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 2025030065

ORDER DENYING MOTION FOR STAY PUT AT THE PHILLIPS ACADEMY

MAY 22, 2025

On May 14, 2025, Parents on behalf of Student filed a motion for stay put. Specifically, Student seeks a stay put order for placement at The Phillips Academy, a nonpublic school. Student's motion for stay put included four exhibits. Exhibit A is the individualized education program, called IEP, dated December 5, 2023. The December 5, 2023 IEP offered continued placement at Esther B. Clark, a nonpublic school. Exhibit B is a consent page for the December 5, 2025 IEP, signed by Parents. Parents consented to placement at Esther B. Clark, and partially agreed to other aspects of the December 5, 2025 IEP. Exhibit C is an IEP amendment dated April 10, 2025, and Exhibit D is an email dated May 12, 2025, from The Phillips Academy to Fremont Unified and Parents offering Student a place at the Academy.

On May 20, 2025, Fremont Unified School District filed an opposition on the ground that Student's request for a stay put order placing Student at The Phillips Academy is not proper until Student's IEP team can meet to discuss the placement at the Academy. Fremont Unified filed a declaration by Director of Special Education Fran English, along with exhibits, in support of its opposition. English's declaration and exhibits confirm the December 5, 2023 IEP is Student's last agreed upon and implemented program. On May 20, 2025, Student filed a response to Fremont Unified's opposition.

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 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).)

Courts have recognized, however, that the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).) When a student advances from grade to grade, the stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, considering the changed circumstances. (*R.F. Frankel v. Delano Union School District,* (E.D.Cal 2016) 224 F. Supp.

3d, 979, *citing, Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D.Cal. 2005) 353 F.Supp.2d 1083, 1086.)

Student began attending Esther B. Clark in 2021. On March 6, 2025, Ester B. Clark sent Fremont Unified written notice to exit Student from Ester B. Clark after April 12, 2025.

Fremont Unified convened an IEP team meeting on April 10, 2025. The April 10, 2025 IEP amendment offered Student placement at a comprehensive high school, with specialized academic instruction and related services. Fremont Unified also sent referrals to three nonpublic schools. Parents did not consent to the April 10, 2025 IEP amendment.

Pending responses from a nonpublic school, Fremont Unified also offered interim services from a nonpublic agency, to be paid by Fremont Unified directly or to reimburse Parents. On May 12, 2025, The Phillips Academy provided notice of Student's acceptance.

On May 13, 2025, Fremont Unified provided Parents with IEP meeting notices proposing IEP team meeting dates for May 22, 28, or 29, 2025. The meeting notices identified the meeting purpose as "Transition Planning."

Fremont Unified and Parents are in the process of scheduling an IEP team meeting to discuss Student's placement at The Phillips Academy. Student's explanation in his response that Parents have not agreed to the proposed IEP team meeting dates because Fremont Unified has not clarified that placement at The Phillips Academy will be discussed at the meeting is unpersuasive. Fremont Unified's efforts to convene an IEP team meeting before agreeing to place Student at The Phillips Academy is reasonable to ensure the Academy can meet Student's needs and Parents' expectations.

Fremont Unified does not dispute the December 5, 2023 IEP is the last agreed upon and implemented program, which calls for placement at a nonpublic school. However, The Phillips Academy was not Student's last implemented program, and Student's IEP team has not yet met to discuss transitioning Student to the Academy. Accordingly, Student's motion for stay placement at The Phillips Academy is denied.

ORDER

Student's motion for stay put at The Phillips Academy is denied.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings