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 2025041265

ORDER DENYING MOTIONS TO PRESERVE EVIDENCE

JUNE 2, 2025

On April 28, 2025, Student filed a request for due process hearing naming Cupertino Union School District. On April 30, 2025, the Office of Administrative Hearings, called OAH, issued a scheduling order setting both expedited and non-expedited due process hearing dates. OAH conducted an expedited prehearing conference on May 19, 2025. The expedited due process hearing began on May 28, 2025.

On May 23, 2025, Student filed a document entitled, "Motion to Preserve Evidence." Through this motion, Student sought an order to "preserve all evidence stored in the iPad used in the classroom 2 at McAuliffe [E]lementary [S]chool." Cupertino did not respond to this motion.

On May 26, 2025, Student uploaded a document entitled, "Amended Motion to Preserve Evidence." Through this motion, Student sought an order, "to put a litigation hold to preserve all evidence stored in the iPad used in the classroom 2 at McAuliffe [E]lementary [S]chool; in Class group at [website address] (owner: District and [name]); [and] In Class WhatsApp (Owner: [names])." Because Student uploaded this document on May 26, 2025, the Memorial Day holiday, the document was deemed filed on May 27, 2025, the next business day. Cupertino did not respond to this motion.

OAH considers both the May 23, 2025, and May 27, 2025 motions below.

STUDENT'S MOTIONS ARE NOT TIMELY

Pursuant to the Scheduling Order OAH issued on April 30, 2025, all prehearing motions related to the expedited due process hearing were due no later than May 14, 2025. Motions made after that date required a declaration of good cause explaining why the motion was not filed timely.

Student's motions were filed on May 23, 2025, and May 27, 2025, and do not include any declaration of good cause for the late filing. Student instead argues that good cause exists because Parent is self-represented. Being self-represented is not good cause to disregard OAH's orders or otherwise not comply with due process hearing procedures. Nevertheless, the undersigned exercises his discretion to consider Student's motions.

STUDENT DID NOT ESTABLISH OAH'S AUTHORITY TO ORDER CUPERTINO TO PRESERVE EVIDENCE

Student cited no authority in either the May 23, 2025, or May 27, 2025 motions which requires or empowers OAH to order Cupertino to preserve evidence as Student

requests. Such litigation holds may be authorized under Civil Discovery Act. (Code of Civ. Proc., § 2016.010, et seq.) However, the Civil Discovery Act does not apply to special education due process proceedings. Instead, the Individuals with Disabilities Education Act, called the IDEA, provides parties with the right to present evidence and compel the attendance of witnesses at "a hearing conducted pursuant to subsection (f) or (k)" of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings. (Ed. Code, § 56505, subd. (e).)

Student did not establish that either the IDEA or corresponding California law empower OAH to order Cupertino to preserve evidence as Student requested in his motions. Therefore, Student's motions to preserve evidence are denied.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings