BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2025110210

ORDER DENYING MOTION FOR STAY PUT REGARDING SCHOOL DAY

DECEMBER 16, 2025

On November 24, 2025, Student filed a motion for stay put regarding his school day, titled "Student's Motion to Stay Put on Placement, Services, Access, and Communications." On November 25, 2025, Student filed a related document, called "Request for Emergency Ruling on Student Motion for Stay Put," labeled "Time-Sensitive Emergency Request for Expedited Ruling on Motion for Stay Put." On November 26, 2025, Cupertino Union School District filed an opposition to Student's motion for stay put regarding the school day. On November 26, 2025, Student filed a document called "Student's Surresponse in Support of Student's Motion to Stay Put," also labeled "Time-Sensitive Emergency Request for Expedited Ruling on Motion for Stay Put." On December 3, 2025, Student filed a "second emergency request" in a

document called "Urgent Request for Emergency Ruling on Student Motion for Stay Put," again labeled as "Time-Sensitive Emergency Request for Expedited Ruling on Motion for Stay Put."

On December 11, 2025, Student filed a motion for stay put regarding Student's participation in an after-school program, and on December 15, 2025, Student filed a document called "Urgent Request for Emergency Ruling on Student Motions for Stay Put," which concerned both the November 24, 2025 motion for stay put regarding the school day, and the December 11, 2025 motion for stay put regarding the after-school program. Student's motion for stay put regarding the after-school program is ruled upon by separate Order.

With respect to the school day, Student argues his placement at the time Student's complaint was filed, November 5, 2025, was the "services, location, duration, supports, and related services" contained in a settlement agreement Student and Cupertino executed on April 10, 2025. The settlement agreement resolved three special education due process cases then-pending with the Office of Administrative Hearings, called OAH, OAH case numbers 2024100966, filed by Cupertino on October 25, 2024, 2024110522, filed by Student on November 15, 2024, and 2025040244, filed by Student on April 4, 2025. Student asserts Cupertino retaliated against Student for filing the November 5, 2025 expedited due process hearing request by unilaterally changing Student's placement and services on November 14, 2025. Student requests an order requiring Cupertino to "maintain Student's placement exactly as defined in April 2025 agreement."

Cupertino opposes Student's motion for stay put regarding the school day, arguing the resources available to Student under the April 10, 2025 settlement agreement do not constitute a placement to which Student is entitled to "stay put"

during the pendency of a due process case. Cupertino argues Student used to be eligible for special education and related services and had an individualized education program, called an IEP. However, as determined in the June 27, 2025 Expedited Decision in OAH case number 2025041265, Parents fully revoked their consent for special education eligibility on November 19, 2024, and Student became a general education student without an IEP.

Cupertino argues the April 10, 2025 settlement agreement did not create a special education placement to which Student had any rights to stay put. The agreement explicitly stated, "The placement and services that the District agrees to provide through this Agreement do not constitute, and shall not be construed as, an admission of liability for any purpose, an admission of what is [free appropriate public education, called] FAPE for Student, or 'stay put' should any future dispute arise." The settlement agreement contained its own statement of when the services agreed to in that document would terminate:

> The District will complete the assessments agreed to in Attachment A within the legal timelines and will review them at an IEP meeting and draft an offer of FAPE for Student upon a determination that Student is eligible for special education and related services under the IDEA. Until the District has completed the assessments agreed to in Attachment A and made a complete offer of FAPE to Student and has had at least one meeting with the Diagnostic Center to review its assessment with the Parties, the District will provide the following education and related services to Student: [list of five provisions].

In opposition to Student's motion for stay put regarding the school day, Cupertino asserts by declaration of Cupertino's attorney:

- By June 4, 2025, Cupertino completed all assessments of Student pursuant to the assessment plan signed on April 10, 2025;
- Cupertino provided copies of the assessment reports to Parents on May 27, 2025, with an updated psychoeducational assessment report provided on May 29, 2025, and June 4, 2025;
- Cupertino attempted to schedule IEP team meetings to review the assessment reports on May 22, May 29, June 5, August 18, and September 11, 2025;
- Parents refused to attend, and Cupertino held an IEP team meeting without Parents on September 11, 2025;
- Cupertino staff determined Student is eligible for special education and developed an offer of FAPE for Student;
- Cupertino provided Student's September 11, 2025 IEP to Parents on September 29, 2025, and again on October 27, 2025; and
- As of November 25, 2025, Parents had not consented to Student's initial IEP dated September 11, 2025, nor had they attended an IEP team meeting with Cupertino.

Cupertino asserts the April 10, 2025 settlement agreement did not confer special education eligibility to Student, Parents have not signed any subsequent IEP consenting to eligibility or a particular offer of placement and services, and OAH cannot order continued implementation of the April 25, 2025 settlement agreement as Student's stay put.

Student's "surresponse" in support of the motion for stay put argues the April 10, 2025 settlement agreement was obtained through duress and the language about the services of the agreement not constituting stay put in the event of a dispute should therefore be disregarded. Student also suggests a January 2023 IEP might more properly be considered the "last consented IEP."

Repeatedly during the expedited due process hearing, on December 9, 10, and 11, 2025, Student urged the undersigned Administrative Law Judge, called an ALJ, to grant Student's motion for stay put regarding the school day. The ALJ requested Parent provide information regarding when, after Parents revoked consent to special education eligibility in November 2024, and also after April 10, 2025, either Parent consented in writing to Student's eligibility for special education.

On December 10, 2025, Student uploaded to the Witness Schedules section of Case Center a draft document that attempted to itemize writings Parent contends constitute some parental consent in writing to special education. One exhibit, pre-marked S171, Parent described as "Signed IEP2 page on October 19, 2025, where the parent signed eligibility for special education with corrections to areas of eligibility and need." Cupertino objected to any consideration of exhibit S171, asserting Parents never provided that executed document to Cupertino on, around, or anytime after October 19, 2025, until it was untimely uploaded to Case Center, not only less than five business days before the start of the expedited due process hearing in violation of Education Code section 56505, subdivision (e)(7), but on the morning of December 10, 2025, while the expedited due process hearing was already in progress.

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).)

This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the last agreed-upon and implemented IEP placement prior to the dispute arising. (*Thomas v. Cincinnati Board of Educ.* (6th Cir. 1990) 918 F.2d 618, 625, as informed by later federal definition of term "placement" in 34 C.F.R. § 300.116 (2006); see *N.W. ex rel. J.W. v. Boone County Board of Educ*. (6th Cir. 2014) 763 F.3d 611, 617.)

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

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

The expedited hearing shall occur within 20 school days of the hearing request. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c) (2006).) While the appeal is pending, the child shall remain in the interim alternative educational setting, often called IAES, pending the hearing officer's decision or until IAES placement expires after 45 school days, whichever is first, unless the parent and the local education agency agree otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. §1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533 (2006).)

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

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

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

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

OAH timely set Student's challenge to the alleged failure to conduct any manifestation determination for an expedited due process hearing to begin on December 9, 2025. Student requests to continue receiving the supports and services called for under the parties' April 10, 2025 settlement agreement during the pendency of, at least, the expedited due process hearing.

One aspect of the expedited due process hearing currently in progress is a determination of whether Student, who was a general education Student at all times after Parents revoked consent for special education eligibility in November 2024, was entitled to the protections of title 20 United States Code section 1415(k), specifically a manifestation determination after disciplinary removals totaling more than 10 days, because Cupertino had what is legally defined as a "basis of knowledge" that the student had a disability before the behavior prompting the disciplinary action occurred. (20 U.S.C. § 1415(k)(5)(B) & (C).)

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

Regardless of the outcome on the determination of whether Cupertino had a "basis of knowledge" regarding Student's disability, with respect to Student's request for stay put regarding the school day, Student failed to establish that the supports and services called for under the parties' April 10, 2025 settlement agreement are a "placement" to and in which Student is entitled to "stay put." The settlement agreement is not the last agreed-upon and implemented IEP prior to the dispute arising, in fact is not an IEP at all, and by its explicit terms stated the supports and services to be

provided under the settlement agreement were not FAPE for Student and would not be Student's "stay put" services in the event of a future dispute.

Student's motion for stay put regarding the school day is denied.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings