

Students with Complex Medical Needs: Navigating the Landscape and Avoiding Pitfalls

By: Carol Jung, Esq. & Steven Catron, Esq.

Senior Attorneys at Learning Rights Law Center in Los Angeles, CA

INTRODUCTION

Students with complex medical needs often have substantial challenges accessing needed educational services. In addition to the difficulty of addressing significant physical and mental health challenges, there is often substantial confusion regarding what supports are available, which legal standards govern this determination, and the interplay between federal and state laws meant to ensure that these vulnerable students continue to access and meaningfully benefit from an education.

For students with health needs, there are generally two separate and distinct systems to address their education. For all students, including those with or without qualifying disabilities under the IDEA, states generally make available home/hospital instruction . This support is made available to all students who have a *temporary* disability. For eligible students, HHI generally provides a proscribed service (e.g. one hour of instruction for each day a child misses school). Under the IDEA, homebound instruction/home hospital placement is available as a placement for students with an IEP who require this very restrictive setting based on their unique needs. For this IDEA placement, the IEP team should determine what services are required based on the unique and individual needs of the child.

Despite the differences between and the separate legal frameworks for these two approaches to addressing the needs of children with significant health needs, IEP teams frequently borrow provisions for addressing temporary disabilities and apply them to limit services available under the IDEA. As discussed below, this arbitrary limit is inappropriate and may unnecessarily prevent children with qualifying disabilities from

having access to and/or from receiving meaningful educational benefits from their public education.

DESCRIPTION OF THE POPULATION

Students with complex medical needs comprise those with a wide variety of physical and mental health conditions and may have drastically varying needs. Included in this population are children with quite common and well-known diagnoses such as broken limbs, a major surgery, cancer, asthma, allergies, diabetes, seizure disorders, anxiety, and depression. Other children may have severe medical conditions including rare genetic conditions unknown to the general population and even unfamiliar to the broader medical community. Still others have co-morbidity of medical, mental health, and developmental disorders. As all children are unique, each child will have unique needs that are associated with their diagnosis.

The impact of these conditions may broadly affect a child's education. Due to a medical condition, a child may miss instruction, have health care needs at school (at times requiring nursing services), further negative impacts on mental health which could lead to school avoidance, or be unnecessarily excluded from school activities.

While some of these conditions may be temporary in nature, others may impact a child indefinitely or for an unknown length of time, making educational planning complex at best.

OVERVIEW OF APPLICABLE LAWS

In the United States, the federal government generally has a limited role in defining the rights and responsibilities of the government in providing an education. As a result, the majority of laws and regulations related to an education for students is left to the individual states. Each state develops its own legal framework for education. For students with significant health needs who are not eligible for a 504 plan or an IEP, both of which will be discussed below, individual state (or in some cases local) rules will control what services and supports are available.

Federal law provides for additional protections for students in protected classes, such as disability. Public accommodations, including schools, are prohibited from discrimination against individuals with a physical or mental impairment that substantially limits one or more major life activities (including learning).¹ Similarly, entities which receive federal funds are prohibited from discriminating against or excluding individuals with qualifying disabilities from programs or activities of the entity.²

Federal law further provides that children with qualifying disabilities who need special education must be provided with a Free Appropriate Public Education (“FAPE”) “that emphasizes special education and related services designed to meet their unique needs...”.³ While each state may establish additional rules governing the provision of a FAPE, states may not establish rules which provide a lesser set of protections than that established in federal law.

Students with complex medical needs may benefit from each of these respective legal frameworks, creating both opportunities for assistance and a significant risk that local education agencies default to the most straightforward (and often least effective) method for addressing complex needs.

504 PLANS: Ensuring a child’s access to school.

A “504 plan” is a document which is frequently created to record a school’s plan for providing equal access to education for a student with a qualifying disability for purposes of Section 504 of the Rehabilitation Act of 1973. Although schools frequently create a 504 plan and ask for parents to sign in agreement, federal law does not require a written document, nor does it require parental agreement. Instead, schools receiving federal funds are required to provide equal access, regardless of whether a plan for compliance is documented or agreed on.

¹ Title II of the Americans with Disabilities Act, 42 U.S.C. § 12010 *et seq.*

² Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

³ 29 U.S.C. § 1400(d)(1)(A). The Rehabilitation Act also requires that certain entities must provide a Free Appropriate Public Education; however, the contours of this requirement fall outside the scope of this white paper. See 34 C.F.R. § 104.33.

For purposes of Section 504, an individual has a qualifying disability if they have a “physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.”⁴ Under the implementing regulations of the Americans with Disabilities Act, an impairment which is “episodic or in remission is a disability if it would substantially limit a major life activity when active.”⁵ Thus, conditions like epilepsy, cancer, or drug addiction may constitute a qualifying disability for purposes of the ADA, and by extension Section 504.⁶ A temporary illness or condition may also constitute a qualifying disability if the condition lasts, or is expected to last, for an extended period of time.⁷

Students qualifying for protections under Section 504 are entitled to receive accommodations and services to enable a child with a qualifying disability equal access to education commensurate with their nondisabled peers. This may include accommodations for students with complex medical needs such as extended time to complete assignments, “quality over quantity”⁸, additional academic assistance when a child misses school, additional time to get to classes, modified school schedules, excused absences/tardies when related to the qualifying disability, virtual instruction, and many others.⁹ Many different accommodations and services may be available, depending on the individual needs of the child (and the creativity of the team developing the 504 plan).

INDIVIDUALIZED HEALTH PLANS: Ensuring a child’s *safety* at school

Individualized Health Plans (“IHP”s) can be viewed as a function of Section 504 and ADA, requiring schools to grant reasonable accommodations and modifications to rules/policies/practices when necessary to allow students with disabilities to fully

⁴ 34 C.F.R. § 104.3(j).

⁵ 28 C.F.R. § 35.108.

⁶ 29 U.S.C. § 794(d); *see also Jones v. City of Boston*, 752 F.3d 38, 58 (1st Cir. 2014).

⁷ *See, e.g. Anaheim City (CA) Sch. Dist.*, 115 LRP 19319 (OCR 12/02/2014) (specifying that a school District should have evaluated a child for Section 504 when he had to use a wheelchair for four months as a result of a severe leg break).

⁸ This is a common accommodation allowing for students to receive less work (taking out any repetitive or “busy-work”) on assignments and is often advisable to accompany the accommodation of extended time on assignments.

⁹ Accommodations such as these may be available under a 504 plan, an IHP, or an IEP.

participate in school programs and activities, including extracurricular activities by addressing a student's health related needs.

Although like a 504 plan there are no legal requirements for an IHP, or that it even be in writing, it is advisable for an IHP to include the following: (1) A child's medical diagnosis; (2) health care needs; (3) medication and whether any medication must be administered at school along with side effects; (4) activity restrictions; (5) names of school staff responsible for monitoring or providing health care services at school/school base activities; (6) school staff that will be trained and how they will be trained; (7) how to handle emergencies; and (8) who should be notified in case of an emergency. Additionally, it is helpful for an IHP to also lay out activities that a student should be allowed to participate in to prevent a student from unnecessarily being excluded from an activity. For example, although a child may be restricted from participating in contact sports due to the risk of injury complicated by their underlying medical condition, they may be able to participate in non-contact sports.

The IHP should be developed in conjunction with a health professional at the school (typically the school nurse), the student's medical care provider, and the family.

IEPs: Ensuring a child receives an *appropriate* education

Generally, students are eligible for an IEP if they meet age requirements, eligibility criteria under one or more defined categories, and if as a result of their identified eligibility they need special education and related services.¹⁰ While a child with complex medical needs may be identified as eligible in any identified category (e.g. Autism), as a result of the complex medical needs several eligibility categories should be discussed at a minimum.

For example, Other Health Impairment ("OHI") is defined to mean "having limited strength, vitality, or alertness... that results in limited alertness with respect to the educational environment" which is "due to chronic or acute health problems..." and

¹⁰ 20 U.S.C. § 1401(3)(A).

“[a]dversely affects a child’s educational performance.”¹¹ Although several conditions are expressly identified as examples of conditions likely to meet this eligibility category such as attention deficit disorder, diabetes, epilepsy, or leukemia,¹² this is a non-exhaustive list; many other complex medical conditions may also cause a child to be eligible for an IEP under OHI.

A less frequently applied category of eligibility, Orthopedic Impairment (“OI”), may also apply for students with complex medical needs. Under federal law, Orthopedic Impairment includes various impairments such as those “caused by a congenital anomaly, impairments caused by disease (e.g.; poliomyelitis, bone tuberculosis...” as well as conditions like “cerebral palsy, amputations, and fractures or burns that cause contractures.”¹³ Much like OHI, OI conditions are not limited by those expressly included in the statutory definition; instead, OI is defined as “a severe orthopedic impairment that adversely affects a child’s educational performance.”¹⁴

Multiple disabilities is the final eligibility category that should likely be considered for children with complex medical needs. Multiple Disabilities is in essence what it sounds like: a combination of impairments which impacts a student educationally.¹⁵ The statutory definition adds on that the combination of the separate impairments “causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.”¹⁶ In the experience of the authors, there is a great degree of variability between individual school Districts in how, or whether, this eligibility category is analyzed.

Once an IEP team has determined that a student is eligible for special education, the IEP team should develop an IEP which includes the child’s present levels of performance, measurable goals and the special education accommodations and related services that the child requires in order to receive a Free and Appropriate Public

¹¹ 34 C.F.R. § 300.8(c)(9).

¹² *Id.*

¹³ 34 C.F.R. § 300.8(c)(8).

¹⁴ *Id.*

¹⁵ 34 C.F.R. 300.8(c)(7).

¹⁶ *Id.*

Education.¹⁷ As part of the IEP decision, the IEP team must determine what type of program the child should be educated in: “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.”¹⁸ For children with students whose individual needs require homebound instruction placement, the IEP team should then craft a specific program which meets the needs of the individual child, including appropriate related services.

Home/Hospital Instruction under general education framework

As federal law does not provide requirements or guidance for home/hospital instruction for students, state law, where it exists, governs to establish requirements in this area.¹⁹ States may use different terminology, but generally share a few common components to address home/hospital instruction.

States generally provide that students with a (1) temporary disability, (2) who cannot attend school for more than a set time period, (3) as identified by a health professional, will receive a (4) statutorily defined minimum amount of individual instruction. Significant to the underpinning of this statutory framework is that the home/hospital instruction is intended to be for a relatively short period of time; it is not intended to be a permanent plan for the child’s education. Accordingly, it is not necessarily intended, nor required, to provide a meaningful education placement; instead it is intended to provide for some minimal level of education while the child’s health needs dictate that they cannot participate in their typical course of study.

(1) A “temporary disability” is generally defined as a physical or mental disability which precludes a student from participating in regular day classes or an alternative education program.²⁰

¹⁷ 20 U.S.C. § 1414(d).

¹⁸ 34 C.F.R. § 300.115; *see also* 34 C.F.R. § 300.39.

¹⁹ In addition to the ADA and Section 504 discussed above, the equal protection clause of the fourteenth amendment further provides that if a state establishes a public school system they must ensure that no child living in that state may be denied equal access to education. *See, e.g. Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *Plyler v. Doe*, 45 U.S. 202, 216 (1982).

²⁰ *See, e.g. Cal. Educ. Code § 48206.3(a); Student’s Right to Home or Hospital Instruction Act of 2020 (“D.C. Home or Hospital Instruction Act”), 2019 D.C. B 392 § 1.*

(2) States vary in the length of the set time period a student must be anticipated to be unable to participate in a typical day school program; however, states generally require that the student be unable to attend their typical program for more than five to ten days in order to qualify for home/hospital instruction.²¹

(3) Unlike eligibility for homebound instruction placement under the IDEA, which will be discussed below, for home/hospital instruction states generally require that a healthcare provider identify that the student requires home/hospital instruction.²² States may also set requirements for the contents of the statement from the student's healthcare provider including documenting the rationale for the extended absence from the child's typical educational program and when they are anticipated to return to their regular course of study.

(4) Where state law proscribes a minimal level of services during home/hospital instruction, states vary greatly in what level of services is required.²³ Notably, in apparent recognition that its prior minimum level of instruction did not meet the needs of students, effective July 2023, New York increased its minimum instructional level for home/hospital instruction to 10 hours per week for elementary students and a minimum of 15 hours per week for secondary students. While state law typically frames the requirement as the minimum amount of individual instruction that a student must receive while participating in the home/hospital instruction program, it is the experience of the authors of this white paper that local education agencies uniformly interpret this state

²¹ See, e.g. Kentucky Admin. Reg. 7:150(4); N.Y. Comp. Codes R. & Regs. Tit. 8 § 100.22(a).

