

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

CASE NO. 2025110210

EXPEDITED DECISION

FEBRUARY 4, 2026

On November 5, 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 Kara Hatfield heard this matter by videoconference on December 9, 10, 11, and 17, 2025, and January 6, 7, 13, 14, and 22, 2026. The Administrative Law Judge is called an ALJ.

Parent represented Student and attended all hearing days except January 22, 2026, on Student's behalf. Attorney Jennifer Nix represented Cupertino. Jennifer Wallis, Director of Special Education, attended all hearing days on Cupertino's behalf.

On January 22, 2026, the last day of hearing, the evidentiary record was closed, and the matter was submitted for decision. The ALJ allowed the parties to file closing arguments by noon on January 28, 2026, but did not continue the matter. Neither party filed a closing argument.

## EXPEDITED ISSUES

The December 1, 2025 Order Following Prehearing Conference took the enumerated and separately stated claims of Student's request for due process hearing, called a complaint, and grouped the alleged disciplinary removals by timeframe. The December 1, 2025 Order Following Prehearing Conference retained as Issue 1 the claim Student stated as Issue 1 in his complaint.

The December 1, 2025 Order Following Prehearing Conference worded Issue 2 to cover the allegations of Student's claims 2 through 18 and 51 through 67 of the complaint – the claims for which Student explicitly invoked title 20 United States Code section 1415(k) – to concern the period April 11, 2025, through the end of the 2025 extended school year. The December 1, 2025 Order Following Prehearing Conference worded Issue 3 to cover the allegations of Student's claims 2 through 18 and 51 through 67 of the complaint – the claims for which Student explicitly invoked title 20 United States Code section 1415(k) – to concern the period from the start of the 2025-2026 school year through the date the complaint was filed, November 5, 2025.

On December 5, 2025, Student filed written objection to the restatement of issues in the December 1, 2025 Order Following Prehearing Conference. Student's objection included arguments attempting to revive a timeframe and claims extinguished by an April 10, 2025 settlement agreement with Cupertino and asserting Cupertino breached the settlement agreement. Student's arguments regarding Cupertino's alleged breach of contract are significant because they reveal that the true nature of Student's dispute with Cupertino is not about any purported disciplinary removals. Student's repetitious focus on alleged breach of contract exposes how frivolous, unreasonable, and without foundation it was for Student to allege the expedited claims of his complaint, and indicate Student presented and maintained the expedited claims for improper purposes.

At the beginning of the expedited due process hearing on December 9, 2025, the ALJ, who was a different ALJ than the one who held the December 1, 2025 prehearing conference, reviewed with Student and Cupertino the issues stated in the December 1, 2025 Order Following Prehearing Conference and Student's written objection to the statement of issues for the expedited due process hearing. The ALJ rejected Student's statement of the first claim in his complaint, which was included in the December 1, 2025 Order Following Prehearing Conference as Issue 1, because as reflected in the June 27, 2025 Expedited Decision in OAH Case Number 2025041265, whether Cupertino had a "basis of knowledge" that Student was "a child with a disability before the behavior that precipitated the disciplinary actions occurred" is not a separate legal issue. There is no independent remedy for prevailing on this question. In this context, disciplinary actions or disciplinary removals mean "because of a violation of a code of student conduct." (20 U.S.C. § 1415(k)(1)(E)(i).) This question regarding "basis of knowledge" is part of the analysis of the actual legal issue, which is whether the school district is required to conduct a manifestation determination for a student who did

not have an individualized education program, called an IEP, in effect at the time of disciplinary removals of the student from his current placement for more than 10 school days in a school year. The ALJ informed the parties the question of whether Cupertino had a basis of knowledge that Student was a child with a disability before the behavior that precipitated any disciplinary actions needed to be addressed by the parties in their presentation of the case, but it would not be a separate enumerated legal issue in the Expedited Decision.

The ALJ also informed the parties that the wording Student used in his complaint in his statement of claims 2 through 5, which was incorporated into Issues 2 and 3 stated in the December 1, 2025 Order Following Prehearing Conference, was incorrect. Student's complaint challenged Cupertino's alleged failure to conduct a "manifestation determination review." The ALJ clarified that a school district conducts a manifestation determination and if the parent disagrees with the manifestation determination, the parent can appeal that determination in an administrative law proceeding. (20 U.S.C. § 1415(k)(1)(E), (k)(3)(A) & (B); 34 C.F.R. §§ 300.532, 300.536(b)(2).) When sitting in appeal of the manifestation determination, the ALJ does a manifestation determination review. Accordingly, the ALJ would reword the two actual issues of the case to reflect the correct wording of the federal statutes.

Therefore, the expedited issues in the case were:

1. Did Cupertino fail to conduct a manifestation determination prior to removing Student from his current school setting, including afterschool programs, for more than 10 school days between April 11, 2025, and the end of the 2025 extended school year?

2. Did Cupertino fail to conduct a manifestation determination prior to removing Student from his current school setting, including afterschool programs, for more than 10 school days between the beginning of the 2025-2026 school year and November 5, 2025?

The ALJ rephrased and clarified with the parties the issues for the expedited hearing, 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 has been made.

Throughout the expedited due process hearing, the ALJ allowed Student to refer to the claims as enumerated in his November 5, 2025 complaint and considered all the enumerated and separately stated claims when ruling on the relevance of evidence. Student had ample opportunity to present competent evidence regarding each alleged violation of title 20 United States Code section 1415(k) asserted in claims 2 through 18 and 51 through 67 of his complaint, despite the grouping of those alleged violations by timeframe in the statement of the Issues in the December 1, 2025 Order Following Prehearing Conference. Student was in no way prejudiced by the grouping of his claims by timeframes. Student's December 5, 2025 Objection to Restatement of Issues and every oral repetition of it at hearing is overruled.

## 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 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All subsequent references to the Code of Federal Regulations are to the 2006 version. 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 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 begin

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 has 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 six years old and in kindergarten at the time of the hearing. Student resided within Cupertino's geographic boundaries at all relevant times. Student had a medical diagnosis of autism spectrum disorder. Student previously was eligible for special education under the primary category of autism but Parents revoked consent for special education and related services in November 2024.

## LITIGATION HISTORY

There is extensive litigation history between Student and Cupertino in the 12 months preceding Student filing this case, some of which impacts the scope of this Expedited Decision. The cases between Student and Cupertino, excluding the four cases

Student filed against other entities but related to the same circumstances as the disputes with Cupertino and dismissed by OAH for lack of jurisdiction over those entities, are summarized below.

OAH CASE NUMBER 2024100966, FILED BY CUPERTINO  
OCTOBER 25, 2024

On October 25, 2024, Cupertino filed OAH Case Number 2024100966 naming Student seeking a determination that its multidisciplinary Transitional Kindergarten Readiness Assessment Report dated June 2, 2024, satisfied all legal requirements such that Student was not entitled to any independent educational evaluations at public expense.

OAH CASE NUMBER 2024110522, FILED BY STUDENT NOVEMBER 15,  
2024

On November 15, 2024, Student filed his first case naming Cupertino, OAH Case Number 2024110522, and moved to consolidate his first case with the case Cupertino filed on October 25, 2024. Student alleged Cupertino:

- falsified IEP team meeting notes,
- sent inaccurate and incomplete injury reports,
- committed child abuse and neglect under the California Penal Code,
- failed to assign a fulltime one-to-one behaviorist/health aide,

- refused to provide timely progress data before IEP team meetings,
- failed to enable Student to make meaningful progress on his IEP goals,
- caused Student to regress because of an inappropriate placement,
- placed Student in an unsafe classroom,
- implemented an inappropriate curriculum without adequate focus on social-emotional learning,
- predetermined IEP goals in the September and October 2024 IEPs,
- failed to appropriately instruct Student,
- excluded Student from the Expanded Learning Opportunities Program, called ELOP or ELO-P, "after regular school ends" at Student's school,
- engaged in "repeated discriminations and retaliations" against Student and Parents,
- failed to provide report cards for two trimesters in the 2023-2024 school year,
- failed to provide non-disruptive observations, and
- locked Student in the room with an iPad for extended time when Parents prohibited Cupertino from allowing Student electronic devices during school time.

Student labeled his claims as concerning denial of FAPE on multiple bases. OAH granted Student's motion to consolidate Cupertino's case and Student's first case, to proceed to hearing on the dates set in Student's first case. Student then requested a continuance of the due process hearing of the consolidated matter to seek legal representation, which OAH granted to February 25, 2025. Student did not obtain legal representation. Student then requested a continuance to engage in mediation, which OAH granted and set the due process hearing to start on April 22, 2025.

#### OAH CASE NUMBER 2025040244, FILED BY STUDENT APRIL 4, 2025

While the consolidated matters of Cupertino's case and Student's first case were still awaiting hearing, Student filed his second case, OAH Case Number 2025040244. It included expedited and non-expedited claims. OAH set the due process hearing on the expedited claims to start on May 6, 2025, and the hearing on the non-expedited claims to start on May 13, 2025.

Student alleged Cupertino "expelled the Student from ELO-P" in a discriminatory and retaliatory practice on March 20, 2025, without a manifestation determination, and for the purpose of bringing in private-pay students to the program after regular school hours. Student alleged Cupertino violated Education Code section 46120 when it "misappropriated the funds specifically received for the Student."

Six days after filing this second complaint, on April 10, 2025, Student and Cupertino entered into a settlement agreement that resolved the three OAH cases on file at that time, the consolidated matters of OAH Case Numbers 2024100966 and 2024110522, and 2025040244. On April 11, 2025, the parties filed a joint request to dismiss those cases with prejudice.

## OAH CASE NUMBER 2025041265, FILED BY STUDENT APRIL 29, 2025

On April 29, 2025, only 18 days after the settlement, Student filed his third complaint, OAH Case Number 2025041265. It included expedited and non-expedited claims. OAH set the due process hearing on the expedited claims to start on May 28, 2025, and the hearing on the non-expedited claims to start on June 10, 2025.

The core of Student's third complaint was repeated allegations of events that Student cumulatively described as "[t]he District's intentional non-compliance with the Settlement Agreement." Cupertino filed a Notice of Insufficiency regarding the 12 non-expedited claims, and OAH determined Student had not sufficiently pleaded any of those claims. Student was afforded 14 days to file an amended complaint regarding the non-expedited claims, but he did not. When Student did not timely file an amended complaint regarding the non-expedited claims, OAH dismissed the case as to the non-expedited claims and vacated the non-expedited hearing dates. Cupertino also moved to dismiss Student's first claim, that Cupertino did not follow "the required process of establishing good cause before issuing a Stay Away order." OAH dismissed the claim because it is outside OAH's jurisdiction.

On May 22, 2025, Student moved to invalidate the April 10, 2025 settlement agreement based on Cupertino's alleged failures to follow it, essentially arguing breach of contract. OAH denied Student's motion on the basis that OAH does not have jurisdiction over the April 10, 2025 settlement agreement, including Student's request to invalidate it.

OAH held the due process hearing on Student's expedited claim and issued a Decision on June 27, 2025. The sole legal issue in the case was whether Cupertino violated title 20 United States Code section 1415(k) between April 11, 2025 – the date after the settlement agreement that extinguished any educationally related claim arising on and prior to April 10, 2025 – and April 29, 2025 – the date on which Student filed his complaint – by failing to hold a manifestation determination 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 challenged the timeframe at stake, seeking to reopen claims that arose before the April 10, 2025 settlement agreement. The ALJ who presided over the expedited due process hearing overruled Student's objection and also later denied Student's motion for reconsideration of the timeframe. The June 27, 2025 Expedited Decision considered Student's plea to deny any preclusive effect to the April 10, 2025 settlement agreement and determined "Parents waived claims through April 10, 2025." (Page 14.) The ALJ documented the authority on which OAH denied Student's attempt in the expedited due process hearing to evade the effect of the waiver language in the settlement agreement:

...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. CV20-142-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.) (Page 13.)

Integral to the case, and actually stated as a separate legal issue in the May 19, 2025 Order Following Expedited Prehearing Conference and June 27, 2025 Expedited Decision, was the question of whether Cupertino had a basis of knowledge that Student was a child with a disability before the behavior that precipitated the disciplinary action occurred. Title 20 United States Code section 1415(k)(5) and 34 Code of Federal Regulations part 300.534 provide “protections for children not yet eligible for special education and related services.” A child “who has not been determined to be eligible for special education and related services” and “who has engaged in behavior that violates a code of student conduct” may assert any of the protections provided under the IDEA.

In Student’s third case, it was necessary to answer this question of whether Cupertino had a statutorily defined “basis of knowledge” because for the period April 11 to 29, 2025, Student did not have an IEP and only received services that looked like special education and related services because of the April 10, 2025 settlement agreement. If Student had an IEP at that time, it would not have been necessary to consider whether Cupertino had, under title 20 United States Code section 1415(k)(5) and 34 Code of Federal Regulations part 300.534, a “basis of knowledge” that he was a child with a disability before the behavior that precipitated the disciplinary action occurred.

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Student invoked the expedited due process hearing procedures based on the allegation Cupertino had removed Student for disciplinary reasons for more than 10 school days but failed to comply with the procedural requirement of a manifestation determination under title 20 United States Code section 1415(k)(1)(E). Cupertino only was required to hold a manifestation determination if Student had an IEP in effect, or, if Student did not have an IEP, if Cupertino had a “basis of knowledge” Student was a child with a disability before the behavior that precipitated the disciplinary action occurred.

The ALJ first considered whether Student, who previously had an IEP, in fact had an IEP at the time of the alleged disciplinary removals such that Cupertino would have been required to conduct a manifestation determination. The ALJ concluded:

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. (Page 9.)

The ALJ summarized the effect of Parents’ November 19, 2024 revocation of consent: “The record established Student was not eligible for special education between April 11, 2025, and April 29, 2025.” (Page 16). This determination was necessary to the case, and led to the ALJ next considering whether, for the timeframe at issue in

Student's third case, Cupertino had a "basis of knowledge" that would have required it to conduct a manifestation determination if Student was removed for disciplinary reasons for more than 10 school days in a school year. The ALJ determined, "Cupertino conceded on the record that it had the required basis of knowledge during the relevant timeframe for this Expedited Decision." (Page 10.)

However, even if Cupertino would have been required to conduct a manifestation determination if Student had been removed from his educational setting due to violations of a code of Student conduct for more than 10 school days in a school year, Student failed to prove he was removed, for any reason, for more than 10 school days between April 11 and 29, 2025. Based on Student's failure to prove a change of placement as defined by 34 Code of Federal Regulations part 300.536, the ALJ declined to make any findings as to "whether Student was removed from [specified] activities, or whether any removals were disciplinary actions." (Page 19.) Ultimately, "Student did not prove that Cupertino's duty to convene a manifestation determination ... was triggered between April 11, 2025, and April 29, 2025." (*Ibid.*)

It is noteworthy, as it relates to the determination in this Expedited Decision regarding the current case that Parent presented the expedited claims for improper purposes, that during the expedited hearing in OAH Case Number 2025041265, Parent was invited and afforded the opportunity to testify to support the allegations of the expedited claims in that third complaint, specifically that Cupertino removed Student from any educational setting, curricula, or programming to discipline Student. Parent declined and did not testify.

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Student did not timely appeal the June 27, 2025 Expedited Decision to a court of competent jurisdiction and it became final, with all preclusive effects attached to that status.

#### OAH CASE NUMBER 2025060187, FILED BY STUDENT JUNE 5, 2025

On June 5, 2025, on the fourth day of the ongoing expedited due process hearing in OAH Case Number 2025041265, Student filed his fourth complaint, OAH Case Number 2025060187. It included expedited and non-expedited claims. OAH set the due process hearing on the expedited claims to start on July 1, 2025, and the hearing on the non-expedited claims to start on July 15, 2025. When OAH dismissed Student's only non-expedited claim for lack of jurisdiction, OAH dismissed the case as to the non-expedited claim and vacated the non-expedited hearing dates.

Student's fourth complaint alleged Cupertino removed Student from 20 different portions of curricula throughout the school year and Expanded Learning Opportunities Program between November 20, 2024, and June 6, 2025, and failed to conduct a manifestation determination.

The expedited hearing began on July 1, 2025. OAH issued a July 7, 2025 Order Dismissing Expedited Case with Prejudice for Failure to Prosecute. After three days of hearing and during the second witness's testimony, Parent failed and refused to proceed with testimony either of the witness on the stand or another witness Student requested who was available that day. Parent indicated he was considering withdrawing the case

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but refused either to proceed or unequivocally withdraw the case. Parent's comments indicated he wanted to end the hearing so he could, potentially, have a different judge decide the case. OAH dismissed Student's expedited case with prejudice for failure to prosecute, due to Student's abandonment of the case through Parent's refusal to continue to prosecute the case, in the middle of a hearing day with two witnesses waiting to testify.

Student did not timely appeal the July 7, 2025 Order Dismissing Expedited Case with Prejudice for Failure to Prosecute to a court of competent jurisdiction and it became final, with all preclusive effects attached to that status.

#### OAH CASE NUMBER 2025080032, FILED BY STUDENT JULY 30, 2025

On July 30, 2025, Student filed his fifth complaint, OAH Case Number 2025080032. It included expedited and non-expedited claims. OAH set the due process hearing on the expedited claims to start on August 26, 2025, and the hearing on the non-expedited claims to start on September 9, 2025.

Student's fifth complaint alleged Cupertino removed Student from more than 25 different portions of curricula from November 2, 2024, through June 6, 2025, and during summer 2025 regarding the Expanded Learning Opportunities Program between June 30 and July 25, 2025, and failed to conduct a manifestation determination. Almost all of Student's claims were identical to those stated in Student's fourth complaint, OAH Case Number 2025060187. Student also alleged Cupertino forced Parents to sign an IEP on January 25, 2023, then forced Parents to sign a settlement agreement in July 2023

based on Parents' challenges to the January 2023 IEP, and then breached the July 2023 settlement agreement. Student alleged Cupertino then failed to implement the January 2023 IEP since August 2024. Student alleged,

"The parents have already exhausted all administrative options including filing a complaint with the Department [o]f Education under the case [number] 09-25-1071 regarding non-compliance of the District with settlement agreements; however, the recent Presidential Executive Orders against [the Department of Education] has blocked processing of the complaint. The parents have no other choice to seek an emergency order through expedited due process hearing to compel the District to comply with law."

Despite the determination in the June 27, 2025 Expedited Decision in OAH Case Number 2025041265 that "Parents clearly and unambiguously revoked their consent for Student's special education eligibility," Student attempted to plead around that necessary legal conclusion by alleging in his fifth complaint that Parents "partially revoked consent on the January 2023 IEP ... while maintaining the fact that the Student was and still is eligible for special education" and that Parents "reinstated consent and requested an IEP meeting," which Cupertino allegedly failed to hold as of the date of the fifth complaint.

Cupertino filed a Notice of Insufficiency regarding the fifth complaint. OAH determined Student had not sufficiently pleaded any of the 10 non-expedited claims. Student was afforded 14 days to file an amended complaint regarding the non-expedited claims, but he did not. OAH dismissed the case as to the non-expedited claims and vacated the non-expedited hearing dates, which had the effect of closing the case based

on intervening events, described below. Cupertino also moved to dismiss claims 2 and 5 of the fifth complaint, seeking determinations of whether Cupertino violated Education Code sections 48900 and 46120, respectively. OAH dismissed those claims because they are outside OAH's jurisdiction.

The August 18, 2025 Order Following Expedited Prehearing Conference and Dismissing Claims Barred by Res Judicata dismissed parts of Student's remaining expedited issues in his fifth complaint, claims 1, 3 and 4, because they were limited by the July 7, 2025 Order in OAH Case Number 2025060187 dismissing Student's claims with prejudice from November 20, 2024, to June 6, 2025. The issues considered in OAH Case Number 2025060187 were whether Cupertino failed to conduct a manifestation determination as required by state and federal law, following greater than 10 days of disciplinary removals from Student's educational placement, including the Expanded Learning Opportunities Program, and informal suspensions between November 20, 2024, and June 6, 2025. The final order in OAH Case Number 2025060187 dismissed these claims, with prejudice, for the period November 20, 2024, to June 6, 2025, for failure to prosecute. Therefore, Student's attempt in OAH Case Number 2025080032 to again litigate whether Cupertino failed to conduct a manifestation determination as required by state and federal law, following greater than 10 days of disciplinary removals from Student's educational placement, including the Expanded Learning Opportunities Program and informal suspensions, between November 20, 2024, and June 6, 2025, was barred.

What remained to be determined in OAH Case Number 2025080032 was, possibly, whether Cupertino failed to conduct a manifestation determination as required by state and federal law, following greater than 10 days of disciplinary removals from Student's

educational placement, including the Expanded Learning Opportunities Program, and informal suspensions from August 30 to November 19, 2024, and from June 7 to July 30, 2025.

The expedited due process hearing began on August 26, 2025. The ALJ presiding over that expedited hearing reviewed with the parties for two hours the Issues for expedited hearing, the preclusive effect of some of the determinations of the OAH Expedited Decision and other Orders, pending written motions the parties filed related to the expedited hearing, and oral motions made that morning. Many of the rulings went against Student and required Student to make offers of proof before calling any witnesses. Parent decided not to proceed on the expedited claims and moved to withdraw the claims without prejudice. Because no witness had been called, OAH dismissed the expedited claims of OAH Case Number 2025080032 without prejudice, on the record.

OAH closed the case on September 5, 2025.

OAH CASE NUMBER 2025090479, FILED BY STUDENT  
SEPTEMBER 12, 2025

On September 12, 2025, Student filed his sixth complaint against Cupertino, OAH Case Number 2025090479. It included expedited and non-expedited claims. OAH set the due process hearing on the expedited claims to start on October 7, 2025, and the hearing on the non-expedited claims to start on October 28, 2025.

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Student's sixth complaint again alleged Cupertino removed Student from more than 25 different portions of curricula from November 2, 2024, through June 6, 2025, and during summer 2025 regarding the Expanded Learning Opportunities Program between June 30 and July 25, 2025, and failed to conduct a manifestation determination. Student's factual allegations were identical to those stated in Student's fourth complaint, OAH Case Number 2025060187, and fifth complaint, OAH Case Number 2025080032. Student again alleged Cupertino forced Parents to sign an IEP on January 25, 2023, then forced Parents to sign a settlement agreement in July 2023 based on Parents' challenges to the January 2023 IEP, and then breached the July 2023 settlement agreement. Student again alleged Cupertino failed to implement the January 2023 IEP since August 2024. Student again alleged,

"The parents have already exhausted all administrative options including filing a complaint with the Department [o]f Education under the case [number] 09-25-1071 regarding non-compliance of the District with settlement agreements; however, the recent Presidential Executive Orders against [Department of Education] has blocked processing of the complaint. The parents have no other choice to seek an emergency order through expedited due process hearing to compel the District to comply with law."

Despite the determination in the June 27, 2025 Expedited Decision in OAH Case Number 2025041265 that "Parents clearly and unambiguously revoked their consent for Student's special education eligibility," Student again attempted to plead around that necessary legal conclusion by alleging in his sixth complaint that Parents

“partially revoked consent on the January 2023 IEP ... while maintaining the fact that the Student was and still is eligible for special education” and that Parents “reinstated consent and requested an IEP meeting,” which Cupertino allegedly failed to hold as of the date of the sixth complaint.

Cupertino filed a Notice of Insufficiency regarding the sixth complaint. OAH determined the 26-page complaint alleged 25 claims, and the claims and relevant timeframes were almost identical to those pleaded in Student’s previously filed due process complaints, except for the addition of some new related claims and revised dates. Student’s complaint replicated numerous issues OAH previously determined to be insufficiently pleaded in OAH Case Numbers 2025041265 and 2025080032.

OAH determined Student’s sixth complaint against Cupertino had sufficiently pleaded five of the non-expedited claims, plus four more because Cupertino did not challenge their sufficiency, but had not sufficiently pleaded eight of the non-expedited claims. Student was afforded 14 days to file an amended complaint regarding the non-expedited claims, but he did not. Cupertino also moved to dismiss claims 5, 6, 7, and 21 of the sixth complaint, seeking determinations of whether Cupertino violated Education Code sections 48900, 46120, and 8482.6. OAH dismissed those claims because they are outside OAH’s jurisdiction.

In the September 30, 2025 Order Following Expedited Prehearing Conference, the ALJ who presided over that proceeding limited Student’s issues to whether Cupertino violated title 20 United States Code section 1415(k) by failing to hold a manifestation determination following more than 10 days of disciplinary removals from Student’s educational placement, including the Expanded Learning Opportunities Program and informal suspensions, between June 5, 2025, and September 12, 2025. The ALJ in effect

granted Cupertino's motion to dismiss Student's expedited claims that overlapped in time with those covered by the June 27, 2025 Expedited Decision in OAH Case Number 2025041265 and those dismissed with prejudice by the July 7, 2025 Order Dismissing Expedited Case with Prejudice for Failure to Prosecute in OAH Case Number 2025060187. The ALJ took under submission the remaining aspect of Cupertino's motion to dismiss Student's expedited claims, being any removals that Student occurred outside Cupertino's regular school year, specifically between June 6 and August 13, 2025.

Student objected to the statement of Issues for the expedited hearing and within that objection noted the September 23, 2025 Order Determining Non-Expedited Claims Partially Sufficient and Partially Insufficient; Order Dismissing Issues 5, 6, 7 and 21 for Lack of Jurisdiction, even as corrected on September 25, 2025, stated Student's September 12, 2025 complaint had 25 claims, when it actually had 26 claims and OAH had not addressed that 26th claim.

However, in the afternoon the day before the expedited hearing was scheduled to begin, Student withdrew the entire case without prejudice. OAH vacated all dates and dismissed the case on October 6, 2025.

#### THE CURRENT CASE: OAH CASE NUMBER 2024110210, FILED BY STUDENT NOVEMBER 5, 2025

On November 5, 2025, Student filed his seventh complaint against Cupertino, which included expedited and non-expedited claims. OAH set the due process hearing on the expedited claims to start on December 9, 2025, and the hearing on

the non-expedited claims to start on December 23, 2025. This Expedited Decision is being issued after the expedited hearing resulting from Student's seventh complaint.

Student called as witnesses and took testimony from:

- a kindergarten teacher in the 2025-2026 school year who was not Student's teacher but who attended a field trip to a local pumpkin patch by the four combined kindergarten classes and who had an interaction with Parent at school the next day;
- Student's kindergarten teacher for the 2025-2026 school year, who testified for eight hours across three days;
- a behavior aide who supported Student only on the first day of school in the 2025-2026 school year, August 14, 2025; and
- a behavior aide who supported Student from the second day of school in the 2025-2026 school year, August 15, 2025, through December 10, 2025.

After eight days of hearing, Student had failed to produce a scintilla of evidence that during the 2025-2026 school year through November 5, 2025, Student had been removed from his placement, even for one day let alone more than 10 school days. More significantly, Student failed to produce evidence of any possibility Student had been disciplined, for anything, let alone for a violation of a code of student conduct, during the 2025-2026 school year through November 5, 2025. Despite being repeatedly requested and directed to provide a list of the specific dates on which Student contended he had been removed from his placement as discipline between April 11 and November 5, 2025, Student failed to offer those dates.

Student did identify September 4, October 22, and October 23, 2025, as specific dates on which disciplinary removals occurred for which he was invoking an expedited due process hearing. Otherwise, Student continued only to identify date ranges in which he alleged disciplinary removals occurred, such as "between April 11, 2025 and June 5, 2025," "between August 14, 2025 and November 5, 2025," and "between October 1, 2025 and November 5, 2025."

When afforded more time to identify the specific dates Student intended to prove he had been removed, which would amount to the legally necessary "more than 10 school days," he did not. Student's questioning of his kindergarten teacher indicated Student believed and was contending a disciplinary removal occurred on October 31, 2025. Student's questioning of the teacher also implied Student believed and was contending disciplinary removals occurred on unspecified dates when pages of Student's classroom worksheets had been marked "did not attempt."

Student's questioning of the aide assigned to Student August 15 to December 10, 2025, indicated Student believed and was contending a disciplinary removal occurred in the last five minutes of the regular school hours on August 18, 2025. Therefore, Student's only identified removal dates consisted of August 18, September 4, and October 22, 23, and 31, 2025. The testimony of four witnesses did not support any characterization of events on any of those dates as removals from Student's placement, and particularly not anything related to discipline against Student for anything he did or did not do, let alone Student's violation of a code of student conduct.

Student failed to identify "more than 10 school days" on which removals purportedly occurred, and eight hours of testimony by the current classroom teacher produced no evidence to support Student's claims he was removed for disciplinary

reasons or justifying having invoked the expedited due process hearing procedures available under title 20 United States Code Section 1415(k). The ALJ therefore authorized Student to call the two behavior aides from the 2025-2026 school year as his next two witnesses, but conditioned Student's opportunity to call any other witnesses who were employees of Cupertino, members of the school board, or any other people on Parent testifying to establish a reasonable basis to believe Student had been removed from his placement for more than 10 school days for violations of a code of student conduct. On January 7, 2026, the ALJ scheduled:

- the aide assigned to Student only on August 14, 2025, to testify on January 13, 2026;
- the aide assigned to Student from August 15 to December 10, 2025, to testify on January 14, 2026; and
- Parent to testify on January 15, 2026.

Parent was on notice of his opportunity to testify on January 15, 2026, for one week. On January 14, 2026, Parent waited until one minute before the scheduled end of the hearing day to request a continuance based on an asserted urgent medical appointment for Student on January 15, 2026. The ALJ granted a continuance to January 22, 2026. The ALJ reiterated Parent was expected to testify on January 22, 2026, to establish any reasonable basis to believe Cupertino removed Student for disciplinary reasons during the timeframe asserted in Student's request for an expedited due process hearing, after which evidence Student would be permitted to call additional witness.

Parent stated his reluctance to testify and that he might elect not to testify because he did not want to, and he did not believe the ALJ could require him to. Cupertino stated Parent was on Cupertino's witness list and if Parent elected not to testify in Student's case-in-chief, Cupertino planned to call him as a witness during its presentation of evidence.

Parent on behalf of Student failed to appear on January 22, 2026, and did not testify. Due to Student's failure to appear and to prosecute the case, the ALJ closed the evidentiary portion of Student's case. Cupertino rested its case without presenting additional evidence. The ALJ closed the evidentiary record for the expedited due process hearing and ordered that any written closing argument be filed by January 28, 2026.

**EXPEDITED ISSUE 1: DID CUPERTINO FAIL TO CONDUCT A MANIFESTATION DETERMINATION PRIOR TO REMOVING STUDENT FROM HIS CURRENT SCHOOL SETTING, INCLUDING AFTERSCHOOL PROGRAMS, FOR MORE THAN 10 SCHOOL DAYS BETWEEN APRIL 11, 2025, AND THE END OF THE 2025 EXTENDED SCHOOL YEAR?**

Student contends Cupertino removed, suspended, or expelled Student from parts of school during regular school hours and from the Expanded Learning Opportunities Program after regular school hours and failed to hold a manifestation determination in required timelines.

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Cupertino contends Student was never removed from school, or from the Expanded Learning Opportunities Program after regular school hours, as discipline of Student. Cupertino contends Student did not have even one day of disciplinary removal and therefore did not have “more than 10 school days” of removals because Student violated a code of student conduct. Cupertino contends Student therefore did not have a right to a manifestation determination and Student improperly invoked an expedited due process hearing to compel Cupertino to hold a manifestation determination. Cupertino further contends even if there had been a change of Student’s placement due to more than 10 school days of disciplinary removals, Student had no right to a manifestation determination because Parents refused special education and related services in November 2024 and that triggered the exception to Cupertino’s “basis of knowledge” under title 20 United States Code section 1415(k)(5)(C).

Under federal and state special education law, students found eligible for special education are afforded certain rights in disciplinary matters. Those rights include, in certain circumstances, the right to a determination of whether the student’s misconduct “that led to a disciplinary change of placement” was caused by or directly related to the student’s disability. (20 U.S.C. § 1415 (k)(1)(E)(i)(I); 34 C.F.R. § 300.530.) 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).) For disciplinary changes in placement greater than 10 consecutive school days, or greater than 10 non-consecutive school days that are a pattern amounting to a change of placement, the disciplinary measures applicable to students without disabilities may only be applied to a special education student if the conduct resulting in discipline is determined not to have been a manifestation of the special education student’s disability. (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c).)

For a student who has not yet been determined eligible for special education, the right to a manifestation determination applies only if the student engaged in behavior that violated a rule or code of conduct of the local education agency and the local educational agency had 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).) The local educational agency had a basis of knowledge that a student was a student with a disability before the behavior occurred if:

- The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- The parent of the child has requested an evaluation of the child pursuant to 20 U.S.C. § 1414(a)(1)(B); or
- The teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency. (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

However, there are statutory exceptions. The local educational agency shall not be deemed to have knowledge that the child is a child with a disability if:

- The parent of the child has not allowed an evaluation of the child pursuant to 20 U.S.C. § 1414(a)(1)(D);

- The parent of the child has refused special education and related services; or
- The child has been evaluated and it was determined that the child was not a child with a disability under the IDEA. (20 U.S.C. § 1415(k)(5)(C); 34 C.F.R. § 300.534(c).)

Cupertino urges OAH to determine that based on Parents' revocation of consent to special education on November 19, 2024, as determined in the June 27, 2025 Expedited Decision of OAH Case Number 2025040187, Cupertino statutorily did not have a "basis of knowledge" that Student was a child with a disability, and therefore was not required to hold a manifestation determination if Student thereafter was removed from his educational placement for more than 10 school days in a school year due to violations of a code of student conduct.

It is unnecessary to do so. Before a student has a right to a manifestation determination, regardless of whether the student does or does not have an IEP at the time, the student must have been removed from his educational setting because of a violation – by the student – of a code of student conduct. It therefore is irrelevant whether Student had an IEP between April 11, 2025, and the end of the 2025 extended school year, or whether Cupertino had a "basis of knowledge" Student was a child with a disability. Student failed to prove by a preponderance of the evidence Student ever violated a code of student conduct. Student failed to prove by a preponderance of the evidence Cupertino ever disciplined Student for any reason, especially for violating a code of student conduct. Student failed to prove by a preponderance of the evidence Cupertino removed him for a single school day, let alone more than 10 school days, between April 11, 2025, and the end of the 2025 extended school year.

The June 27, 2025 Expedited Decision approached the topic from the other angle, asserting,

“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).)”

(Page 9.)

It is equally appropriate to determine as “the threshold question” whether the local educational agency has undertaken disciplinary removals for “more than 10 school days in a school year” (34 C.F.R. § 300.536(a)(2)(i)) before considering whether the student who has been subjected to disciplinary removals is entitled to the special education behavioral protections. It is not necessary to consider a hypothetical legal question that has no application to the actual facts of a case where, as here, Student failed to meet his burden of proof that he was removed for more than 10 school days in a school year for violating any code of student conduct.

At the expedited due process hearing on December 9, 2025, Cupertino renewed its motion to dismiss the expedited claims asserted in Student’s complaint alleging disciplinary removals that covered the same timeframes as:

- Student’s waiver of all claims as of April 10, 2025, in the April 10, 2025 settlement agreement, on its own and as enforced by the June 27, 2025 Expedited Decision in OAH Case Number 2025041265;

- Student's claims determined in the June 27, 2025 Expedited Decision in OAH Case Number 2025041265; and
- Student's claims dismissed with prejudice in the July 7, 2025 Order Dismissing Expedited Case with Prejudice for Failure to Prosecute in OAH Case Number 2025060187.

The ALJ took Cupertino's motion under submission to be considered along with Student's prior written opposition to Cupertino's written motion to dismiss and Student's argument at the expedited due process hearing.

For the same reasons as it is not necessary to determine whether Cupertino had the statutorily defined "basis of knowledge," it is not necessary to determine whether Student's expedited claims before April 11, 2025, and between April 11, 2025, and the end of the 2025 extended school year, are precluded by the settlement agreement, the June 27, 2025 Expedited Decision in OAH Case Number 2025041265, and/or the July 7, 2025 Order Dismissing Expedited Case with Prejudice for Failure to Prosecute in OAH Case Number 2025060187. Student failed to prove by a preponderance of the evidence Student ever violated a code of student conduct. Student failed to prove by a preponderance of the evidence Cupertino ever disciplined Student for any reason, especially for Student violating a code of student conduct. Student failed to prove by a preponderance of the evidence Cupertino removed Student for a single school day, let alone more than 10 school days, between April 11, 2025, and the end of the 2025 extended school year. Cupertino's motion to dismiss Student's expedited claims based on waiver or preclusion is denied as moot based on Student's failure of proof.

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Student failed to prove he was entitled to a manifestation determination because he failed to prove he was removed from his school setting, including programs after regular school hours, for more than 10 school days between April 11, 2025, and the end of the 2025 extended school year.

EXPEDITED ISSUE 2: DID CUPERTINO FAIL TO CONDUCT A MANIFESTATION DETERMINATION PRIOR TO REMOVING STUDENT FROM HIS CURRENT SCHOOL SETTING, INCLUDING AFTERSCHOOL PROGRAMS, FOR MORE THAN 10 SCHOOL DAYS BETWEEN THE BEGINNING OF THE 2025-2026 SCHOOL YEAR THROUGH NOVEMBER 5, 2025?

Student contends Cupertino removed, suspended, or expelled Student from parts of school during regular school hours and from the Expanded Learning Opportunities Program after regular school hours and failed to hold a manifestation determination in required timelines.

Cupertino contends Student was never removed from school, or from the Expanded Learning Opportunities Program after regular school hours, as discipline of Student. Cupertino contends Student did not have even one day of disciplinary removal and therefore did not have "more than 10 school days" of removals because Student violated a code of student conduct. Cupertino contends Student therefore did not have a right to a manifestation determination and Student improperly invoked an expedited due process hearing to compel Cupertino to hold a manifestation determination.

Cupertino further contends even if there had been a change of Student's placement due to more than 10 school days of disciplinary removals, Student had no right to a manifestation determination because Parents refused special education and related services in November 2024 and that triggered the exception to Cupertino's "basis of knowledge" under title 20 United States Code section 1415(k)(5)(C).

Student failed to prove any disciplinary removals between August 14 and November 5, 2025. Every example of a so-called removal Student raised was proven by a preponderance of the evidence not to be a disciplinary removal as contemplated by title 20 United States Code section 1415(k). It was unreasonable and improper for Student to invoke an expedited due process hearing. Each purported removal is addressed below.

On the third day of school, August 18, 2025, Student's kindergarten teacher concluded instruction slightly before the end of the day, with approximately five minutes remaining in the regular school day. She told all the students to go outside in the playground area adjacent to the kindergarten classrooms and run around. Student asked his aide for his backpack and water bottle, and the aide helped Student gather those items and then go outside. The teacher then called all the students back into the classroom to sit and wait for their parents to come to the classroom door to get them. The other students entered the classroom. Student did not go back into the classroom. He sat down on a bench outside the classroom. When Parent entered the campus to approach the classroom to pick up Student, the aide waived at Parent to get his attention and have Parent meet Student at the bench Student was sitting on.

The fact that on August 18, 2025, Student was outside the classroom while his classmates were inside the classroom, even if it was for as many as five minutes, was not a removal for Student's violation of a code of student conduct and did not count as an event that could have, with additional days of disciplinary removals, required Cupertino to hold a manifestation determination.

On September 4, 2025, Student's aide overheard other staff say Parent needed to go to the office after school to receive some paperwork from the principal. Student's kindergarten teacher concluded instruction slightly before the end of the day, with approximately five minutes remaining to the regular school hours. Student's aide believed he would be helping Parent if he took Student to the office to meet Parent there and avoid Parent needing to walk past the office to the other side of campus to the kindergarten classrooms to pick up Student. With less than five minutes remaining in the regular school hours, the aide walked Student to the office and waited with him there for Parent to arrive. When Parent arrived to campus, the school secretary waved Parent down so he would not have to walk to the other side of campus to the kindergarten classrooms because Student was inside the office waiting for Parent, where Parent needed to pick up paperwork from the principal.

The fact that on September 4, 2025, Student was outside the classroom while his classmates were inside the classroom, even if it was for as many as five minutes, was not a removal for Student's violation of a code of student conduct and did not count as an event that could have, with additional days of disciplinary removals, required Cupertino to hold a manifestation determination.

On October 22, 2025, all four kindergarten classes took a fieldtrip to a local pumpkin patch. Student traveled with his classmates to and from the pumpkin patch by school bus. After the fieldtrip, Student's teacher sent all her students' parents three photographs from the trip. Student did not appear in any of the photographs, although part of his body possibly was at the right edge of one of the photos. Parent inferred from Student's absence from the three photos that Student had been "removed" from the activities at the pumpkin patch and that if Student was removed it must have been as punishment for any bad behavior. The preponderance of the evidence did not establish Student was removed from any activities at the pumpkin patch, or that any discipline of Student for any reason occurred at the pumpkin patch.

The fact that Student was not documented in the three photographs Student's teacher shared from the kindergarten classes' field trip to a pumpkin patch on October 22, 2025, was not a removal for Student's violation of a code of student conduct and did not count as an event that could have, with additional days of disciplinary removals, required Cupertino to hold a manifestation determination.

On October 23, 2025, Parent was on campus after regular school hours while Student was in the Expanded Learning Opportunities Program. A kindergarten teacher who was not Student's teacher approached Parent to investigate his presence in an area that parents were not expected to be at that time. The interaction devolved into a conflict due to Parent's confrontational manner and ultimately Parent was escorted

off campus. Although Student could have remained in the Expanded Learning Opportunities Program until its conclusion because Parent's removal from campus had no connection to Student's conduct, Parent took Student with him and characterized it as a disciplinary removal of Student by Cupertino.

As with the questions of "basis of knowledge" and preclusive effects of the waiver in the April 10, 2025 settlement agreement and the June 27, 2025 Expedited Decision and July 7, 2025 Order Dismissing Expedited Case with Prejudice for Failure to Prosecute, it is not necessary to determine whether actual disciplinary removals from the Expanded Learning Opportunities Program after regular school hours can be included in a non-special education student's attempt to invoke the right to a manifestation determination after more than 10 school days of disciplinary removals in a school year. Student failed to establish any school days of disciplinary removal, let alone more than 10 school days of disciplinary removals, even if disciplinary removals from the Expanded Learning Opportunities Program were to be included.

The fact that Parent was escorted off campus after regular school hours and before the conclusion of the Expanded Learning Opportunities Program hours on October 23, 2025, and Parent chose to take Student with him at that time, was not a removal for Student's violation of a code of student conduct and did not count as an event that could have, with additional days of disciplinary removals, required Cupertino to hold a manifestation determination.

On October 31, 2025, during a parade of students in Halloween costumes during regular school hours, Student's classroom gathered outside against a building for a group photo by people attending the parade. Student was sitting down in the center of the front row. He stood up before the group photo was taken. His aide entered the

group of children to support. Student and his aide then were blocking the audience's view of the students behind them. Student's teacher directed the aide to move Student, and the aide guided Student out of the center of the group to be the last student on the left edge of the row of standing students for the group photograph. Parent characterized the event as a disciplinary removal of Student by Cupertino.

The fact that Student was sitting in the center of the front row of his group of classmates in Halloween costumes on October 31, 2025, stood up and blocked the audience's view of the students behind him, and was repositioned to be standing as the last student on the left edge of the row of standing students for the group photo was not a removal for Student's violation of a code of student conduct and did not count as an event that could have, with additional days of disciplinary removals, required Cupertino to hold a manifestation determination.

Some worksheets Student was assigned in class during the period August 14 to November 5, 2025, contained the notations applied by Student's kindergarten teacher that Student did not attempt them. Parent characterized Student's documented lack of attempts to complete some worksheets as reflecting disciplinary removals of Student by Cupertino. Student's teacher had not removed Student from the opportunity to participate in the worksheet activities. Student's aide had not removed Student from the opportunity to participate in the worksheet activities. Student was present in the classroom but did not put effort into performing the tasks and activities the worksheets required, even with encouragement and attempts by Student's teacher and aide to engage Student in the activities.

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Student's questioning of his kindergarten teacher and two aides at hearing focused on whether each of them had performed tasks or functions Parent asserted had been required of them and of Cupertino by the April 10, 2025 settlement agreement. Parent consumed an unreasonable amount of time at hearing in pursuit of Student's argument that Cupertino breached the April 10, 2025 settlement agreement, not evidence of disciplinary removals for Student's violation of any code of student conduct totaling more than 10 school days in any single school year. Student has repetitively filed the same expedited claims, lost them on lack of proof and failure to prosecute, withdrawn them on the morning of hearing or the afternoon before, and attempted to relitigate claims Student already lost. Student has repeatedly filed unmeritorious motions, conducted unnecessary discovery, and engaged in tactics that were frivolous and solely intended to cause unnecessary delay of resolution of his purportedly expedited claims. In other venues, Parent on behalf of Student might be deemed to be a "vexatious litigant" under Code of Civil Procedure section 391. In this specific administrative law expedited due process hearing, Student's expedited claims were frivolous, unreasonable, and without foundation, and Parent's pattern of conduct establishes Student presented and maintained the expedited claims for improper purposes.

Student failed to prove he was entitled to a manifestation determination because he failed to prove he was removed from his school setting, including programs after regular school hours, for more than 10 school days between August 14 and November 5, 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.

### EXPEDITED ISSUE 1:

Cupertino did not fail to conduct a manifestation determination prior to removing Student from his current school setting, including afterschool programs, for more than 10 school days between April 11, 2025, and the end of the 2025 extended school year.

Cupertino prevailed on Expedited Issue 1.

### EXPEDITED ISSUE 2:

Cupertino did not fail to conduct a manifestation determination prior to removing Student from his current school setting, including afterschool programs, for more than 10 school days between the beginning of the 2025-2026 school year through November 5, 2025.

Cupertino prevailed on Expedited Issue 2.

## ORDER

All Student's requests for relief are 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.

KARA HATFIELD

Administrative Law Judge

Office of Administrative Hearings