BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. EAST SIDE UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2015100670 ORDER DENYING MOTION FOR STAY PUT

On October 19, 2015, Student file a request for due process naming East Side Union High School District and a motion for stay put supported by unauthenticated exhibits. East Side filed an opposition to the motion for stay put on October 23, 2015. The opposition was supported by a declaration from East Side's Special Education Coordinator and authenticated exhibits.

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)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented 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.)

When a special education student transfers to a new school district within the same academic year, the new district must adopt an interim program that approximates the student's old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel G v. Vashon Island Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1134.) The interim IEP becomes the stay put placement pending a disagreement concerning whether the interim IEP offers a FAPE. (*Vashon*, supra, 337 F.3d at p. 1134; *Termine ex. rel. Termine v. William Hart Union High Sch. Dist.* (C.D. Cal. 2002) 219 F.Supp. 1049, 1061.)

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

DISCUSSION AND ORDER

The relevant facts as alleged in Student's complaint and based upon the evidence submitted are undisputed. Student is twenty years old and eligible for special education under the category of intellectual disability. She maintains her own educational rights.

Student moved to within East Side boundaries on September 3, 2015. The East Side 2015-2016 school year began on August 11, 2015. Thus, Student moved within East Side's boundaries during the East Side school year. Student's prior district of residence was Fremont High School District. East Side and Fremont are not within the same SELPA.

Student's most recent agreed upon IEP prior to her move had been developed by Fremont. It was dated November 13, 2014 and amended May 27, 2015. In pertinent part, it offered placement at Project SEARCH, a full-time internship program at Stanford University that provided academic instruction focused on vocational skills for part of the day, with the remainder of the day in a vocational setting learning independent job skills.

East Side held an IEP team meeting on September 28, 2015. East Side offered Student a comparable placement in an East Side post-secondary program with emphasis on community based instruction, vocational training, and social skills. Students in the program participated in extensive off-campus job training and work experience. The program was based on the campus of an East Side school and included extensive off-campus job training and experience.

East Side was required to offer an interim program as close as possible to the last implemented IEP, which it did. East Side was not required to provide Student exactly the same program provided by Fremont. While it is regrettable that Student was unable to obtain an inter-district transfer, there is no basis upon which to compel East Side to grant the transfer as stay put. Accordingly, Student's motion for stay put placement in Project Search is denied.

IT IS SO ORDERED

DATE: November 2, 2015

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings