NAVIGATING REQUESTS FOR HOMEBOUND INSTRUCTION

Under the IDEA and its implementing regulations, school districts must provide a free and appropriate public education ("FAPE") to all children with disabilities between the ages of three (3) and twenty-one (21). 20 U.S.C. § 1412(a)(1)(A). FAPE is broadly defined in the IDEIA's implementing regulations as special education and related services that: (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the State Educational Agency; (c) include an appropriate preschool, elementary school, or secondary school education in the state involved; and (d) are provided in conformity with an individualized education program that meets the requirements of 34 CFR §300.320 through 34 CFR § 300.324. 34 CFR § 300.17. The requirement to confer FAPE is satisfied if the child's IEP is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. v. Douglas County School Re-1*, 69 IDELR 174 (2017). The IDEA does not guarantee any particular level of education and "cannot and does not" promise any particular educational outcome. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (2017) (citing *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (1982)).

A FAPE must be delivered to a child in the least restrictive environment. The least restrictive environment ("LRE") is one that allows the disabled child to be educated with nondisabled peers (mainstreamed) to the greatest extent appropriate. *Beth B. v. Van Clay,* 282 F.3d 493, 497 (7th Cir. 2002). In determining the LRE, the IDEA states that the educational placement of a student with a disability shall be "as close as possible to the child's home [and] [*u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled*." 34 CFR § 300.116 (emphasis added). Deciding what constitutes least restrictive environment is the responsibility of the IEP team. *See* 23 Ill. Admin. Code §226.240(a) and (b) (placement decision must be made by the IEP team and must be consistent with the student's IEP). Moreover, courts have recognized that in this type of situation deference should be given to the decisions of trained educators. *Heather S. v. State of Wisconsin,* 125 F.3d 1045, 1057 (7th Cir. 1997).

A placement that provides for a student to receive home instruction is the most restrictive placement along the continuum of placements offered by a district. The United States Department of Education noted,

> 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.

DOE Commentary to Subpart E, § 300.551 (1997 IDEA Reauthorization) (emphasis added).

The Ninth Circuit similarly stated that "[h]ospitalized and homebound care should be considered to be among the least advantageous educational arrangements [and are] to be utilized only when a more normalized process of education is unsuitable for a student who has severe health restrictions." *Program Standards and Guidelines for Special Education and Special Services, Programs and Services for the Orthopedically Handicapped and Other Health Impaired*, and

Department of Educ., State of Hawaii v. Katherine D., 555 IDELR 276, 727 F.2d 809, 818 (9th Cir. 1983), cert. denied, 471 U.S. 1117, 112 LRP 25887 (1985).

"A physician cannot simply prescribe special education; rather the [IDEA] dictates a full review by an IEP team." *Marshall Joint School District No. 2 v. C.D., by and through his parents, Brian D. and Traci D.*, 616 F.3d 632, 54 IDELR 307 (7th Cir. 2010). As the Seventh Circuit – **binding on all Illinois school districts and state agencies (including ISBE) –** made abundantly clear in *Marshall*, a physician's recommendation does not trump the placement decision authority of an IEP team. Under the IDEA and the myriad case law interpreting its LRE requirements, deferring to a physician to place a student in the most restrictive setting is impermissible, illegal, and a denial of FAPE – unless there are no related aids or services which made the student's attendance at school possible.

As the Supreme Court pointed out in *Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66, 29 IDELR 966 (U.S. 1999), school districts must provide services targeted at integrating students with medical needs into the school setting. Anything less is not FAPE. *See also Marc V. by Dr. Eugene V. v. North East Independent School District*, 48 IDELR 41 (W.D. Tex. 2006), affirmed by 109 LRP 582 (5th Cir. 2007) (holding that the school district does not have to delegate its authority to determine special education services to a physician because the parent claims that the requested placement is medically necessary. Because the parents in this case refused to allow the district to speak with their son's physician about his diagnosis of post-traumatic stress disorder, the IEP team had no obligation to comply with the parents' demand for homebound instruction).

However, once a school district has received a **legally-sufficient** certification from a medical provider (as further defined below in the School Code), the school district must consider to the provision of homebound instruction for the student. In order for a child with a disability to be eligible to receive home instruction, he or she must have a documented medical condition that renders them unable to attend school. The Illinois School Code provides in relevant part:

> A child qualifies for home or hospital instruction if it is anticipated that, due to a medical condition, the child will be unable to attend school, and instead must be instructed at home or in the hospital, for a period of 2 or more consecutive weeks or on an ongoing intermittent basis.

105 ILCS 5/14-13.01.

In other words, a student is eligible for homebound instruction when the student is unable to attend school due to a documented medical condition.

In *Rockford School District #205,* the hearing officer emphasized that the severity of the medical condition must preclude the student from receiving instruction in a less restrictive setting with supplementary aides and services. *Rockford School District #205,* 108 LRP 42815 (Illinois State Educational Agency June 26, 2008). The student in *Rockford* had been diagnosed with autism and expressed that he had "been more depressed and not comfortable at school." *Id.* The hearing officer concluded that such conditions were not sufficient to necessitate homebound services. *Id.* The hearing officer observed that the student's autism was "a disability with which the student had long suffered, and it had not prevented him from attending school." *Id.* The hearing officer also stated that the student's alleged depression and feelings of discomfort "are not illnesses requiring absence from school at all, but merely descriptive of the student's moods at school." *Id.* He further explained-

> To the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled[.] Special classes, separate schooling (including home bound instruction) or other removal of children with disabilities from the regular educational environment may, consistently with IDEA, occur only when the nature or severity of the disability, as medically documented, is that such that satisfactory educational progress in regular classes, with the use of supplementary aids and services, cannot be achieved. 20 U.S.C. § 1412(a)(5)(B)
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> For the District to have permitted home bound instruction for the student, when the nature and severity of his disability, as medically documented, did not even remotely suggest that he could not achieve satisfactory educational progress in the regular classroom, with the assistance of his assigned paraprofessional and the provision of other services, would have violated IDEA.

Rockford School District #205, 108 LRP 42815 (Illinois State Educational Agency June 26, 2008).

Thus, homebound instruction is only appropriate when the nature and severity of a child's disability – *as medically documented* – indicate that the child cannot attend school even with the use of supplementary aids and services. If a school district provides homebound services to a child with a disability who can attend school with the use of supplementary aids and services, then the school district is in violation of the IDEA.

Once a determination has been made by a licensed physician that a child with a disability is unable to attend school even with use of supplementary aids and services, the physician must complete a written statement that contains information required by the Illinois School Code. The Illinois School Code states-

> In order to establish eligibility for home or hospital services, a student's parent or guardian must submit to the child's school district of residence a written statement from a physician licensed to practice medicine in all of its branches stating the existence of such medical condition, the impact on the child's ability to participate in education, and the anticipated duration or nature of the child's absence from school.

105 ILCS 5/14-13.01.

Courts have determined that where the physician's written statement does not include certain information required by state special education regulations, the IEP team is precluded from approving the parents' request for homebound instruction. In *Cupertino Union School District v. K.A.*, 64 IDELR 275 (N.D. Cal. 2014), the district court upheld an administrative decision that denied a parent's request for homebound services for her son. The parent had presented two notes from the student's treating physician. Neither note, however, identified the student's diagnosed condition or certified that the severity of the condition precluded instruction in a less restrictive setting. U.S. District Judge Beth Labson Freeman agreed that the IEP team's hands were tied. "Without a compliant doctor's note, the IEP team could not legally recommend home-hospital instruction," Judge Freeman concluded.

However, a compliant note from a physician is merely the beginning – and not the entirety – of the eligibility process. The Seventh Circuit noted that "a physician's diagnosis and input on a child's medical condition is important and bears on the team's informed decision on a student's needs…. But a physician cannot simply prescribe special education; rather, the Act dictates a full review by an IEP team composed of parents, regular education teachers, special education teachers, and a representative of the local education agency[.]"). *Marshall Joint Sch. Dist. #2 v. C.D.*, 54 IDELR 307, 616 F.3d 632 (7th Cir. 2010).

A student's educational placement must be made by the IEP team, which is made up of persons knowledgeable about the student. 34 C.F.R. 300.116(a)(1). The Office of Special Education and Rehabilitative Services stated that the "Department's position that when a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an individualized education program (IEP) meeting is necessary to change the child's placement and the contents of the child's IEP, if warranted." Questions and Answers on Providing Services to Children with Disabilities During the H1N1 Outbreak, 53 IDELR 269 (OSERS 2009). During the IEP meeting, the team must address whether the current IEP is reasonably calculated for the student to make appropriate progress in the least restrictive environment, and, if not, whether a more restrictive placement is warranted.

For example, in *Bellingham Pub. Schools*, 41 IDELR 74 (SEA MA 2004), when asked by the district to explain why a student was confined to the home and in need of homebound services, the doctor responded by listing the student's impairments. *Id.* The physician noted that the student "has severe learning disabilities (reading, expressive and written language, and math), and also suffers from ADHD, ODD (Oppositional Defiant Disorder), Asperger's Syndrome, a mood disorder that has many of the hallmarks of bipolar illness, anxiety disorder, and obsessive-compulsive disorder." *Id.* However, neither the school district nor the hearing officer were satisfied. The hearing officer explained,

> To the maximum extent appropriate, children with disabilities ... are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
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> Pursuant to this requirement, Bellingham has a legal responsibility to provide Student's education in the least restrictive environment where appropriate services can be delivered. Providing educational services only within the home, separate from a student's peers at school, is considered the most restrictive educational setting possible….
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> Nothing within Dr. Henry's original submission of May 16, 2003 or in his more recent letter of January 23, 2004 explains how any of Student's diagnoses impacts upon his ability to leave the home and receive educational services at a school. Dr. Henry has provided no basis for distinguishing Student (and his diagnoses) from all of the students with these same diagnoses who receive their educational services within a school setting. In other words, the diagnoses, without more, do not explain why Student must remain at home.

> Dr. Henry's justifications for home tutoring essentially amount to a listing of the diagnoses which Student has been given by professionals who have worked with him. I will assume, without deciding, that at least some of the listed diagnoses are medical in nature.
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> In order for Parents to prevail in their efforts to obtain home tutoring, their physician's statement must provide some basis for me to conclude that Student cannot be educated within the school setting. … [A] simple recitation of Student's diagnoses is not sufficient.

Id.

The Eleventh Circuit recently held a request for homebound on the basis of food sensitivities is not justified by the IDEA's directive to provide special education and related services in the least restrictive environment. It reasoned-

> The district court correctly concluded that E.K. did not present evidence justifying in-home schooling. A.K.'s strict diet was not prescribed by a medical doctor, she does not have a life-threatening condition, and she is not under the regular care of a medical doctor. *Most importantly, though, E.K. provides no evidence that GCSD will be unable to adequately supply A.K. with her special diet.* In fact, the evidence actually shows that A.K. would be best served by reintegrating her into the school setting where she can practice social interaction with her peers.

A.K. by and through her parent, E.K., E.K., Plaintiffs-Appellants, v. GWINNETT COUNTY SCHOOL DISTRICT, Defendant-Appellee, 62 IDELR 253 (11th Cir. Feb. 14, 2014) (emphasis added).

From the Illinois School Code:

105 ILCS 5/14-13.01(a) (*in pertinent part*):
*** *** ***
A child qualifies for home or hospital instruction if it is anticipated that, due to a medical condition, the child will be unable to attend school, and instead must be instructed at home or in the hospital, for a period of 2 or more consecutive weeks or on an ongoing intermittent basis. For purposes of this Section, "ongoing intermittent basis" means that the child's medical condition is of such a nature or severity that it is anticipated that the child will be absent from school due to the medical condition for periods of at least 2 days at a time multiple times during the school year totaling at least 10 days or more of absences. There shall be no requirement that a child be absent from school a minimum number of days before the child qualifies for home or hospital instruction.

In order to establish eligibility for home or hospital services, a student's parent or guardian must submit to the child's school district of residence a written statement from a physician licensed to practice medicine in all of its branches, a licensed physician assistant, or a licensed advanced practice nurse stating the existence of such medical condition, the impact on the child's ability to participate in education, and the anticipated duration or nature of the child's absence from school. Home or hospital instruction may commence upon receipt of a written physician's, physician assistant's, or advanced practice nurse's statement in accordance with this Section, but instruction shall commence not later than 5 school days after the school district receives the physician's, physician assistant's, or advanced practice nurse's statement.

Special education and related services required by the child's IEP or services and accommodations required by the child's federal Section 504 plan must be implemented as part of the child's home or hospital instruction, unless the IEP team or federal Section 504 plan team determines that modifications are necessary during the home or hospital instruction due to the child's condition.

Eligible children to be included in any reimbursement under this paragraph must regularly receive a minimum of one hour of instruction each school day, or in lieu thereof of a minimum of 5 hours of instruction in each school week in order to qualify for full reimbursement under this Section. If the attending physician, physician assistant, or advanced practice nurse for such a child has certified that the child should not receive as many as 5 hours of instruction in a school week, however, reimbursement under this paragraph on account of that child shall be computed proportionate to the actual hours of instruction per week for that child divided by 5. The State Board of Education shall establish rules governing the required qualifications of staff providing home or hospital instruction.

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Other Case Notes:

Lourdes, Oregon Public Schools, 57 IDELR 53 (OCR 2011). Although an Oregon charter school followed the state ED's instructions to the letter when placing a student with diabetes on homebound instruction, its placement decision drew criticism from OCR. The significant change in the student's placement, coupled with the district's failure to reevaluate the student or notify his parents of their procedural safeguards, amounted to a Section 504 violation. OCR recognized that

the Oregon ED requires districts to have a licensed health care provider assess students with medical conditions and develop individualized health plans for those students at least once a year. Still, OCR explained that the charter school's difficulties in hiring a school nurse did not excuse its unilateral decision to remove the student from his general education class and place him on homebound instruction. Not only does Section 504 require a district to evaluate a student before a significant change in placement, OCR observed, but it precludes a student's removal from the general education setting unless the student cannot benefit from such a placement. "Because [the charter school] placed the student in an in-home tutoring environment, which was a more restrictive environment than what the student had previously and subsequently been provided, [it] failed to comply with [Section 504's LRE provision]," OCR wrote. OCR also pointed out that the charter school failed to provide the parents with notice of their procedural safeguards. Finding that the procedural violations resulted in a denial of FAPE, OCR instructed the district to develop and implement appropriate procedures for the evaluation and placement of students with disabilities, and to consider whether the student in this case was entitled to compensatory education.

C.S. v. Rockford Public School District 205, 108 LRP 42815 (SEA IL 2008). The IEP for C. S., which did not provide for home bound instruction, was reasonably calculated to confer on him an "educational benefit" within the meaning of IDEA, and so, as a matter of law, should be the IEP that the District applies in C. S.'s case, unless and until a new IEP is developed in accordance with law and the professional judgment of District staff, *see Alex R. v. Forestville Comm. Unit Sch. Dist. No. 221,* 375 F. 3d 603, 615 (7th Cir. 2004). In contrast, because home bound instruction for C. S. was very unlikely to confer on him any educational benefit, and moreover, would have placed C. S. in an environment far more restrictive than a class room setting at Montessori, an IEP that provided for home bound instruction for C. S. would itself violate IDEA, and be unlawful, see 20 U.S.C. §§1412(a)(5)(A) and 1413(a)(l), *Beth B. v. Van Clay,* 282 F.3d 493, 499 (7th Cir. 2002).

Key Quote:

> In any event, and critically, during the entire post February 1, 2008 school year, the mother, while she apparently made a few calls to District staff at the beginning of February, 2008 asserting that her son was ill, *see id.* at 33, 54 never, with one barely arguable exception, submitted any medical documentation of any illness, though the District required that she do so and requested that she do so if her son's absences were to be excused, *id.* at 33. (Much less did the mother submit any documentation of an illness that would have required his absence from school for more than four months). As a result, all of the student's absences from school, from February 1, 2008, to March 11, 2008, the date the mother withdrew her son from Montessori, as found below, were unexcused absences, see JE 100.
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> 5. The one barely arguable exception (respecting medical documentation) referred to above was a note that the mother secured from Thomas Danko, M.D. (The note is at JE 008 and also at JE 157). It is addressed to "whom it may concern," is dated February 14, 2008, and was generated as a result of mother and student's medical visit to Dr. Danko on February 7, 2008, see Tr. June 12, 2008 at 36. The exception is only "arguable," however, because only by a stretch, is any illness that would require the student's extended absence from school documented, or even described, in the letter at all. The note thus refers to the student's autism, but that is was a disability with which the student had long suffered, and it had not prevented him from attending school. The note also refers to the student as "having been more depressed and not comfortable at school," which are not illnesses requiring absence from school at all, but merely descriptive of the student's moods at school. It also refers to

the student's "current illness," but what this "illness" was -- and whether it is any different from the student being "depressed and not comfortable at school" or different from the student's "autism" -- is not identified or described or otherwise documented. This officer finds, in any event, that the February 14 note from Dr. Danko did not document any illness or condition that required the student to be absent from school for even one day, much less for more than four months. In any event, it is extremely doubtful that C. S. suffered from any illness requiring his extended absence from school (i.e. his absence from school for other than during the first week or so of February 2008). The lack of any medical documentation of such an illness -- submitted to either the District or "retroactively" at the hearing to this officer -- supports that conclusion. So does the mother's own testimony, for while the matter of her son's medical treatment was raised with her at the hearing (Tr. June 12, 2008 at 94-97), she did not testify that she even sought professional medical assistance for C. S. at any time after February 1, 2008 (other than from Dr. Danko, on February 7, 2008). Yet, if her son, had truly been suffered from an extended illness during the last four months of the school year, serious enough to keep him out of school, this officer would expect her to have sought just such assistance, and been eager to testify about it.

6. Petitioners solicited the February 14 letter from Dr. Danko (JE 008), see Tr. June 12, 2008 at 34-37, for a different purpose that to provide medical documentation of C. S.'s illnesses requiring C. S. 's absence from school. The letter is thus framed in terms of a joint request for home-bound instruction. It says that R. S. had "requested" of Dr. Danko a recommendation for home bound instruction. JE 008. Then, Dr, Danko, implicitly invoking C. S.'s "autism," his "depression" and [dis]comfort[ ]" at school, and his unspecified "current illness," himself requests that C. S. "receive homebound services for the remainder of the year." Whether this request is based on the independent judgment of Dr. Danko that the provision of such services was medically appropriate, or he was merely being responsive to R. S.'s request to him, is unclear from the text of the letter, and Dr. Danko did not testify in the matter, so this officer has no way of knowing what his views are on the matter.

Greater Johnstown School District, 115 LRP 17340 (PA SEA 2015). A Pennsylvania district's decision to place a student with ED in home instruction was contrary to LRE principals and led to a prolonged denial of FAPE. The student with bipolar disorder was verbally aggressive toward teachers and peers. When the parent refused to consider a residential treatment facility, the district offered home instruction. The IHO observed that the district provided the student with one of the most restrictive alternatives on the continuum of placements – ones that kept the student out of school and away from peers. In addition, the five hours per week of instruction was the minimum permitted under the law, and the district didn't provide the services identified in the child's IEP. Finding that the district failed to provide meaningful educational services in the LRE, the IHO ordered compensatory education.

Tyler W. v. Upper Perkiomen School District, 963 F. Supp. 2d 427 (E.D. Pa. 2013). *A* Pennsylvania district's decision to provide only one hour of daily academic instruction to a 5-year-old boy during his 15-week hospitalization for severe behavioral problems proved to be an expensive mistake. Determining the district denied the child FAPE, the District Court ordered the district to provide a full day's worth of IEP services for each of the 75 school days the child went without appropriate instruction. The court observed that the parents' decision to place the child in the partial hospitalization program did not relieve the district of its obligation to implement the child's IEP. To the contrary, a letter from the Pennsylvania ED clearly stated that the district of residence was responsible for providing educational services to a child placed in a partial hospitalization program. Although the child's IEP required the district to provide 28 hours of special education and related

services each week, the court pointed out that the child received only one hour of academic instruction for each day of his placement. "Even this hour was not in compliance with the specially designed instruction set out in [the child's] IEP," U.S. District Judge Petrese B. Tucker wrote. The court noted that the child made little academic progress during his time in the partial hospitalization program. Moreover, because the district was well aware of the child's severe behavioral issues, it should have had an appropriate program in place at the start of the school year. Concluding that the district's failure to address the child's needs "pervaded and undermined his entire school day," the court held the child was entitled to 420 hours of compensatory education.

Cupertino Union School District v. K.A., 64 IDELR 275 (N.D. Cal. 2014). Because medical notes asking a California district to excuse a 10-year-old boy's seizure-related absences did not include certain information required by state special education regulations, the district did not violate the IDEA when it denied the parent's request for home instruction. The District Court upheld an administrative decision that denied the parent's request for relief. California regulations provide that an IEP team cannot recommend home instruction unless it has a medical report from a physician, surgeon, or psychiatrist that identifies the student's diagnosed condition, certifies that the severity of the condition precludes instruction in a less restrictive setting, and includes a projected calendar date for the student's return to school. The court observed that neither of the notes submitted by the parent met that standard. The first note, issued by the student's treating physician, asked the district to excuse a nine-day seizure-related absence and stated that he could return to school the following week if his condition stabilized. The author of the second note, whom the ALJ could not identify due to an unreadable signature, similarly stated that the student had been hospitalized for two days and could return to school when his parents wished. U.S. District Judge Beth Labson Freeman agreed with the ALJ that the IEP team's hands were tied. "Without a compliant doctor's note, the IEP team could not legally recommend home-hospital instruction," Judge Freeman wrote. The court previously ruled in a decision reported that the parents' refusal to attend follow-up IEP meetings justified the district's decision to rely on existing information and develop the student's IEP without further team discussion.

K.K. v. Pittsburgh Public Schools, 64 IDELR 62 (3rd Cir. 2014). A Pennsylvania district's failure to realize that a gifted 12th-grader with gastroparesis had started skipping her rigorous academic classes due to the anxiety caused by falling behind her classmates did not entitle the recent graduate to relief under Section 504. The 3d Circuit held in an unpublished decision that the district's attempts to accommodate the student's disabilities, while imperfect, did not amount to a denial of FAPE. The three-judge panel acknowledged that staff members were confused as to who was responsible for monitoring the student's progress under her Section 504 plan, which modified the student's schedule to include free periods, provided extended time for assignments, and allowed the student to enter and exit the school as needed. Furthermore, the district was unaware that the student was spending portions of each day in the school library instead of attending her classes. However, the court also concluded that the district took reasonable steps to accommodate the student so she could continue participating in its advanced studies program. The court pointed out that the district "offered increasingly significant modifications" to address the student's medical and mental health needs. In addition to meeting with the parents to develop and revise the student's Section 504 plan, the court observed, the district offered to provide mental health services and evaluate the student for IDEA eligibility. "Virtually every interaction between [the student's] parents and school administrators resulted in express steps being taken with the goal of addressing the challenges presented by [the student's] difficult and unusual circumstances," U.S. Circuit Judge Thomas I. Vanaskie wrote for the panel. The court also ruled that the homebound services the student received in her junior year were appropriate. Although the parents criticized

the quality and amount of instruction, the court noted that the homebound services provided "a modest approximation of the high-caliber instruction" the student received in school:

> Our review of the record reveals that the District's homebound instruction policy was never intended to be a full substitute for in-class learning -- but nor was it required to be. Instead, it is a stopgap procedure designed to give temporarily homebound students a reasonable opportunity to maintain pace with their coursework during a limited absence from the classroom setting. As implemented here, the policy resulted in District personnel working actively with K.K. and her parents to provide a modest approximation of the high-caliber instruction that K.K. had received while actively attending class.
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> We recognize that the record contains instances in which the District did not promptly reply to inquiries by K.K.'s parents and failed to detect K.K.'s self-imposed seclusion in the library. These lapses, however, taken in the context of the challenges presented by K.K.'s serious and unpredictable illnesses, simply do not rise to the level of a statutory violation. On the whole, the District's efforts provided K.K. with a meaningful opportunity to obtain passing marks in several of the school's most advanced courses and to maintain a scholastic record that led to enrollment in a prestigious university.

Note: K.K.'s class schedule included AP English, Japanese, Chinese, calculus, physics, European history, and biology. Why do you think the District had a difficult time finding a homebound instructor?

Section 226.300 Continuum of Alternative Placement Options

Each local school district shall, in conformance with the requirements of 34 CFR 300.39 and 300.115, ensure that a continuum of placements is available to meet the needs of children with disabilities for special education and related services. With respect to the home instruction and instruction in hospitals and institutions referenced in 34 CFR 300.39 and 300.115:

a) The child receives services at home or in a hospital or other setting because he or she is unable to attend school elsewhere due to a medical condition.

b) When an eligible student has a medical condition that will cause an absence for two or more consecutive weeks of school or ongoing intermittent absences, as defined in Section 14-13.01(a) of the School Code [105 ILCS 5/14-13.01(a)], the IEP Team for that child shall consider the need for home or hospital services. The provision of home or hospital services shall be based upon a written statement from a physician licensed to practice medicine in all its branches that specifies:

1) the child's medical condition;

2) the impact on the child's ability to participate in education (the child's physical and mental level of tolerance for receiving educational services); and

3) the anticipated duration or nature of the child's absence from school.

c) *Special education and related services required by the child's IEP must be implemented as part of the child's home or hospital instruction, unless the IEP Team determines that modifications are necessary during the home or hospital instruction due to the child's condition.* (Section 14-13.01 of the School Code)

1) The amount of instructional or related service time provided through the home or hospital program shall be determined in relation to the child's educational needs and physical and mental health needs.

2) The amount of instructional time shall not be less than five hours per week unless the physician has certified in writing that the child should not receive as many as five hours of instruction in a school week. In the event that the child's illness or a teacher's absence reduces the number of hours in a given week to which the child is entitled, the school district shall work with the IEP Team and the child's parents to provide the number of hours missed, as medically advisable for the child.

d) A child whose home or hospital instruction is being provided via telephone or other technological device shall receive not less than two hours per week of direct instructional services.

e) Instructional time shall be scheduled only on days when school is regularly in session, unless otherwise agreed to by all parties.

f) Home or hospital instructors shall meet the requirements of 23 Ill. Adm. Code 1.610 (Personnel Required to be Qualified).

g) In accordance with Section 14-13.01(a) of the School Code, services required by the IEP shall be implemented not later than five school days after the district receives the physician's statement.

(Source: Amended at 40 Ill. Reg. 2220, effective January 13, 2016)