BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

CASE NO. 2026010399

EXPEDITED DECISION

MARCH 4, 2026

On January 12, 2026, 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 Clifford H. Woosley heard this matter by videoconference on February 3, 4, and 11, 2026. Parent represented Student. Cupertino did not appear at the hearing.

On February 11, 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 5:00 p.m. on February 17, 2026, but did not continue the matter. Student filed a closing brief, which included a motion for default and a request for sanctions. OAH has denied both motions.

In this Decision, a prehearing conference is called a PHC, a free appropriate public education is called a FAPE, and an individualized education program is called an IEP. Cupertino Union School District is called Cupertino.

RESPONDENT CUPERTINO'S PARTICIPATION

On January 13, 2026, Cupertino filed notice of representation. On January 21, 2026, Cupertino filed Notice regarding its intended case participation, along with the declaration of its attorney, Jennifer Nix. Cupertino informed OAH that it would not be appearing at expedited prehearing conferences or for expedited hearing, and that Cupertino expected that OAH would proceed with the expedited hearing without Cupertino's presence or participation. Cupertino reserved its right to respond to any motion or notice filed by Parent.

Cupertino acknowledged that Parent of Student had the right to file special education expedited due process complaints under federal and state law. However, Cupertino contended that Parent did not have the right to force Cupertino to attend serial hearings on the same issues, oppose renewed frivolous motions, or to expend public resources, exceeding tens of thousands of dollars, to continue to lend credence

to Parent's frivolous contentions. Cupertino contended that Parent continued to assert, in this due process and multiple duplicative motions, that Student faced disciplinary removals, despite having never been able to produce any documentary or testimonial evidence of such removal, in multiple due process proceedings and motions.

EXPEDITED ISSUES

Student alleged 70 issues in a 74-page attachment to OAH's form complaint. These alleged issues are called the complaint's issue allegations. At the January 26, 2026 expedited PHC, the complaint's issue allegations 1 through 21 and 54 through 70, were clarified as the issues for the expedited hearing. All but three of the complaint's issue allegations, and a few introductory sentences of the 74-page attachment, were identical to Student's previous filing in OAH Case No. 2025110210. At the expedited PHC, Parent acknowledged that the remaining 67 complaint's issue allegations misstated the time periods and requested that they be deemed to be for November 5, 2025, to the date of the new complaint's filing, because Parent had been in a hurry to file the new complaint. Parent's request was granted.

Student's complaint named the YMCA of Silicon Valley and Cupertino Union School District's Board of Education as respondents. In prior expedited actions filed by Parent, OAH dismissed the YMCA and the School Board as respondents because they did not fall within the legal definition of public agencies obligated to offer Student a FAPE. They were not within the jurisdiction of OAH's Special Education Division. Parent acknowledged this at the January 26, 2026 expedited PHC, again noting that Parent had

been in a hurry to file the new complaint. YMCA of Silicon Valley and the Cupertino Union School District's Board of Education were dismissed as respondents in this due process proceeding, at the expedited prehearing conference.

The complaint's expedited issue allegations contain contentions regarding removal or preclusion from classes, after-school programs, educational interventions, and extracurricular activities between November 5, 2025, and January 12, 2026, when Parent filed Student's complaint. These included, for example, the

- Expanded Learning Opportunities Program, reading, writing, and math interventions,
- physical education,
- social activities, and
- student-parent school activities.

The complaint's expedited issue allegations constitute underlying factual allegations that Student seeks to prove at the expedited hearing. Every one of Student's expedited issue allegations allege that Cupertino violated 20 United States Code section 1415(k).

At the expedited PHC, the ALJ reminded Parent that Student sought an expedited hearing regarding Cupertino's alleged failure to conduct a "manifestation determination review," after Cupertino's alleged disciplinary removal of Student for more than 10 days, during the issues' timeframe, for the violation of a code of student conduct. The ALJ clarified for Parent that the threshold legal issue, in determining if section 1415(k) applied, was the removal or suspension of Student, for more than 10 days, due to

Student's violation of a code of student conduct. Absent such disciplinary removal, section 1415(k) would not apply. Student would not be entitled to a manifestation determination meeting, even if Student were a special education child.

Accordingly, the ALJ reworded the complaint's expedited issue allegations of underlying factual assertions into three inclusive issues for hearing, consistent with the wording of the federal statutes. (20 U.S.C. § 1415(k)(1)(E), (k)(3)(A) & (B); 34 C.F.R. §§ 300.532, 300.536(b)(2).) The ALJ did not change the substance of Student's assertions in clarifying and restating Student's expedited issues, as allowed 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].) Parent acknowledged at the expedited PHC that Parent understood the stated issues.

The expedited issues in the case are:

1. Did Cupertino remove Student from Student's current school setting, including after-school programs, because Student violated a code of student conduct, for more than 10 school days, between November 5, 2025, and January 12, 2026?

2. If so, did Cupertino have a basis of knowledge, between November 5, 2025, and January 12, 2026, that Student was a child with a disability before the behavior that precipitated the alleged disciplinary actions occurred?

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3. If so, did Cupertino violate Title 20 United States Code section 1415, subdivision (k), by failing to conduct a manifestation determination review before removing Student from Student's current school setting, including after-school programs, for more than 10 school days between November 5, 2025, and January 12, 2026?

The expedited PHC Order read that the complaint's filing was January 13, 2026. However, Student filed the complaint at 4:59 p.m., January 12, 2026. The issues reflect the proper date. Otherwise, the issues are those which Parent reviewed and acknowledged at the expedited PHC.

On the first day of hearing, the ALJ reminded Parent that Student must prove-up all three issues to receive any relief in the expedited hearing. In other words, Student needed to prove by a preponderance of the evidence that a disciplinary removal of more than 10 school days took place, as stated in Issue 1. Then, Student must demonstrate in Issue 2 that Cupertino had a basis of knowledge that Student was a child with a disability. Finally, Student must prove Issue 3's assertion that Cupertino failed to conduct a manifestation determination review. Parent acknowledged that Parent understood.

At the expedited PHC, Student asked that the hearing be continued because Parent wanted to subpoena witnesses. Parent was well aware of the subpoena process. For example, in Student's prior action, OAH Case Number 2025110210, Student

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Requested, received, and issued 32 subpoenas for individuals to testify within five business days of the complaint's filing. Here, Student filed the matter on January 12, 2026. On January 21, 2026, Cupertino gave notice that it would not participate in the expedited hearing. Still, Parent did not issue any subpoenas.

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

At the expedited PHC, the ALJ reminded the Parent that, if Parent felt unable to prosecute the case at that time, Parent on behalf of Student could withdraw and dismiss the case, without prejudice. Parent chose to prosecute, proceeding to hearing on February 3, 2026.

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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 FAPE 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 school 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).) In this Decision, 20 United State Code, section 1415(k) is called section 1415(k).

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).)

LITIGATION HISTORY

There is extensive litigation history between Student and Cupertino during the year preceding Student's filing of this case, some of which impacts the scope of this Expedited Decision. These cases between Student and Cupertino 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 June 2, 2024 multidisciplinary Transitional Kindergarten Readiness Assessment Report 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 the first case naming Cupertino, OAH Case Number 2024110522, and moved to consolidate Student's first case with the case Cupertino filed on October 25, 2024. Student alleged 16 claims against 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 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, "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
- 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 the claims as denials of FAPE on multiple bases. OAH granted Student's motion to consolidate Cupertino's case and Student's first case, which were to proceed to hearing on the dates set in Student's case. Student 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. OAH granted the parties' request to mediate and continued the due process hearing to April 22, 2025.

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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 a second case, OAH Case Number 2025040244. It included expedited and non-expedited claims. OAH set the due process hearing on the expedited claims for May 6, 2025, and the hearing on the non-expedited claims for 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 review meeting, 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 OAH Case Number 2025040244. This is referred to the April 2025 Settlement Agreement. 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 a third complaint, OAH Case Number 2025041265. It included expedited and non-expedited claims. OAH set the due process hearing on the expedited claims for May 28, 2025, and the hearing on the non-expedited claims for 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 pled any of those claims. Student was afforded 14 days to file an amended complaint regarding the non-expedited claims, but Parent did not amend. OAH then 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.

OAH held the due process hearing on Student's expedited claim and issued an Expedited 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's waiver of any educationally related claims, and April 29, 2025, the date on which Student filed the complaint. Student's assertions of disciplinary removals that required Cupertino to hold a manifestation determination review meeting of Student included 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." (April 2025 Settlement Agreement, page 14.)

The ALJ stated that OAH did not have jurisdiction to hear claims waived by a prior settlement agreement, and documented the authority on which OAH denied Student's attempt to evade the effect of the waiver language in the April 2025 Settlement Agreement. (See *Y.G. v. Riverside Unified 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].) The ALJ ruling stated that if Student sought to invalidate, or set aside, a settlement agreement, Student 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.) Despite the clarity of the ALJ's findings, Parent on behalf of Student repeatedly asserted that Cupertino breached the settlement agreement in support of Student's claims in multiple motions and assertions in Student's five subsequently filed due process complaints.

A separate legal issue in the 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 allegedly precipitated disciplinary removal. If Student had an IEP at that time, it would not have been necessary to consider whether Cupertino had a "basis of knowledge." 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, if the school district had a "basis of knowledge."

In Student's third case, the Decision considered the question of whether Cupertino had a current IEP, because Student was receiving services that appeared to be provided by the April 2025 Settlement Agreement, only.

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 [Student] to attend McAuliffe [Elementary School] as [Student] is no longer a special education student?" Thus, Parents clearly and unambiguously revoked their consent for Student's special education eligibility. (Page 9.)

Student did not have an IEP because Parents removed Student from special education. However, the question of Student's special education status was not determinative in Student's third case because the ALJ found that Parent failed to prove a change of placement, as defined by 34 Code of Federal Regulations part 300.536, for

more than 10 school days in the school year. Section 1415(k) was inapplicable because Cupertino's duty to convene a manifestation determination review meeting was not triggered by behavior violating a student code of conduct, between April 11, 2025, and April 29, 2025.

Notably, Parent was invited and afforded the opportunity to testify to support the allegations of the expedited claims in Student's third complaint, especially about disciplinary removals. Parent declined and did not testify at hearing.

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, Parent filed Student's fourth complaint, OAH Case Number 2025060187, during ongoing expedited due process hearing on Student's 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 July 1, 2025, and the hearing on the non-expedited claims to start on July 15, 2025. OAH dismissed Student's only non-expedited claim for lack of jurisdiction.

Student's expedited claims in the fourth complaint alleged Cupertino removed Student from 20 different portions of curricula throughout the school year and the Expanded Learning Opportunities Program between November 20, 2024, and June 6, 2025. Therefore, Student asserted that Cupertino was obligated to conduct a manifestation determination review.

The expedited hearing began on July 1, 2025. After three days of hearing and during the second witness's testimony, Parent failed and refused to proceed with testimony of the witness on the stand or another witness, who Student requested and was available to testify. Parent's comments indicated Parent wanted to end the hearing so Student could, potentially, have a different judge decide the case. OAH issued a July 7, 2025 Order Dismissing Expedited Case with Prejudice for Failure to Prosecute, due to Student's abandonment of the case when Parent refused to continue, 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, Parent filed Student's 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 based on

Parents' challenges to the January 2023 IEP, and then breached the 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 Student's 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 Parent did not amend. 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 Student's 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 school 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 2025060187dismissed 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, following greater than 10 school days of disciplinary removals, from 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 review as required by state and federal law, following greater than 10 school 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. For two hours, the presiding ALJ reviewed with the parties 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, Parent filed Student's 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 21, 2025.

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 review. 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 that Parents had already exhausted all administrative options.

Despite the determination in the June 27, 2025 Expedited Decision 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 Student's 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.

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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 Parent did not amend. Cupertino also moved to dismiss four claims of the sixth complaint, which asserted 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 review following more than 10 school 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, regarding alleged removals that occurred outside Cupertino's regular school year, specifically between June 6 and August 13, 2025.

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Student objected to the statement of Issues for the expedited hearing. 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.

OAH CASE NUMBER 2025110210, FILED BY STUDENT NOVEMBER 5, 2025

On November 5, 2025, Parent filed Student's 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. The expedited hearing convened as scheduled, and lasted nine hearing days. The Expedited Decision on Student's seventh complaint was issued on February 4, 2026.

Student called and took testimony from four witnesses: two kindergarten teachers and two behavior aides. Parent examined one of the kindergarten teachers for eight hours. Parent was scheduled to testify on the last day of hearing, but Parent did not appear and did not testify. The ALJ closed the record, concluded the evidentiary hearing, permitted the parties to file closing briefs, and submitted the matter for decision.

The Expedited Decision was timely issued on February 4, 2026. The ALJ found that Parent had not submitted a scintilla of evidence which supported Parent's contention that Cupertino ever removed Student from Student's current educational setting to another setting or by suspension, because Student violated a code of student conduct. The ALJ found that Student's arguments of multiple "disciplinary removals" were simply not supported by evidence. The witnesses' testimony and the documentary

evidence clearly demonstrated Student was never disciplined by removal. The times that Student may have not participated in some activities during the school day because Student declined or was having some maladaptive behavior, or that Student missed a group picture, were not disciplinary removals as contemplated by section 1415(k).

Whether Student was a special education student or Cupertino had a "basis of knowledge" (20 U.S.C. § 1415(k)(5)(B)) was irrelevant. Parent did not demonstrate any disciplinary proceeding, action, or removal of Student. Section 1425(k) did not apply to Student. Since Student was therefore not entitled to a manifestation determination review, Cupertino was not obligated to hold a manifestation determination review meeting. Cupertino prevailed in Parent's seventh filing with OAH.

The ALJ also reviewed Parent's litigative history before OAH and found that, Parent on behalf of Student might be deemed to be a "vexatious litigant" under Code of Civil Procedure section 391. Shortly before the start of the hearing on the non-expedited issues, Parent dismissed the remainder of Student's case.

THE CURRENT CASE: OAH CASE NUMBER 2026010399, FILED BY STUDENT JANUARY 12, 2026

On January 12, 2026, Parent filed this due process request, Student's eighth complaint, against Cupertino, which included expedited and non-expedited claims. OAH set the due process hearing on the expedited claims to start on February 3, 2026, and the hearing on the non-expedited claims to start on March 3, 2026. This Expedited Decision is being issued after the Expedited Decision in Student's seventh complaint was issued on February 4, 2026.

OAH schedules hearing days, by videoconference, from 9:30 a.m. to 3:30 p.m. However, Parent stated that Parent needed to have the hearing finish by 12:30 p.m. for the first two days of hearing and by 1:30 p.m. for the last day of hearing, because Parent was required to pick up Parent's children, including Student, from school. If Parent was late, the elementary school would call the deputy sheriff. Therefore, though there were three days of hearing, the days were shortened.

Student was in kindergarten at the time of the hearing. Student resided within Cupertino's geographic boundaries at all relevant times. Student was previously eligible for special education, but Parents revoked consent for special education and related services in November 2024.

ISSUE 1: DID CUPERTINO REMOVE STUDENT FROM STUDENT'S CURRENT SCHOOL SETTING, INCLUDING AFTER-SCHOOL PROGRAMS, BECAUSE STUDENT VIOLATED A CODE OF STUDENT CONDUCT, FOR MORE THAN 10 SCHOOL DAYS, BETWEEN NOVEMBER 5, 2025, AND JANUARY 12, 2026?

Student contended that Cupertino had removed Student from Student's current school setting, including after-school programs, because Student violated a code of student conduct, for more than 10 school days, between November 5, 2025, and January 12, 2026.

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 greater than 10 consecutive school days, or greater than 10 non-consecutive school days that are a pattern amounting to a change of placement, constitutes a change of placement. (34 C.F.R. § 300.536(a)(1).) 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).)

Here, Parent alleged multiple disciplinary removals, offering testimony, documentary evidence, and argument, that failed to demonstrate that Student was ever removed from any educational setting, for any length of time, for violating a student code of conduct.

PARENT'S TESTIMONY AT THE HEARING

Unlike Student's prior due process hearings, Parent testified at this hearing. Parent provided approximately six hours of testimony, under penalty of perjury, over three hearing days. Since there were no participating opposing counsel and party at hearing, Parent was not subjected to cross-examination.

The ALJ interacted with Parent during Parent's testimony. The ALJ explained how to lay foundation for an exhibit's admission. The ALJ would sometimes repeat back to Parent what the ALJ heard Parent say, seeking clarity. Or the ALJ asked for more information in an attempt to better understand Parent's testimony. Generally, Parent was provided the freedom to testify as Parent determined was appropriate to support Student's expedited case.

Parent was allowed to refer to the factual issue allegations as enumerated in Student's January 12, 2026 complaint. Student had ample opportunity to present competent evidence regarding each alleged violation of title 20 United States Code section 1415(k), asserted in the complaint's issue allegations 1 through 21 and 54 through 70 of Student's eighth complaint. During testimony, Parent said to ignore, or withdraw, the complaint's issue allegations numbers

- 17,
- 18,
- 19,
- 20,
- 21,
- 61,
- 62,
- 63,
- 67,
- 68,
- 69, and
- 70.

Parent had uploaded almost 4000 pages of proposed exhibits to OAH's Case Center electronic evidence application. Parent offered many exhibits into evidence, asserting that they were relevant and supported Parent's testimony. The ALJ admitted 39 exhibits, at Parent's request. However, the ALJ cautioned Parent that admission of

an exhibit did not mean that the ALJ was accepting the exhibit as proof of the fact or issue Parent was alleging. Exhibits would be given the evidentiary weight that was appropriate. The ALJ explained that many, if not most, of the exhibits would have been objected to by the opposing party, if they had attended the hearing. Such objections would have successfully excluded many of the exhibits.

Generally, Parent's testimony was difficult to follow because Parent's testimony regularly returned to conspiratorial themes, misstatements of facts or law, or long convoluted arguments. Also, outside of and during Parent's testimony, Parent would break into invectives against Cupertino, Student's elementary school's staff, Cupertino's counsel, or OAH ALJs.

EXPANDED LEARNING OPPORTUNITIES PROGRAM

This subsection concerns the complaint's issue allegations, numbers

- 3,
- 4,
- 5,
- 6,
- 7,
- 8,
- 54, and
- 55.

Student had attended an after-school program, called Expanded Learning Opportunities Program, commonly called ELOP. After Student's regular kindergarten class, Student would be taken to the ELOP program, which was at facilities in the neighboring municipal park.

Parent testified that Cupertino improperly stopped providing Student with a one-to-one behavioral aide as of November 15, 2025. As a result, Student did not have the behavioral aide when Student returned to the ELOP program on Monday, November 17, 2025. Parent contended that, without the aide, Student's maladaptive behaviors increased at the ELOP program. Parent claimed Student would elope and exhibit other disruptive behaviors, which ELOP declared was a safety risk. Therefore, Parent asserted Cupertino informed Parents that Student could not attend ELOP because of the safety concerns caused by Student's behaviors.

Parent's testimony regarding when Cupertino forbade Student from attending ELOP was confusing. Parent did not offer any exhibits, which indicated the date Student was no longer able to attend the ELOP program. However, Parent stated a few times that Student's last day attending ELOP was December 10, 2025.

Parent spent a lot of time explaining how Student was accepted into the ELOP program, introducing evidence of the money available to Cupertino for the program. Parent claimed Cupertino was withholding funds to which Student was entitled for ELOP attendance. Parent said this demonstrated Cupertino's nefarious intent to wrongly deny Student services and educational opportunity to which Student was entitled. Parent recited this assertion a number of times during Parent's testimony, but provided no evidence of such conduct by Cupertino. Parent's testimony was unpersuasive in this regard.

Parent also asserted the removal of the aide was wrongful because Cupertino was obligated by contract to provide the services. Parent testified that the April 2025 Settlement Agreement provided the one-to-one aide, as well as other services, and that Cupertino breached the agreement by terminating the services. Parent had made this assertion in Student's prior actions, in multiple motions in prior actions, and in two motions for stay put in this matter. The motions for stay put were denied because Student did not have an agreed-upon, implemented IEP. That is, the services Student was receiving, including the one-to-one behavioral aide, were not special education related services. The services were provided as part of the April 2025 Settlement Agreement. Parent repeatedly asserted that Cupertino breached the settlement agreement during Parent's hearing testimony, in prehearing motions, and in duplicative motions in the prior filings. Yet, the settlement agreement specifically stated that the services provided by the agreement were not for the purpose of providing Student with a FAPE and could not be used as stay put. Finally, OAH did not have jurisdiction to hear claims that a party breached a settlement agreement. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1030.)

Parent testified that Student's behaviors caused Student to be thrown out of the ELOP program and that these behaviors would not have occurred if Student still had the one-to-one aide. Parent claimed that Student's exclusion from ELOP was a disciplinary removal because of Student's behavior, such as eloping or being disruptive, but provided no evidence of any disciplinary action by Cupertino toward Student, for violating a code of student conduct, or for any other reason.

Parent's testimony is reviewed in some detail because it exemplifies Parent's disregard for the truth. Evidence Code section 780 states that a court or jury may consider in determining the credibility of a witness in any matter that has a reasonable

tendency to prove or disprove a witness's truthfulness of their testimony at the hearing. Here, Parent's sworn testimony that Student was removed from the ELOP program because of Student's maladaptive behaviors was simply untrue.

On December 11, 2025, Parent on behalf of Student filed an "Urgent Student Motion for Stay Put in ELOP," during the expedited hearing of the prior, seventh complaint, OAH Case Number 2025110210. Parent attached various exhibits to the motion, including two letters, the first to Parent only and the second to both of Student's parents, from or on behalf of Cupertino. Since Parent did not include these letters in Parent's proposed exhibits for this hearing, the letters are extensively reviewed in this decision. To be clear, the letters referred to the conduct of the Parent who appeared on behalf of Student, in this and Student's prior complaints. Student's other parent's behavior was not referred to in Cupertino's two letters.

The first letter was to Parent, dated November 19, 2025, from Associate Superintendent Mike Ghelber, on behalf of Cupertino's Board of Education. The letter is entitled "Final Notice of Restrictions and Conditions for Continued Participation in the ELOP Program." The letter begins, as follows:

> "Dear [Parent],
>
> This letter constitutes final written notice regarding your conduct toward Expanded Learning Opportunities Program (ELOP) staff and the terms under which [Student] may continue to participate in the District's after-school program.
>
> Over an extended period, you have repeatedly engaged in conduct that is disruptive, confrontational, verbally abusive, and intimidating toward District and YMCA employees. Your behavior

has interered with program operations, disrupted the safety and stability of the environment, and caused staff to fear for their personal safety. These incidents have occurred despite multiple warnings, three temporary stay-away directives, and repeated opportunities for you to correct your conduct."

The letter then lists the provisions of California law the Parent had violated. (Ed. Code §§ 32211 and 44811; Penal Code §§ 415, 602.1(b), 626.7, and 626.8; and District Board Policy/Administrative Regulation § 5148.2.) Cupertino informed Parent that Student could continue in ELOP only under the following circumstances:

"1. Your Campus Access is Prohibited
Effective immediately and pursuant to Penal Code§§ 626.4 and 626.7 and Education Code § 32211, you are prohibited from entering school grounds during all ELOP operating hours. This includes all secured, fenced, and interior campus areas.
2. Arrival Procedures…
3. Pick-Up Procedures…
4. Conduct Requirements
You must interact with staff in a civil, respectful, and non-threatening manner at all times including sign out. Any additional incidents of verbal abuse, intimidation, or interference with staff will result in immediate removal of [Student] from the program."

The second letter was addressed to both of Student's parents, dated December 10, 2025, from Cupertino attorney Jennifer Nix. The letter is entitled "Notice of Violation of Restrictions; Removal of [Student] … from ELOP Program Effective Thursday, December 11, 2025." The letter notified parents that Student would not be permitted to attend the ELOP program effective Thursday, December 11, 2025. Student's last day of attendance was Wednesday, December 10, 2025.

Attorney Nix noted that this action was taken following the November 19, 2025 letter which set forth the conditions of Student's continued participation in ELOP. Attorney Nix reviewed prior communications regarding Parent's behavior. This included an April 28, 2025 notice under Penal Code section 626.4, that Parent was not allowed on Cupertino premises for 14 days, because of repeated harassing and aggressive behavior involving teachers and aides, which created an environment of intimidation and disrespect. And, on May 22, 2025, Cupertino notified Parent that Parent was restricted from access to the elementary school, for the remainder of the 2024-2025 school year, due to Parent's continuing harassment, aggressiveness, and confrontational language that intimidated staff, who became apprehensive for their personal safety and well-being.

Attorney Nix then reviewed a December 5, 2025 incident, when Parent accused staff of injuring Student. Parent's conduct was inappropriate, uncivil, harassing, and intimidating. This violated the conduct requirements described in the November 2025

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letter, which was set by Cupertino's School Board as a condition of Student's continued involvement in the ELOP after-school program. The December 10, 2025 letter ended with the following summary paragraph:

> "To be clear, [Student is] ... no longer permitted to attend ELOP because of your continued refusal to follow civility rules. … [Student has not] … engaged in any behavior or conduct that would warrant dismissal."

In the motion to which these two letters were attached, Parent asserted that Parent was not aggressive or rude and that Parent had a right to interact with staff and be on campus. Regardless, Parent knew that Student was not removed from ELOP because of Student's conduct or behavior. Student could not attend the after-school ELOP program because of Parent's behaviors.

Parent's testimony that Cupertino removed Student from ELOP because of Student's behavior was untrue.

UNDELIVERED SERVICES AND UNQUALIFIED PROVIDERS

This subsection addresses the complaint's issue allegations, numbers

- 9,
- 10,
- 11,
- 12,
- 13,

- 14,
- 15,
- 16,
- 56,
- 57,
- 58,
- 59,
- 60,
- 64,
- 65, and
- 66.

Parent asserted that Student did not receive services to which Student was entitled and that some services were delivered by unqualified providers. Parent also claimed that Student was not allowed to participate in classroom and school activities, primarily due to Student's behaviors. Parent claimed that these amounted to disciplinary removals from Student's educational settings, which exceeded 10 days, from November 5, 2025, to January 12, 2026.

Parent testified that Student had been the object of a concerted effort by Cupertino to remove Student from the elementary school. Parent claimed that Student's school was Cupertino's academically superior elementary school, recognized for its accomplished program and students' performance. Parent produced evidence that Student's elementary school had the least number of special education students in

Cupertino's elementary schools. Parent claimed that Student's elementary school was therefore treating Student in a manner that would result in Student's removal from the school. This way, Parent claimed that Cupertino's elite elementary school could maintain its recognized outstanding performance by eliminating another special education Student from its roster. Parent's theory in this regard was unsupported by any evidence.

Parent argued Student did not receive services to which Student was entitled. As a consequence, Student's unaddressed behavioral support needs allegedly resulted in Student being removed from full participation in class activities, in the classroom, at recess, and during field trips. Student would elope or disturb other students and therefore be excluded from fully participating in class instruction, groups, and learning. Parent saw that Student's work was not posted in the classroom, that Student was not fully included in activities during a field trip, and excluded from group work, because of behaviors. Parent claimed that these, and other failures to fully include Student, demonstrated a pattern of removal that was disciplinary, referring to Cupertino's scheme of making sure Student underperformed. After all, Parent reasoned, Student's elementary school was high performing and any failure by Student to meet these higher standards was a violation of a student code of conduct. Parent's testimony and admitted exhibits did not indicate that Student was in anyway removed from participation in any school activity for violating a code of student conduct.

Parent testified and introduced a few documents in support of Parent's claim that Student's assigned behavior aide was a criminal, based on Parent's independent research. The submitted exhibits did not support Parent's claim. In addition, Parent testified regarding other alleged conduct, by the aide, which was unsupported by persuasive evidence.

Parent asserted that since the assigned behavior aide was unqualified, Student did not receive the services to which Student was entitled. Parent testified that this too was a disciplinary removal because an unqualified service provider meant Student could not perform and participate like Student otherwise would. Parent again tried to connect this to Cupertino's alleged scheme to remove Student from the elementary school.

Parent repeated the allegations of Cupertino's breach of the 2025 settlement agreement, noting Cupertino ceased delivery of services, other than just the behavior aide, on November 15, 2025. These included individual weekly speech and language instruction, group weekly speech and language instruction, and weekly occupational therapy. Since Student was entitled to such services, Parent claimed that the time of the nondelivered services were disciplinary removals. The failure to provide Student with a service to which Student was entitled may be a basis for a denial of FAPE claim, but it is not a disciplinary removal as envisioned by section 1415(k). Parent offered no evidence or law to support the assertion that the alleged failure to provide services was because Student's behavior violated a code of student conduct.

In summary, Parent's claims, that the alleged loss of services and services by an unqualified provider were disciplinary removals, were unpersuasive. Parent's factual assertions were vague and not supported by convincing evidence. Parent's statements of fact were primarily theories and conclusions, loosely and questionably related to documentary evidence. Parent did not provide evidence, law, or argument that demonstrated the nonreceipt of services, if true, were disciplinary in nature.

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Student failed to prove by a preponderance of evidence that Cupertino removed Student from Student's current school setting, including after-school programs, because Student violated a code of student conduct, for more than 10 school days, between November 5, 2025, and January 12, 2026.

Cupertino prevails on Issue 1.

ISSUE 2: IF SO, DID CUPERTINO HAVE A BASIS OF KNOWLEDGE, BETWEEN NOVEMBER 5, 2025, AND JANUARY 12, 2026, THAT STUDENT WAS A CHILD WITH A DISABILITY BEFORE THE BEHAVIOR THAT PRECIPITATED THE ALLEGED DISCIPLINARY ACTIONS OCCURRED?

Issue 2 addresses the complaint's issue allegation number 1, which asserted that Cupertino had a basis of knowledge that Student was a child with a disability. Student alleged that, since Cupertino had a "basis of knowledge," Cupertino was obligated to comply with its duties under section 1415(k), and hold a manifestation determination review meeting as if Student had an active IEP.

As clearly stated in section 1415(k), and as acknowledged by Parent at the PHC and the commencement of the hearing, Student's special education status is not determinative, unless Student first established that Cupertino removed Student from Student's educational placement, or suspended Student, for more than 10 school days between November 5, 2025, and January 12, 2026, due to behavior that violated a code of student conduct. Student did not.

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However, Student also failed to prove, by a preponderance of the evidence, that Cupertino had a "basis of knowledge" because the evidence indicated that Cupertino offered Student services, which Parents rejected.

Student was aware of Cupertino's position that Student was not a special education student, which was confirmed in prior due process hearings. However, Student had previous IEPs, demonstrating special education needs. Also, Parent asserted that the April 2025 settlement agreement affirmed that Student had need of related services to address Student's deficits. Therefore, Parent asserted that Cupertino had a "basis of knowledge" that Student was a child with a disability, before the behavior that precipitated the disciplinary action under section 1415(k)(5)(B).

Parent testified that Parent signed the "Eligibility" page of a September 11, 2025 Cupertino IEP document for Student. Parent's signature appeared on the lower right portion of the page, which was entered as an exhibit. However, Parent admittedly made substantial changes to the page, saying Parent could not sign something that was not accurate.

Parent claimed that this page showed that Parents accepted Cupertino's finding of Student's eligibility, on October 19, 2025. This eligibility page was one page of an IEP, and it is not the page a parent would sign to accept, reject, or accept with exceptions. Also, the page was not an acceptance of Cupertino's finding of Student's eligibility because Parent changed the secondary eligibility, the effect of the disability, and areas of need. Notably, Parent did not provide evidence of sending the alleged partial acceptance to Cupertino. In every communication with Cupertino, which included documents, Parent always had an email documenting that the document was

sent. Here, there was no evidence that this document was sent to Cupertino, any of its staff, or its legal counsel, by mail, email, text, or personal delivery. Parent's assertion that Parents' accepted Cupertino's IEP's finding of eligibility was unpersuasive.

The IEP page did demonstrate that Cupertino convened an IEP team meeting on September 11, 2025, found Student eligible, and offered Student placement and services. This would typically establish that Cupertino had a "basis of knowledge" under section 1415(k)(5)(B), since the IEP offer predated November 5, 2025, when the alleged "disciplinary" removals began.

However, section 1415(k)(5)(C) states that "a 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 refused services under this part …." Here, Parent testified that Parents refused Cupertino's offer of placement, services and accommodations, made in the September 2025 IEP. Therefore, the statutory exception applies, and Cupertino did not have a "basis of knowledge."

Parent's testimony and evidence did not demonstrate that Cupertino had a "basis of knowledge" because the exception to the "basis of knowledge" criteria, as described in section 1415(k)(5)(C), applies to Cupertino. Also, regardless of whether Cupertino had a "basis of knowledge," Student did not prove, by a preponderance of the evidence, that Cupertino ever removed Student from Student's educational placement, or suspended Student, for more than 10 school days between November 5, 2025, and January 12, 2026, due to behavior that violated a code of student conduct.

Cupertino prevails on Issue 2.

ISSUE 3: IF SO, DID CUPERTINO VIOLATE TITLE 20 UNITED STATES CODE SECTION 1415, SUBDIVISION (K), BY FAILING TO CONDUCT A MANIFESTATION DETERMINATION REVIEW BEFORE REMOVING STUDENT FROM STUDENT'S CURRENT SCHOOL SETTING, INCLUDING AFTER-SCHOOL PROGRAMS, FOR MORE THAN 10 SCHOOL DAYS BETWEEN NOVEMBER 5, 2025, AND JANUARY 12, 2026?

Issue 3 concerns the complaint's issue allegation number 2, which alleged that Cupertino was obligated to hold a manifestation determination review because of Student's disciplinary removals.

Student did not demonstrate that Student had ever been the object of any disciplinary removal from Student's educational setting, due to a violation of a student code of conduct. Therefore, as Parent acknowledged at the PHC regarding Issues 2 and 3 for hearing, Cupertino was not obligated to hold a manifestation determination review meeting. Section 1415(k) simply did not apply to Student.

Cupertino prevails on Issue 3.

SUMMARY OF PROCEEDING

Evidence Code section 780 provides examples of conduct to be used in evaluating the credibility of a sworn witness. These apply to Parent. Parent's testimony often sounded aggressive and was generally accusative. (Evid Code § 780, subs. (a) and (b).) Parent's testimony included repeated accusations of Cupertino's organized oppression of

Parent. (Evid Code § 780, subs. (b), (c), (f), and (i).) Parent struggled to find evidentiary relationships between Parent's factual assertions and the documentary evidence. (Evid Code § 780, subs. (b), (c), (d), (f), and (i).) Parent offered sworn testimony that was directly contradicted by documentation Parent had provided OAH. (Evid Code § 780, subs. (e), (f), (h), and (i).) Parent's testimony lacked credibility, was unpersuasive, and was unreliable.

Parent on behalf of Student meets the definition of a "vexatious litigant" under Code of Civil Procedure section 391(b). Here, Parent on behalf of Student has repeatedly made and pursued claims that were frivolous, unreasonable, and without foundation, and Parent's pursuit of the expedited claims were for improper purposes.

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 remove Student from Student's current school setting, including after-school programs, because Student violated a code of student conduct, for more than 10 school days, between November 5, 2025, and January 12, 2026.

Cupertino prevailed on Expedited Issue 1.

EXPEDITED ISSUE 2:

Cupertino did not have a basis of knowledge, between November 5, 2025, and January 12, 2026, that Student was a child with a disability before the behavior that precipitated the alleged disciplinary actions occurred.

Cupertino prevailed on Expedited Issue 2.

EXPEDITED ISSUE 3:

Cupertino did not violate Title 20 United States Code section 1415, subdivision (k), by failing to conduct a manifestation determination review before removing Student from Student's current school setting, including after-school programs, for more than 10 school days between November 5, 2025, and January 12, 2026.

Cupertino prevailed on Expedited Issue 3.

ORDER

All of Student's requests for relief are denied.

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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.

Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings