BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023090332

ORDER GRANTING MOTION FOR STAY PUT

SEPTEMBER 26, 2023

On September 13, 2023, Student filed a motion for stay put. On September 18, 2023, District filed an opposition. On September 20, 2023, Student filed a reply. As explained below, the motion is granted.

APPLICABLE 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 educational

program, called IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

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).)

DISCUSSION

Student's last agreed upon and implemented IEP, dated December 14, 2022 and signed by Parents December 19, 2022, stated that her "current school of attendance" was Mission San Jose High School. The notes of a prior IEP, dated May 2022, stated that District's offer of FAPE would be implemented at Mission San Jose.

District now argues that Mission San Jose was not actually offered as an IEP placement, but that Student was only able to attend Mission San Jose pursuant to an intra-district transfer from her home school, Kennedy High School. Further, District argues that the intra-district transfer was, on May 25, 2023, revoked due to Student's attendance issues, and that maintaining adequate attendance was one of the terms of the intra-district transfer. Therefore, District argues, it appropriately instructed Student that she could no longer attend Mission San Jose, and should instead enroll at Kennedy for the 2023-24 school year. District argues that it can implement Student's IEP program and services at Kennedy.

District's contentions are not persuasive, because the December 14, 2022 IEP explicitly states that Student attends Mission San Jose and because the notes of a prior IEP explicitly stated that Mission San Jose was where the offer of FAPE will be implemented. Here, District argues in essence that the words in the IEP do not

accurately reflect its true intended offer of FAPE. However, for purposes of stay put, maintaining the status quo requires the unambiguous language of the IEP to control. For this reason the motion is granted.

ORDER

The motion for stay put is granted. During the pendency of this due process dispute, Student's stay put placement and services shall be implemented at Mission San Jose High School.

IT IS SO ORDERED.

June Lehrman

June Lehrman
Administrative Law Judge
Office of Administrative Hearings