BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

CUPERTINO UNION SCHOOL DISTRICT,

OAH CASE NUMBER 2025110210

OAH CASE NUMBER 2025110972

ORDER DENYING JANUARY 12, 2026 MOTION FOR STAY PUT

JANUARY 21, 2026

On January 12, 2026, Student filed his seventh motion requesting stay put, this time a combined request regarding both the regular hours of school and the Extended Learning Opportunities Program, called ELOP or, alternatively, ELO-P, occurring after the regular hours of school. Cupertino Union School District filed oppositions to previous stay-put motions but not this most recent motion.

Student's prior motions regarding the regular hours of school were:

1. November 24, 2025 – Student's Motion to Stay Put on Placement, Services, Access, and Communications," followed on November 26, 2025, by a "Student's Surresponse in Support of Student's Motion to Stay Put" after Cupertino opposed Student's motion;
2. November 25, 2025 – 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";
3. November 26, 2025 – "Time-Sensitive Emergency Request for Expedited Ruling on Motion for Stay Put";
4. December 3, 2025 – "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"; and
5. December 15, 2025 – "Urgent Request for Emergency Ruling on Student Motions for Stay Put," which concerned both Student's November 24, 2025 motion for stay put regarding the school day, and his December 11, 2025 motion for stay put regarding the afterschool program.

These documents were ruled on in an Order Denying Motion for Stay Put Regarding School Day, dated and served December 16, 2025.

Student's prior motions regarding ELOP, occurring after the regular hours of school, were:

6. December 11, 2025 – "Urgent Student Motion for Stay Put In ELO-P," labeled "Time-Sensitive Emergency Request for Expedited Ruling on Motion for Stay Put," which was followed by the December 15, 2025 "Urgent Request for Emergency Ruling on Student Motions for Stay Put,"

which concerned both Student's November 24, 2025 motion for stay put regarding the school day, and his December 11, 2025 motion for stay put regarding the afterschool program.

These documents were ruled on in an Order Denying Motion for Stay Put Regarding Afterschool Program, dated December 16, 2025, and served December 18, 2025.

On January 2, 2026, Student filed a Motion for Reconsideration of Stay Put, regarding both December 16, 2025 Orders. On January 9, 2026, the Office of Administrative Hearings denied the motion for reconsideration.

In his latest motion, Student again attempts to resume receiving during regular school hours the supports and services Cupertino was providing Student under an April 10, 2025 settlement agreement, and to resume attending the ELOP after regular school hours. None of Student's arguments accord with the law.

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 individualized education program, called 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 placement during regular school hours and from the program he participated in after regular school hours 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. The expedited hearing is still in progress. 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 but probably until conclusion of the non-expedited portion of the case.

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.

In this current motion, Student argues documents that have been pre-marked as exhibits in the due process hearing, but not yet moved into evidence or admitted, indicate Parents consented to Student's eligibility for special education and related services after April 10, 2025. These documents were not attached to Student's motion. As a courtesy to Student, the Administrative Law Judge reviewed exhibits S171, S173, S174, and S175 from the online database of pre-marked exhibits for the expedited due process hearing.

On October 21, 2025, Parents wrote a five-page letter to Cupertino accusing Cupertino of breaching the April 10, 2025 settlement agreement and falsifying records. Within that letter, Parents embedded an image of one page from the September 11, 2025 IEP Cupertino sent Parents, the page labeled "IEP – Eligibility." This single page stated the eligibility categories Cupertino proposed. Parents edited the document to add a category of eligibility and add to the areas Cupertino had identified

as being the effects of disability and areas of need. In the lower right corner, Parents added the date October 19, 2025, with a digital scribble that might be one Parent's signature.

Student argues this image Parents embedded in the October 21, 2025 constituted renewed consent to special education and related services. However, Parents did not sign and return the page of the IEP that was about consent. There is a specific page for consent, and Parents did not sign and transmit that. It is not necessary for a parent to sign a specific form to consent to special education and related services, and another writing such as a letter explicitly stating Parents consent to special education and related services would suffice. But that is not what Parents provided. In fact, Student's January 12, 2026 motion for stay put exactly states the status even as of January 12, 2026, which is that "no new IEP has been signed or accepted."

All of Student's arguments about any supposed legal difference between the separated words "school day" and "after school" versus single words of "schoolday" and "afterschool" do nothing to address or change the fact that at the time Student filed the complaint in this case, he was a general education student and did not have a special education placement in which he was entitled to "stay put." This distinguishes Student from all other students in the seven cases Student cites as authority for his assertion he should have been able to continue receiving the services of the April 10, 2025 settlement agreement while this due process case is pending.

For example, Student asserts OAH Case Number 2008120309 stands for the proposition that a settlement placement was the operative placement during a later disagreement. The student in that case had an IEP and his parents had not revoked consent for its implementation. When a dispute arose, the student and school district entered into a settlement agreement, which the parents later wanted the school district

to continue operating under. In the current case, Parents withdrew Student from special education and Student did not have special education placement at the time this dispute arose.

Furthermore, the very OAH case Student relies on to attempt to obtain continued effect of his own settlement agreement in fact denied enforcement of the settlement agreement as stay put. The March 3, 2009 Decision in 2008120309 concluded the terms of a settlement agreement determine whether the settlement agreement could have any "stay put" effect and, in that case, the student did not meet his burden of proving that the parties intended the terms of the settlement agreement to be a permanent placement or to be the student's stay-put placement in the event of a later dispute. That Administrative Law Judge concluded the school district did not violate the stay-put protections of federal and state law.

The terms of April 10, 2025 settlement agreement between Parents and Cupertino 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." As previously stated in the December 16, 2025 Order Denying Stay Put Regarding School Day, the April 10, 2025 settlement agreement 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.

Therefore, the correct outcome under the authority Student cites in OAH Case Number 2008120309 is that Student's motion for stay put regarding the regular school hours again be denied.

The six other OAH cases on which Student relies similarly do not support his requested outcome. OAH Case Number 2014011028, which Student claims is a case in which "the 'status quo' is derived from something other than a traditional IEP placement" and involved "existence of interim agreement while pending dispute" was not a special education matter. Neither was OAH Case Number 2017020650, which Student claims involved "existence of interim placement while IEP pending." OAH Case Number 2019030121 also was not a special education case, although Student claims it involved "implemented setting as placement, not expired paperwork."

Student asserts OAH Case Number 2019110958 is an example of "changes materially altered the student's right to education." However, in that case, OAH denied the student's motion for stay put, concluding the student could not compel his continued attendance at the specific nonpublic school named in his last agreed-upon and implemented IEP after the nonpublic school terminated its contract with the school district after proper notice, and the student only was entitled to placement at an alternative, comparable nonpublic school.

Student asserts OAH Case Number 2020090342 is an example of "district must replicate the placement as closely as possible." In that case, the student was orthopedically, cognitively, and visually impaired, and nonverbal. As part of her educational program, the student required speech therapy, occupational therapy, physical therapy, adapted physical education, and specialized vision services, as well as a Health Care Plan and a full time Licensed Vocational Nurse as her one-on-one aide. OAH granted the student's motion for stay put for delivery of the in-person related services of her IEP in her home while school campuses were closed due to the COVID-19 pandemic. Again, that student had an IEP to which her parents had consented and was receiving special education and related services according to that IEP at the time she

filed her case because her parents consented to special education and related services. Those conditions are not present in Student's situation.

Finaly, Student asserts OAH Case Number 2023090342 is an example of "removing access effectively changed placement." The April 3, 2024 Decision in OAH Case Number 2023090342 addressed whether the school district denied the student access to his teacher through distance learning in violation of the school district's stay-put obligations from a 2021 stay-put Order in an earlier case. The Decision also addressed whether the school district unilaterally disenrolled the student in violation of the school district's stay put obligations from a 2021 stay-put Order in an earlier case. The Decision recounted that, as determined in the October 14, 2021 Order Granting Stay Put in OAH Case Number 2021100192, from the first day of school, August 16, 2021, until September 17, 2021, the student's March 4, 2021 IEP was not being implemented as designed. Instead, the student engaged in a form of independent study without requiring the student to attend in-person instruction. This form of independent study was implemented and agreed to by the parents, the student, and his elementary school for more than a month since the start of the 2021-2022 school year. As previously determined in the October 14, 2021 Order, this agreed-to and implemented program was the educational placement that constituted the student's stay put program during the pendency of OAH Case Number 2021100192. Once again, that student had an IEP to which his parents had consented and was receiving special education and related services through it, with mutually agreed-to modifications, when he filed his case in 2021. Those conditions are not present in Student's situation.

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, it 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.

Additionally, with respect to Student's request for stay put regarding ELOP after the regular school hours, Student failed to establish that ELOP after the regular school hours constitutes a "placement" to which Student has any entitlement to "stay put" under the Individuals with Disabilities Education Act, called IDEA. Programs that are held before or after the regular school hours may be part of a child's special education program if the child's IEP team determines such a service is necessary to provide a FAPE. (See *K.D. ex rel. C.L. v. Dept. of Educ. of Hawaii* (9th Cir. 2011) 665 F.3d 1110, 1125; see also *B.B. ex rel. J.B. v. Dept. of Educ. of Hawaii* (D.Hawaii) 483 F.Supp.2d 1042, 1055-56.) But Student was not participating in ELOP as part of a special education placement. His participation was as a general education student and only due to his eligibility as an "unduplicated" student under Education Code section 42238.02, subdivision (b), who is either classified as an English learner, eligible for a free or reduced-price meal, or is a foster youth.

The April 10, 2025 settlement agreement included as a term that Student would be enrolled in "ELOP's afterschool program" and that "Parents acknowledge that continued enrollment in ELOP is contingent upon qualification for the program and compliance with all relevant District ELOP policies."

Student has not established that as of November 5, 2025, he had an IEP in place, let alone an IEP that obligated Cupertino to provide Student with any services before or after regular school hours. Student also did not establish that ELOP, held after the regular school hours, is, in the absence of an IEP that determined access to and

participation in ELOP was necessary for Student to receive a FAPE, a "placement" to which Student has any right under the IDEA to continue attending during the pendency of either the expedited or non-expedited due process hearings.

Student's January 12, 2026 motion for stay put is denied.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings