BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025120051

ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING REQUEST FOR STAY PUT

MARCH 16, 2026

On, December 1, 2025, Parent, on behalf of Student, filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming San Diego Unified School District as respondent. On January 8, 2026, Student filed a motion for stay put. On January 14, 2026, San Diego filed an opposition to the stay put motion and on January 15, 2026, Student filed a reply to San Diego's opposition.

On January 15, 2026, the undersigned denied Student's stay put request. On January 29, 2026, Student filed a request for reconsideration. San Diego opposed the

reconsideration request on January 30, 2026, and Student replied to the opposition on February 4, 2026.

MOTION FOR RECONSIDERATION

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

TIMELINESS

San Diego argues that Student's opposition was not timely, as it was filed 13 days, rather than 10 days, after the issuance of the order denying stay put. As in San Diego's original opposition to the stay put motion, San Diego offers no legal authority stating an absolute time limit to a motion for reconsideration. While a reasonable period is analogized to the previously cited Government Code and Civil Procedure code sections, OAH's policy has always been that the motion be "within a reasonable time" which has been defined as "generally within 10 days." Here again, San Diego identifies no prejudice to the district due to Student's filing on January 29, 2026.

The general rule in both federal and state forums has not changed since the original January 15, 2026 order. Purely technical violations of procedures, resulting in no prejudice, are not grounds for relief. (See, 34 C.F.R. § 300.513(a)(2), [prohibiting IDEA hearing decisions to be based on solely technical violations of the IDEA]. San Diego failed to establish a basis for denying Student's Stay Put motion on the grounds of the

timeliness of the filing. San Diego's objection that Student filed the motion late is overruled.

NEW FACTS, CIRCUMSTANCES OR LAW

San Diego also argues that Student's reconsideration motion offers no new facts, circumstances or law. to support reconsideration, specifically noting that the "new" case offered by Student is from 2014. Student creatively, but not persuasively, asserts that OAH created "new facts" when it denied her motion for Stay Put. If denial of an order constituted new facts upon which reconsideration could be based, clearly, every motion denied would qualify for reconsideration.

However, the undersigned believes Student's argument, that the stay put denial based on Student's inability to prove the existence of a last, consented to and implemented individualized education program, or IEP, fails to address a "gap in the law," requires clarification. For this reason, reconsideration is granted.

STAY PUT DENIED

Student argues that the undersigned should consider the Sixth Circuit Court of Appeals case of *N.W. v. Boone County Board of Education*, (2014) 732 F. 3d 611, hereafter *Boone County,* for the proposition that the placement prior to Student's most recent, placement should become stay put. San Diego argues that a different, and unpublished, 6th circuit case, *J.L. v. Williamson County, Tennessee Board of Education,* (6th Cir., Aug. 2, 2024, No. 23-5704) 2024 WL 3634456, hereafter *Williamson County,* should be persuasive in its rejection of *Boone County*. Neither are precedential in this District. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions issued after 2007. (Federal Rule of Civil Procedure 32.1) The Sixth Circuit Court of Appeals, particularly, permits citation of any

unpublished opinions, orders, judgments, or other written dispositions notwithstanding Federal Rule of Civil Procedure 32.1. (6 Cir. R. 32.1.)

Student asks that dicta from *Boone County* form the basis of a determination that Student's 2020 IEP be considered stay put pending the outcome of Student's December 1, 2026 request for due process hearing. *Boone County* involved a dispute between Parents and a Kentucky Board of Education in which Parents sought an order of Stay Put after a hearing officer decided that, despite the fact Parents had failed to prove Boone County Board of Education denied Student a FAPE, Boone County Board of Education should be required to pay for the private school placement as stay put. The District court agreed but the Sixth Circuit Court of Appeals did not.

The Sixth Circuit held that the parentally chosen private school could not be stay put as the district did not agree to it as an IEP placement. Furthermore, as Student had failed to prove a denial of FAPE, the District court could not require that the school district reimburse for Student's attendance during the litigation. The district went on to declare, without complete analysis, that the last school Student attended under an IEP prior to being removed and unilaterally placed in private school would have been stay put. The court noted this conclusion undermined Parent's argument that they should be reimbursed for their unilaterally chosen private school placement. Whether the prior school was stay put, was not the question being litigated in the case.

The *Williamson County* case declared that there are situations where Student can fail to establish entitlement to stay put. In this case a young teenager with an emotional disability was having difficulty finding success at a district placement. The IEP proposed by the district was not satisfactory to Parents and eventually Parents filed a due process request and the district filed an expedited due process request seeking placement at an interim, alternative educational placement. A settlement placed Student in a

homeschool setting two school years in a row. There were intervening attempts at private school placement. In 2023, Parents filed another due process hearing request and sought stay put pursuant to Student's 2019 IEP. The ALJ found Student's stay put request "illogical" noting he was now in middle school and had been unilaterally placed in private school since the IEP had been in place. The *Williamson County* court focused its decision on timing, criticizing the *Boone County* Court's determination that the IEP placement prior to Student's current placement was stay put. The *Williamson County* court persuasively reasoned that the *Boone County* opinion as to the prior placement being stay put, failed to read the statute as a whole, ignoring the "then-current placement" language. (*Williamson County,* 2024 WL 3634456, at p. 6.)

The dicta regarding this Student's prior placement is not persuasive. While the reasoning of the *Williamson County* decision is persuasive, it is not necessary to find authority for this case outside the Ninth Circuit. The Ninth Circuit has made several consistent statements regarding stay put. These statements acknowledge that stay put is interpreted with the plain meaning of the statute's words:

> "We have recognized that "[t]he reading most consistent with the ordinary meaning of the phrase suggests that the 'then-current educational placement' refers to the educational setting in which the student is actually enrolled at the time the parents request a due process hearing to challenge a proposed change in the child's educational placement." (*E. E. by and through Hutchison-Escobedo v. Norris School District* (*E.E.*) (9th Cir. 2021) 4 F.4th 866, 871.)

The Ninth Circuit has also stated the current educational placement, "is typically the placement described in the child's most recently implemented IEP." (*Id.* at p. 872

citing *Johnson ex rel. Johnson v. Special Educ. Hearing Off.*, 287 F.3d 1176, 1178, 1180.) However, this is not a mandate in every case. Here, Student has not established that the most recently implemented IEP is Student's current placement.

As stated in the original order, 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).) The purpose of the stay put law was to prevent disruption of the Student's education. (*Joshua A. v. Rocklin Unified Sch. Dist.*, (9th Cir. 2009). 559 F.3d 1036, 1040.) The Ninth circuit has defined the "then-current educational placement" as "the educational setting in which the student is actually enrolled at the time the parents request a due process hearing." (*E.E.,* supra, 4 F.4th at p. 872, citing, *N.E. ex rel. C.E. v. Seattle Sch. Dist.*, (9th Cir. 2016) 842 F.3d 1093, 1096.)

As stated originally, Student has the burden to prove that the IEP she asks be declared stay put, is her current educational placement. Student argues that stay put placement is a non-public school she acknowledges she has not attended since she was 13 years old. She is now 18 years old.

Parent's declaration acknowledges Student has not attended the non-public school, pursuant to the 2020 IEP she asserts as the last agreed to and implemented IEP, since December of 2020. Student had difficulties wearing a mask when students returned to in-person instruction. Parents chose to discontinue Student's attendance at public school and, instead, began homeschooling Student without an IEP.

According to the request for due process, which alleged facts are considered true for purposes of this stay put motion, Student sought an IEP offer from the Grossmont Union High School District in September of 2024. Disagreeing that the offer constituted

FAPE, Parents, who are divorced and live in two different districts, then sought an IEP offer from San Diego, presumably re-enrolling in the San Diego district for that purpose. It was not until 2025 that Parents requested that San Diego convene an IEP team meeting.

Student has not proven that the October 16, 2020 IEP constitutes her current educational placement. Parents unilaterally chose to homeschool for several years without seeking an IEP. That was Student's current educational placement as of the filing of this request for due process. The IDEA states, "during the pendency of any proceedings ... the child shall remain in the then-current educational placement." (20-U.S.C. §1415(j).) Stay put in the March 16, 2020 San Diego Unified School District IEP is denied.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings