOP lasted until 5:30 p.m.

Student argued that he was prevented from attending ELOP after 4:30 p.m., and that this action constituted a removal due to a disciplinary action by Cupertino. Student provided no persuasive argument or legal authority to support his position. Student did not prove that, during the relevant timeframe of this Expedited Decision, ELOP was part of his school day such that the protections of title 20 United States Code section 1415, subdivision (k) applied at all.

Even if the IDEA's behavior protections applied, Student did not prove that he was dismissed from ELOP at 4:30 p.m. due to a disciplinary action by Cupertino. Student did not prove that his dismissal time contributed to a pattern of removals or constituted a change of placement that triggered Cupertino's duty to conduct a manifestation determination.

Student also argued that he was entitled to attend ELOP between April 14, 2025, and April 18, 2025, while McAuliffe Elementary School, and its corresponding ELOP, were closed for spring break. Student provided no persuasive argument or legal authority to support his position. Student did not prove that ELOP's unavailability during the spring

break, during which time McAuliffe Elementary School was not providing instruction, contributed to a pattern of removals or constituted a change of placement or otherwise triggered Cupertino's duty to conduct a manifestation determination.

Student did not prove that at any time between April 11, 2025, and April 29, 2025, that the protections of title 20 United States Code section 1415, subdivision (k) applied to ELOP. Even if those protections applied, Student did not prove that the scope or duration of Student's attendance in ELOP contributed to a pattern of disciplinary removals or constituted a change of placement, or otherwise triggered Cupertino's duty to conduct a manifestation determination.

COOKING AND STEGEL

Student's class did not attend cooking and Stegel activities every day. Deborah Bongiovanni, Student's TK classroom teacher credibly testified, and the record otherwise established, that Student's classroom participated in cooking on Mondays. The class was divided into two groups, and each group went to cooking on alternating Mondays. Thus, one group went to cooking on the first and third Mondays of the month, and the other group went to cooking on the second and fourth Mondays of the month. The group of children who did not go to cooking on any particular week would remain in the classroom and receive instruction supervised by Bongiovanni.

Student was assigned to the first group. Student's school was on spring break from April 14, 2025, through April 18, 2025. During that week, school was not in session. Therefore, Student's first regularly scheduled opportunity to participate in cooking class during the relevant timeframe was April 21, 2025.

Bongiovanni credibly testified, and the record otherwise established, that Student's classroom participated in Stegel only on Tuesdays. The record established generally that Stegel was a parent-led activity that provided students with opportunities to practice gross motor and coordination skills by navigating obstacle courses and other wooden climbing equipment. The class was divided into two groups, and each group went to Stegel in shifts. Thus, one group went to Stegel in the first block of the day, and the other group went in the second. The group of children who did not go to Stegel during any given block would remain in the classroom and receive instruction supervised by Bongiovanni.

Student argued that he was eligible to attend cooking both Monday April 21, 2025, and Monday, April 28, 2025. Student also argued that he should have attended Stegel Tuesday, April 22, 2025, and Tuesday, April 29, 2025. As determined above, Student did not prove that the protections under of title 20 United States Code section 1415, subdivision (k) applied to ELOP. Thus, there were at most four school days at issue. As explained below, it is not necessary to determine whether any absences from cooking and Stegel were disciplinary removals under special education law.

Even assuming Student's allegation was true, and Student was subjected to disciplinary removals from those four activity sessions, Student cannot prevail on Expedited Issue 2, because four school days do not constitute a change in placement. (34 C.F.R. § 300.536(a).) Because Student cannot prove a change in placement, the undersigned makes no findings as to whether Student was removed from those activities, or whether any removals were disciplinary actions. Therefore, Student did not prove that Cupertino's duty to convene a manifestation determination review was triggered between April 11, 2025, and April 29, 2025.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

ISSUE 1:

Cupertino Union School District had a basis of knowledge that Student was a child with a disability between April 11, 2025, and April 29, 2025.

Student prevailed on Issue 1.

ISSUE 2:

Cupertino Union School District did not violate title 20 United States Code section 1415, subdivision (k), between April 11, 2025, and April 29, 2025, by failing to hold a manifestation determination review of Student prior to removing Student from cooking class, Stegel class, and the last hour, between 4:30 p.m. and 5:30 p.m., of the Expanded Learning Opportunities Program for more than 10 school days.

Cupertino prevailed on Issue 2.

REMEDIES

Federal courts have broad latitude to fashion appropriate equitable remedies for violations of the IDEA. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S. Ct. 1996, 85 L. Ed. 2d 385]; *Parents of Student W., supra,* 31 F.3d at

p. 1496.) The authority to order such relief extends to hearing officers. (*Forest Grove Sch. Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484; 174 L.Ed.2d 168].) Student prevailed on Issue 1. However, Student did not prove that he was entitled to any remedy by proving this threshold issue, nor is there an equitable basis for awarding relief. Student did not prevail on any other issues. Therefore, Student is not awarded any of his requested remedies.

ORDER

1. Cupertino Union School District had a basis of knowledge that Student was a child with a disability between April 11, 2025, and April 29, 2025.
2. Student was not entitled to a manifestation determination review.
3. Student did not prevail on any other issues.
4. All other requested relief is denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings