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EXPULSION AND THE SPECIAL EDUCATION STUDENT - A BRIEF OVERVIEW OF SCHOOL DISTRICT OPTIONS AND OBLIGATIONS

Though it may seem that “homebound instruction” and “instruction conducted in the home” should be virtual synonyms, to the contrary, they each describe entirely different educational circumstances.

“Homebound instruction” is a discretionary education service a district may elect to provide when its regular education and special education students are medically unable to comply with compulsory attendance pursuant to Pennsylvania School Code Section 13.1329. Specifically, Section 13.1329 provides a medical excuse exception to compulsory attendance at school. The medical excuse must be either 1) certified by a licensed practitioner of the healing arts or 2) provide evidence the student is unable to attend school because of a mental, physical, or other urgent reason. A district’s decision to excuse compulsory attendance is not final until approval from the Department of Public Instruction is received. Every principal or teacher may also, for these same reasons, excuse a student’s absence for temporary periods. Homebound instruction typically is meant to address a short-term medical condition at the conclusion of which the student is expected to return to school. When and if a district elects to provide homebound instruction, a district is free to deliver as much or as little homebound instruction as the health and well-being of the student will allow. However, the Pennsylvania Department of Education (PDE) will only reimburse a district for up to five hours of homebound instruction per week. Finally and most importantly, “homebound instruction” has nothing to do with special education. A student receiving services under the Individuals with Disabilities Education Act (IDEA) or of the Rehabilitation Act of 1973 (Section 504) should never receive homebound instruction if the medical reason for the homebound instruction is one that is directly related to the student’s identified disability and for which the student is receiving special education services.

By contrast, “instruction in the home” is a recognized special education placement option implemented through the issuance of a Notice of Recommended Educational Placement (NOREP) for students identified as eligible for special education services under IDEA or for students receiving services under Section 504. It is, per federal regulations, and because of the disabled student’s lack of contact with non-disabled peers, considered to be one of the most restrictive special education settings, similar to that of full-time residential placement in a private school or instruction in an institution or a hospital.

If a student who is receiving special education services under the IDEA or Section 504 or who is thought to be eligible for these services presents the district with a request for “homebound instruction”, the district should promptly conduct an Individualized Education Plan (IEP) meeting or accommodation planning meeting to discuss the request. This does not mean that the district must agree with the requested change in program and placement. Rather the team should determine if the medical or mental health condition presented as the stated reason for the request is related to the identified disability and warrants in instruction in the home as the appropriate placement, or necessitates some other change in program or placement. Again, the district is only required to consider the outside medical opinion. The district is not required to accept the conclusions contained therein. Like any other change in special education services under the IDEA or Section 504, a request for “instruction in the home” should only be implemented if it is the consensus of the team that the change is appropriate and necessary.

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All changes to the special education program and placement under the IDEA or Section 504, including a placement for instruction in the home, should be made through the issuance of a NOREP specifically identifying the changes to the program and placement that the district is offering. If the team ultimately determines that instruction in the home is not appropriate, but the parents insist on keeping the child at home the student should be considered truant and the district should immediately initiate its truancy policy consistent with the Pennsylvania School Code.

If the IEP or accommodation team concludes that “instruction in the home” is appropriate, even if only for a short period, this constitutes a change in placement. In other words, for IDEA eligible students, a new IEP, and for Section 504 eligible students, a new service plan, will need to be created to identify and develop the full range of services necessary to provide meaningful education benefit in the home setting, including the number of instruction in the home hours that the student is medically available to receive.

Finally, for students who are not disabled, if the medical condition prohibiting the regular education student from attending the district is anticipated to be longer in duration, the district should consider whether the condition constitutes a disability, either under the IDEA or Section 504. It is a safe assumption that prolonged “homebound instruction” limited to five hours per week will likely lead to an educational deficit, which both the district and parents would wish to avoid. Some additional accommodations, such as a Section 504 service plan, may be appropriate in specific cases.

From an administrative standpoint, each district should ensure that every request for “homebound instruction” is reviewed by someone in the special education department. It is too often the practice that such requests are handled by the Office of Pupil Services. As a result, a special education student who might (or might not) be entitled to “instruction in the home” winds up with entirely inappropriate services under “homebound instruction.” As a result, districts may likely incur significant liability for this common mistake.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.