Effective Management of Requests for Instruction in the Home

Tamara Clay, Director
El Dorado County SELPA

Heather Edwards
Girard, Edwards, Stevens & Tucker LLP

ACSA’s Every Child Counts Symposium
February 16, 2018

What We’ll Cover

• What is Home/Hospital Instruction?
• What is Home Instruction?
• Why is the difference significant?
• General/special education implications
• Determining eligibility and the role of physicians
• Practical examples
• Best practices/recommendations
• Recent case law
Terminology

• Although terminology may vary from district to district, the general rule is that "home instruction" is a special education placement on the LRE continuum, while “home/hospital instruction services" are available to all students with temporary illnesses or injuries, regardless of their disability status.

Consider This Example...

• Student with autism.
• School is unable to manage the student's aggressive and violent behaviors in the school setting and his IEP team decides to provide services in the home while it looks for a more appropriate placement = HOME INSTRUCTION
• Same student performed well in the school setting but had to miss three weeks of school due to a severe case of pneumonia, the school might provide HOME/HOSPITAL INSTRUCTION SERVICES (provided the student meets the requirements set forth in state law).
What is Home/Hospital Instruction?

- Individual instruction for students with temporary disabilities for whom it is impossible or inadvisable to attend regular classes or alternative education program.
- Note: Not a solution to poor attendance, grades, or behavior concerns.

Ed. Code § 48206.3(a).

What is a Temporary Disability?

- A physical, mental, or emotional disability that occurs while the student is in regularly enrolled classes or alternative education program and after which he or she can reasonably be expected to return to regular education class or alternative education program.

Ed. Code § 48206.3(b)(1).
What is a Temporary Disability?

- A temporary disability is not a disability for which a pupil is identified as a special education student.

Temporary Disabilities Under IDEA

- Not addressed under IDEA.
- Generally, IDEA precludes eligibility for temporary disabilities because students must have one of the 13 specific conditions listed in the IDEA and must be shown to need special education and related services as a result of the condition. 34 CFR § 300.8 (a).
  - “Other health impairment” includes a chronic or acute condition, but the examples of impairments listed under the definition are all permanent or long-term conditions. 34 CFR § 300.8 (a)(9).
  - “Orthopedic impairment” category also appears to address "permanent" conditions, such as anatomical losses. 34 CFR § 300.8 (a)(8).
Temporary Disabilities Under Section 504

- A temporary impairment does not constitute a disability unless its severity is such that it results in a **substantial limitation** of one or more major life activities **for an extended period of time**.
- Determined on a case-by-case basis, taking into consideration:
  - The duration (or expected duration) of the impairment; and
  - The extent to which it actually limits a major life activity of the affected individual.


Temporary Disabilities Under Section 504

- What constitutes an "**extended period of time**" such that a temporary impairment qualifies as a disability?
  - The interpretation of “extended” should not contravene the regulatory standard under Section 504 for reasonableness and should not be interpreted rigidly.

*Anaheim City (CA) Sch. Dist., 115 LRP 19319 (OCR 12/02/14)*
**Temporary Disabilities Under Section 504**

- **Broken limb examples**
  - District did not violate Section 504 by failing to evaluate a student with a broken foot and knee injury because the injuries affected his mobility for only three months.
    
    *James A. Garfield (OH) Local Sch. Dist.*, 52 IDELR 142 (OCR 2009)
  
  - District should have evaluated a student's eligibility for Section 504 after he suffered a severe leg break during the summer that required him to use a wheelchair for four months.
    
    *Anaheim City (CA) Sch. Dist.*, 115 LRP 19319 (OCR 12/02/14)

**Verification of Temporary Disability**

- District may require verification through any reasonable means that the student requires home instruction (such as doctor’s note).

- Including that disabling condition will not expose the teacher to any contagious disease that can be transmitted by casual contact.

5 C.C.R. § 421.
What is Home/Hospital Instruction?

• Such students shall receive **individual instruction**.
  • Defined as instruction provided to the student at home, in a hospital (excluding state hospitals) or other residential health facility.
  • One hour of instruction counts as one day of attendance.
    – No more than **5 days of attendance per calendar week**, or no more than the total number of calendar days that regular classes are maintained by the district in any fiscal year.

Ed. Code § 48206.3(a)(1), (c).

Purpose of Home/Hospital Instruction Services

• There is no provision in statute that specifically addresses instructional content.
• Goal is to maintain a student at the student’s former level of performance while recovering from the temporary disability so as not to jeopardize the student’s future performance upon returning to a regular day class or alternative education program.

California Department of Education, Home and Hospital Instruction Program Summary (cde.ca.gov/sp/eo/hh/hhprogramsummary.asp)
**Purpose of Home/Hospital Instruction Services**

- Not provided over summer or holiday breaks.
- Typically will not support certain electives (foreign languages, PE, auto shop, etc.)

**Who Can Provide Individualized Instruction?**

- Only teachers with valid California teaching credentials who consent to the assignment.

   Ed. Code § 44865.
Parent Notice of Home/Hospital Instruction Availability

- Districts are required to notify parents at the beginning of a school term of the availability individualized instruction for students with a temporary disability.

Ed. Code § 48206.3(d)

Who Provides HHI services?

- The school district in which the home or hospital is located is responsible for providing individualized instruction.
- What about charter schools?
  - The statutes requiring home hospital instruction for students with temporary disabilities pre-date the enactment of the CA Charter Schools Act in 1992. Thus, the Legislature did not contemplate the existence of charter schools when the laws governing home/hospital instruction were established. And they have not been updated since.
What if Hospital is Located in a Different School District?

• A student with a temporary disability who is in a hospital or other residential health facility (excluding a state hospital) which is located outside the district in which the parent/guardian resides shall be deemed to have complied with the residency requirements for school attendance in the school district in which the hospital is located.

Ed. Code § 48207.

What if Hospital is Located in a Different School District?

• Parents are responsible for notifying the district where student is deemed to reside of the student’s presence in a qualifying hospital.

Ed. Code § 48208.
What if Hospital is Located in a Different School District?

• Upon receipt of notification from the parent, the district must do all of the following:
  – Within 5 working days, determine whether the student will be able to receive individualized instruction.
    • If yes, determine when the instruction will start, which shall be no later than 5 working days after determining eligibility.
  – Provide individualized instruction.
    • ALTERNATIVELY, May enter into an agreement with the district in which the pupil previously attended to have that district provide the pupil the individualized instruction.

Ed. Code § 48208.

What if Hospital is Located in a Different School District?

• Within 5 working days of starting instruction, providing written notification to prior school district that:
  – Student shall not be counted by that district for purposes of computing ADA; and
  – Date on which instruction began.

Ed. Code § 48208.
What is Home Instruction?

- A.K.A. “Homebound Instruction”
- IDEA requires local educational agencies to make available a continuum of educational placements that includes instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.
  
  34 C.F.R. § 300.115.
- For some students, an IEP team may place a student on home instruction if it determines that the student cannot receive FAPE in a less restrictive setting.
- This may (or may not) include temporary homebound services if a student eligible for special education is unable to attend school due to a short-term illness or injury.

  5 C.C.R. § 3051.4
Timelines for Home Instruction

- When a special education student experiences an acute health problem which results in non-attendance at school for more than five (5) consecutive days, the district is required to inform the parent of the availability of individual instruction to be delivered in the pupil’s home, hospital, or other residential health facility (except a state hospital).
- District must convene an IEP team meeting to determine appropriate educational services.

Who Decides Whether Home Instruction is Appropriate?

- The IEP team, of course!
- This means that:
  - Your general education HHI coordinator does not make the decision.
  - Parents cannot insist on home instruction.
  - The fact that you’ve received a letter from a physician stating that a student requires home instruction does not preclude the IEP team from considering a less restrictive setting.
**Amount and Type of Home Instruction Services**

- Must be based on the student’s unique needs.
- IDEA does not require the district to provide the same amount of special education instruction the student would have received while attending school.
- **CAUTION**: The typical 5 hours of individualized instruction in the home may not be adequate.
- Student may need more or less.
- What about other related services (speech, occupational therapy, counseling, behavior services)?

- IEP team should consider any physical or mental factors that may impede the student’s instruction when determining the scheduling and duration of home instruction services.
- **Example**: offering two-hour blocks in the late afternoon when a particular student’s fatigue was at its worst.
On What Does an IEP Team Need to Base Its Recommendation for Home Instruction?

- A medical report which:
  - Is from the student’s attending physician, surgeon, or psychologist;
  - States the diagnosed condition;
  - Certifies that student’s condition prevents attendance in a less restrictive setting; and
  - Contains a projected calendar date for student’s return to school.

5 C.C.R. § 3051.4(d).

Medical Documentation of Student’s Inability to Attend School

- If parent fails to provide such documentation, district does not violate the IDEA by failing to offer home instruction.

- Note: Local educational agencies need to inform parents as to what specific medical documentation is necessary.
Medical Documentation of Student’s Inability to Attend School

Case Example:
- Medical notes asking a California district to excuse a 10-year-old boy's seizure-related absences did not include information required by state special education regulations.
- Parent provided first doctor’s note which asked the district to excuse 9-day seizure related absence and stated he could return to school the following week if his condition stabilized.
- Parent provided a second doctor’s note stating the student had been hospitalized for two days and could return to school when his parents wished.
- Judge explained that without a compliant doctor’s note, the IEP team could not legally recommend home instruction.

_Cupertino Union Sch. Dist. v. K.A.,_ 64 IDELR 275 (N.D. Cal. 2014)

Medical Documentation of Student’s Inability to Attend School

- **Consider** all information provided by physician about a student's suspected areas of disability or recommendation for home instruction.
- The weight an IEP team will give to the report or recommendation will depend on the qualifications of the person rendering the diagnosis and their knowledge and expertise of the underlying condition and/or education practices.
Seek Parent’s Written Permission to Exchange Information with Doctor

• After receiving consent, gather more information including:
  – Date(s) doctor saw the child
  – How much time doctor spent with the child?
  – What records were reviewed?
  – Whether doctor obtained any information from the school?
  – What is the doctor’s understanding about how the student is doing at school?
  – Is the doctor familiar with the programs the school can provide?

Seek Parent’s Written Permission to Exchange Information with Doctor

• Try to alleviate parents’ privacy concerns if necessary:
  – Offer to set up a conference call with parents, staff, and doctor – this way everyone is hearing the same information.
  – Suggest health staff (school nurse or health aide) speak to doctor

• Document your efforts to communicate with the student’s doctor.
Revising the IEP to Reflect Home Instruction Services

- IEP must state the projected date for the beginning of the services, frequency, location, and duration of the services.
  34 C.F.R. § 300.320.
- If the service is intended to be temporary, make that clear in the IEP.
  – Otherwise, home instruction could become the child’s “stay put” placement pending the resolution of any due process or judicial action concerning the student’s educational program.

Revising the IEP to Reflect Home Instruction Services

- All the same procedures must be followed by the IEP team in developing an IEP for a home instruction student as are followed for any other special education student.
- IEP team shall meet to reconsider the IEP prior to the projected calendar date for the student’s return to school.
  5 C.C.R. § 3051.4(d).
Who May Provide Home Instruction Services?

- Instruction may be delivered individually, in small groups, or by teleclass.
- Must be provided by a regular education teacher, special education teacher, if that individual is competent to provide the instruction/services and if its feasible.
  - If not, the appropriate related services specialist shall provide such instruction.

5 C.C.R. § 3051.4(b), (e).

Teacher Requirements

- Teacher providing home instruction must contact student’s prior teacher to determine:
  - The course work to be covered;
  - Books or other materials to be used; and
  - Who is responsible for issuing grades and/or promoting the student.
- For grades 7-12, teacher must confer with school counselor to determine:
  - Hours earned toward course credit in each IEP subject;
  - Student’s grade in each subject; and
  - Who will issue credit or diploma as work is completed.

5 C.C.R. § 3051.4(f).
Must a Parent be Present?

• No California law or case requiring a parent to be at home during periods of instruction.
• One federal court of appeals case addressed this question.
  – A policy requiring parents to be at home during instruction does not violate IDEA or Section 504. *Daniel O. v. Missouri State Board of Ed.*, 210 F.3d 378 (8th Cir. 2000).

You Think YOU’RE Confused?!

• Parents may not understand the distinctions between home instruction and home/hospital instruction services.
• Don’t put too much stock in the wording of the request.
• Ask clarifying questions, such as:
  – The reason for the request;
  – The expected duration of the student’s absence.
• This will help you know what action to take:
  – Convene an IEP team meeting (for an special education student),
  – Refer a student for an evaluation for special education and related services or Section 504, or
  – Offer home/hospital instruction services.
**RECENT CASES:**

**Without Proper Certification from a Doctor, District Could Not Place Student on Home Instruction.**

- Parents sent District an email stating that student was no longer going to attend school because student had become increasingly depressed and despondent. They requested the District provide home instruction.
- Parents provided a letter from doctor indicating that the current school setting may be harmful to student, recommended home instruction or another setting, and warned that student was at risk for hospitalization without immediate intervention.

**Sacramento City Unified School District (OAH No. 2016050013) August 8, 2016**

**RECENT CASES:**

**Without Proper Certification from a Doctor, District Could Not Place Student on Home Instruction.**

- The doctor’s letter failed to meet the criteria needed for home instruction in that it did not certify that student’s anxiety and depression prevented her from attending a less restrictive placement.
- School nurse contacted doctor after securing appropriate consent from Parents to do so.
- Doctor clarified that Student needed to be in a setting with students “like her” and in small classes with a large amount of support.
- Given this additional information, District could not place Student on home instruction.

*Sacramento City Unified School District (OAH No. 2016050013) August 8, 2016*
RECENT CASES:
Don’t Wait for Parent to Request Home Instruction to Convene an IEP Meeting

- 6 year old student eligible for special education under the category of orthopedic impairment.
- Parent never asked for home instruction after Student experienced complications during foot surgery.
- When Parent told school officials that Student's surgery did not go well and that he could not return to school for several weeks, the district failed to offer the student a homebound placement.

Although the district argued that it could not propose a homebound placement until Parent presented a physician's note confirming the student's medical condition, the hearing officer disagreed.
- He pointed out that the Parent had notified the school of the student's surgery two weeks in advance and, after the surgery, sent a letter to administrators regarding the student's health complications and his inability to attend school for another month.
- At that point, the district had a duty to inform the Parent of her right to request a homebound placement and what documents were necessary for homebound eligibility.

*Tehachapi Unified School District (OAH Case No. 2015060035) January 19, 2016*
RECENT CASES:
Detailed Documentation Helps Overcome Allegations that Home Instruction Was Not Provided.

- A few months after a high school student with an undisclosed disability was temporarily placed on home instruction, Parent claimed that Student had only received three (3) hours of instruction during that time.
- District had assigned instructor to work with student five (5) hours per week.
- Instructor told OCR she provided the services every week except for two (2) weeks when she was unable to contact the parent to schedule a time.

RECENT CASES:
Detailed Documentation Helps Overcome Allegations that Home Instruction Was Not Provided.

- OCR focused on documentary evidence of instructor’s handwritten notes and attendance reports that the parent had signed to verify that her child received the instruction.
- Parent insisted that the District had forged her signature.

Sacramento Unified School District (114 LRP 48615) June 13, 2014
Denial of FAPE to Provide Home Instruction without an IEP

• 10 year old student eligible for special education as a student with an intellectual disability and a speech and language impairment.
• IEP required placement in a special day class and speech and language services.
• Parents provided district with a physician's note (and several subsequent notes) prescribing home instruction for three months due to ADHD, Down syndrome, breathing difficulties, and heart problems.
• The District unsuccessfully attempted to convene at least four IEP team meetings.

Denial of FAPE to Provide Home Instruction without an IEP

• District continued to offer Student placement in a special day class that it believed would be a FAPE and repeatedly offered to conduct reassessments of to determine whether a change in placement was appropriate.
• District provided Student five hours of individual instruction in the home per week.
• District did not provide the speech and language services or ESY programming outlined in the IEP.
• District argued it was not required to continue implementing Student’s IEP while the child was at home due to a temporary disability.
Denial of FAPE to Provide Home Instruction without an IEP

- Hearing officer explained that when the district learned the child was experiencing a medical condition resulting in his not attending school for more than five consecutive days, it was required to inform the parents of the availability of home instruction, and reconvened the child’s IEP team to determine appropriate educational services for him.
- District’s recourse for unsuccessful attempts at holding an IEP team meeting was not to unilaterally and without parental consent implement an entirely different program from Student's last agreed-upon and implemented IEP. Rather, District should have filed for due process.
- Ordered to provide compensatory education services.

BUENA PARK SCHOOL DISTRICT (OAH No. 2016090918)
IEP Teams Must Consider Use of Robots Rather Than Home Instruction

• What if parents request that a robot be included in the IEP which would allow their child to virtually attend school?
• In Warren Hills Reg’l High Bd. of Educ., 70 IDELR 57 (SEA NJ 2017), a ninth grade student with Marfan syndrome endured multiple heart surgeries that required hospitalizations and at-home recovery. Physical challenges often prevented his attendance at school. Student reported having bouts of sadness and feelings of isolation from not being able to discuss information in class with his teachers and classmates. Parents requested that a robot be included in the IEP which would permit their son’s virtual attendance at school. The robot would allow the student to see from home what is happening in the classroom and interact with people at school through video communication. District had concerns that the student would miss instruction in case of a breakdown in the technology or on days when he was unable to use the device due to his physical issues. It determined that home instruction was sufficient.
• Parents filed a due process complaint.

IEP Teams Must Consider Use of Robots Rather Than Home Instruction

• Hearing officer found that the district was predisposed to be against the inclusion or "even consideration" of the robot.
• Staff did "little to make inquiries, conduct its own due diligence, or generally explore how to make it work." No one from the district "made any real attempt to obtain information from other districts ... [that] have successfully deployed this technology."
• Hearing officer determined that the district did not provide FAPE in the LRE because it declined to use or consider available technological modifications to allow the student access to direct instruction as it is delivered in the regular education setting.
• IEP teams will want to at least research the technology, consult with the student's doctors, consider how much training will be required of staff, classmates, and the student, address issues related to confidentiality for other students in the classroom, and discuss Internet connectivity issues.
THANK YOU!

Heather M. Edwards
GIRARD, EDWARDS, STEVENS & TUCKER LLP
Tel: (916) 706-1255
Fax: (916) 706-2672
edwards@girardedwards.com

Tamara Clay
EL DORADO COUNTY SELPA
Tel: (530) 295-2228
Fax: (530) 676-4337
tclay@edcoe.org