BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

INGLEWOOD UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020070224

ORDER GRANTING MOTION FOR STAY PUT

AUGUST 27, 2020

On August 24, 2020, Student filed a motion for stay put. On August 25, 2020, Inglewood Unified School District filed an opposition. On August 26, 2020, Student filed a reply.

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 placement in the last agreed upon and implemented

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

In California, a 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 motion is supported by the sworn declaration of parent. Although Parent's declaration does not identify or provide a foundation for the IEPs attached to the motion, dated February 13, 2019 and July 202020, Parent does state that Student's last agreed upon and implemented IEP was dated February 13, 2019. Inglewood's opposition refers to the terms of the February 13, 2019 IEP attached to the motion and does not dispute that the February 13, 2019 IEP is Student's last agreed upon and implemented IEP.

Inglewood's opposition is not supported by a sworn declaration, and attaches an unidentified, undated and unauthenticated one-page document purporting to summarize services offered by SmartStart.

Student argues that the February 13, 2019 IEP offered, and Student attended during the 2019-2020 school year, a nonpublic school placement at SmartStart Developmental Learning Center. However, Inglewood has refused to fund a SmartStart placement for the 2020-2021 school year, requiring instead that Student transfer to a public school placement in accordance with the July 20, 2020 IEP, to which Parent has not consented.

Inglewood argues that SmartStart is only certified to serve students through third grade, and that maintaining Student at SmartStart would result in an injury to Student. However, Inglewood fails to offer admissible evidence of SmartStart's certification, that SmartStart segregates students by grade, or that SmartStart does not have a placement for Student, who is intellectually disabled with severe expressive and receptive language deficits. Inglewood offers no evidence, or even a credible argument, that enforcement of the IDEA's stay put requirements at Student's request would result in physical injury to Student.

Inglewood argues that OAH can change Student's placement upon a determination that Inglewood's July 20, 2020 placement offer is appropriate. However, the determination of whether Inglewood has offered an appropriate placement will be based upon factual findings and conclusions of law only after presentation of evidence in a due process hearing. The stay put provisions of the IDEA are intended to preserve Student's current educational placement pending that OAH decision.

Inglewood argues that it cannot enter into a master contract with SmartStart for a sixth grade student outside of SmartStart's nonpublic school certification. Again, Inglewood has provided no admissible evidence of limitations on SmartStart's certification. Additionally, Inglewood has not submitted evidence that it is unable to meet its stay put obligations through other funding methods.

Inglewood contends that Student is not entitled to attend a nonpublic school once the nonpublic school gives Parent notice that it will cease to serve Student. Inglewood submits no evidence that SmartStart notified Parent that it would be unable or unwilling to serve Student for the 2020-2021 school year.

Lastly, Inglewood argues that during the COVID-19 pandemic all California schools are offering distance learning, and therefore SmartStart's virtual programming is not any more appropriate than Inglewood's virtual programming. Whether or not Inglewood's offer of placement in the July 20, 2020 IEP is appropriate will be determined in a due process hearing, not a stay put motion.

Student is entitled to remain in a nonpublic school placement at SmartStart in accordance with his last agreed upon and implemented IEP of February 13, 2019. Student's motion for stay put is granted.

ORDER

Inglewood will fund Student's placement at SmartStart Developmental Learning Center for the 2020-2021 regular school year, through the issuance of a decision after a due process hearing in this matter.

DocuSigned by:
Alexa Hohensee
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Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings