



June 2021

**Schools Legal Service-PARENTAL DEMANDS FOR HOME HOSPITAL INSTRUCTION
(HHI)
FOR EXCEPTIONAL NEEDS CHILDREN**

Parental requests for home-hospital instruction (HHI) present IEP teams with a dilemma: The IDEA requires districts to make available “a continuum of alternative placements”, including home and hospital instruction, to meet the needs of children with disabilities.^[1] At the same time, the IDEA requires that students be placed in the least restrictive environment (LRE) –one that is free of “special classes, separate schooling, or other removals” “to the maximum extent appropriate.”^[2]

When it comes to student placement, no setting is more restrictive than the home or hospital.^[3] Granting a parent’s request for such a placement creates a risk of liability when education in a less restrictive setting can be achieved satisfactorily with the use of supplementary aids and services. Denying such a request creates an equal risk if the district cannot provide FAPE in the student’s current environment. Safely navigating these competing interests is more complicated when the parent of a student with no apparent need for HHI presents a doctor’s note prescribing it. Making the right call in these situations requires an understanding of the restrictions imposed by the IDEA and State law.

1. Home-Hospital Instruction in California

Home-hospital instruction in California is available to both general and special education students who qualify. The rules that control when and under what circumstances a student will qualify for HHI vary considerably depending on whether the student is in special or general education. District personnel should be mindful of this distinction and be careful not to confuse the rules applicable to each group.

^[1] 34 CFR 300.115

^[2] 34 CFR 300.114(a)(2)

^[3] The Department of Education has observed: Home instruction is, for school-aged children, the most restrictive type of placement because it does not permit education to take place with other children. For that reason, home instruction should be relied on as the means of providing FAPE to a school-aged child with a disability only in those limited circumstances when they cannot be educated with other children even with the use of appropriate related services and supplementary aids and services, such as when a child is recovering from surgery. (64 Fed. Reg. 12638 (1999))

For the student body as a whole, Cal. Ed. Code § 48206.3 makes HHI available to students suffering a temporary disability making attendance in their normal educational program impossible or inadvisable. A temporary disability does not include a disability for which the student is identified as an individual with exceptional needs, but instead, is one incurred during the student's enrollment and in which there is a reasonable expectation of recovery and return to their normal program.^[4]

Home-hospital instruction, as it relates to special education students, is one of several required placement options along the IDEA's Continuum of Alternative Placements that districts are required to have available for special education students.^[5] As such, it may only be provided upon recommendation of the student's IEP team after they have carefully considered all other alternative placements along the Continuum and determined that the student cannot be satisfactorily educated in a less restrictive setting. That is, that HHI is the least restrictive environment.

In addition to the IDEA requirements, California law places additional restrictions on when, and under what circumstances an IEP team may offer HHI to a student receiving special education. Before an IEP team can recommend such a placement, they must have in the assessment information a medical report from the attending physician and surgeon or the report of the psychologist, as appropriate:

1. Stating the diagnosed condition; and
2. Certifying that the severity of the condition prevents the student from attending a less restrictive placement; and
3. Projecting a date for the student's return to school.^[6]

Absent the required information, California courts have been unwilling to require districts to provide HHI. In *Cupertino*, for example, the court upheld the district's denial of a parent's request for HHI when the only medical information provided to the IEP team consisted of two notes from the student's physician requesting the district excuse student's nine-day seizure-related absence. The US District Court (ND Cal.) held that "Without a compliant doctor's note, the IEP team could not legally recommend home-hospital instruction".^[7]

2. Making the call

Doctor's notes, even when legally compliant, do not automatically compel districts to offer HHI. Such decisions must be made by the entire IEP team acting on adequate information and in full consideration of whether the needs of the student can be met in a less restrictive environment.

The IEP team's position at the helm of such decisions is something the courts take rather seriously.

"The law does not permit Riverdale to delegate its judgment about Student's appropriate program to Parents and their doctors, no matter how correct they may be. Nor are Student's doctors necessarily aware of such matters as the resources available to

^[4] Cal. Ed. Code § 48206.3

^[5] 34 CFR 300.115(b)(1); 5 CCR 3051.4(d); The IDEA describes it as a necessary component of the continuum of alternative placements required for a FAPE.

^[6] 5 CCR 3051.4(d)

^[7] *Cupertino Union Sch. Dist. v. K.A.*, No. 13-cv-04659-BLF, 2014 U.S. Dist. LEXIS 177023 (N.D. Cal. Dec. 22, 2014)

Riverdale, the nature of home hospital instruction, or the legal necessity of educating Student in the least restrictive environment.”^[8]

Whether granting or denying a request for HHI, districts should make a clear and detailed record explaining why the chosen placement is the least restrictive. If HHI is the appropriate placement, the IEP team should work its way down the Continuum of all other less restrictive placements, explaining why each in turn, is unsuitable to confer meaningful benefit to the student. This discussion must include an explanation of how the nature or severity of the student’s disability is such that education in that environment, even with supplementary aids and services, cannot be achieved satisfactorily.^[9]

If HHI is not appropriate, the team should go through the same process with any inappropriate, less restrictive placement alternatives, but include a discussion of why HHI is more restrictive than necessary for the student to make appropriate progress in light of their circumstances. This discussion should include an explanation of how the chosen placement can adequately meet the student's needs and overcome the challenges of their disability without resorting to the more restrictive placement.

Restrictiveness of Placements on the Continuum
Regular education programs ^[10]
Resource specialist program (RSP) ^[11]
Designated instructional services (DIS) ^[12]
Special day classes (SDC) ^[13]
Nonpublic, nonsectarian school services ^[14]
State special schools ^[15]
Instruction in non-classroom settings
Itinerant instruction
Telecom instruction, and HHI

3. Duty to investigate and evaluate

Doctor’s notes, and other requests for HHI, often trigger an obligation on the part of the district to evaluate. If HHI looks to be the appropriate placement, the change to a more restrictive setting will almost certainly be deemed a “subsequent significant change in placement”, requiring an evaluation beforehand.^[16] If HHI does not appear appropriate, then the information provided by the parent in support of their request will often be enough to place the district on notice of a possible health-related disability requiring further investigation in the form of an evaluation. More often than not, information provided by parents lack the requisite specificity to enable the IEP team to make an informed decision. Before rejecting a request for HHI, districts should take care to request a release of records from student's medical provider, seek consent to speak to the physician making the recommendation, and request consent to conduct any health assessments necessary to investigate the parent’s claim.

^[8] *Riverdale Joint Unified School District v. Parent*, OAH Case No. 2018030746, (2018) at p. 23

^[9] 34 CFR 300.114(a)(2)(ii)

^[10] 20 USC 1412(A)(5)(a)

^[11] Cal Ed. Code § 56362

^[12] Cal Ed. Code § 56363

^[13] Cal Ed. Code § 56364.2

^[14] Cal Ed. Code § 56365

^[15] Cal Ed. Code § 56367

^[16] 34 CFR 104.35(a)

4. Providing notice to parents

When provided with a doctor's note that does not meet State law requirements, districts have an obligation to inform parents of the nature of the deficiency, including a description of the missing information.^[17]

The law also places obligations on districts confronted with evidence of a health condition affecting a student's placement. When a student with exceptional needs experiences an acute health problem which results in non-attendance at school for more than five consecutive days, the district must inform the parents of the potential availability of individual instruction to be delivered in the student's home, in a hospital, or in other residential health facilities, other than a state hospital. In addition, the district must assure that an IEP team meeting is convened to determine appropriate educational services.^[18]

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^[17] *Vigo County Sch. Corp.*, 108 LRP 37865 (SEA IN 04/14/08)

^[18] Cal. Ed. Code § 48206.3; 5 CCR 3051.17(c); OAH 2015060035