²² See, e.g. Georgia State Bd. Of Educ. Rule 160-4-2-.31(2)(a)(4); D.C. Home or Hospital Instruction Act, § 8.

²³ See, e.g. Georgia State Board of Education Rule 160-4-2-.31(4)(c) (requiring a minimum of three hours of instruction per school week); Utah Admin. Code R277-419-5(3)(f)(ii) (providing full funding to the local school District so long as a student receives a minimum of two hours per week of instruction during periods of disability); Cal. Educ. Code § 48206.3(c)(1) (requiring one hour of individual instruction per day); Code of Vt. Rules, Bd. of Educ. § 1252 (requiring an average of six hours per week of instruction for elementary students; for high school students requiring a minimum of two hours per week per subject per week). Further, many states defer decisions about the provision of home/hospital instruction to the local school district, which may result in greater inconsistency of services. See, e.g. Council on Educational Services for EC, Mar. 13, 2019 (citing a Disability Rights North Carolina survey finding home/hospital instruction was most frequently provided for only "0-3 hours per week"), <https://www.dpi.nc.gov/031319-summary-actions/download?attachment> (last visited Nov. 27, 2023).

“minimum” to be a proscribed program, allowing no variations or services beyond the state established “minimum.”²⁴

Additionally, many, but not all, states expressly identify that for students with an IEP, the IEP team must discuss placement under the IDEA for home/hospital instruction.²⁵ While other states may not expressly state that for students with an IEP team the IEP team should determine what services are necessary, many states home/hospital instruction rules provide a clear reminder that general education home/hospital rules do not limit the rights of students with an IEP under the IDEA and/or 504.²⁶ Regardless of whether state law provides this reminder, state law may not supersede requirements established in federal law.²⁷

Homebound Instruction as a Placement under the IDEA

Homebound Instruction as a placement is a function of special education and is not to be confused with home/hospital instruction available for all students. Homebound instruction placement is among the continuum of special education placement provided for under the IDEA²⁸. As such, it does not follow the same procedures available to children facing a temporary absence from school due to a medical condition. Instead, all of the same procedures must be followed by an IEP team in developing an IEP for a student to be instruction at home as are followed for any other special education student.²⁹

Just as with any placement decision under the IDEA, an IEP team must consider the unique needs of the child in determining whether homebound instruction placement is warranted and the IEP team is still charged with assuring that the student is offered a

²⁴ Exceptions to “minimum” instruction requirements do, however, typically exist to allow for cases where medical advice and/or parental request provide for a decreased educational service level.

²⁵ See, e.g. Kentucky Admin. Reg. 7:150(6); Georgia State Bd. of Educ. Rule 1604-4-2-.31(3)(c).

²⁶ See, e.g. Cal. Ed. Code § 48206.3(e); D.C. Home or Hospital Instruction Act, 2019 D.C. B 392 § 3(c).

²⁷ U.S.C.S. Const. Art. VI, Cl. 2.

²⁸ 34 C.F.R. §300.115, homebound instruction, also referred to as home/hospital placement is a part of the continuum of placement available as part of the Individuals with Disabilities Education Act.

²⁹ Letter to Boney, 18 IDELR 537 (OSEP 1991).

FAPE.³⁰ Among the items the team must consider are assessment information, medical and/or mental health reports, and projected dates for a student's return.³¹

While a survey of cases provided only limited guidance on the requirements of an IEP team in contrast with the provision of home/hospital instruction for all students, in one California case an Administrative Law Judge ("ALJ") held that a district denied a student a FAPE when a school district failed to hold an IEP meeting to determine an appropriate placement because the school district believed that the student was not attending school due to a temporary disability for over two years.³² In so finding, the ALJ cited the distinction between California law providing five hours per week of individual instruction required for temporarily disabled students in contrast with the highly individualized determination required of an IEP team for students eligible for special education in need of the "highly restrictive home or hospital environment."³³ Notably, in this case the district "admitted that it did not provide Student a FAPE once Student began receiving his schooling at home."³⁴ Although the district argued that it was excused from providing a FAPE due to the child's temporary disability, the ALJ disagreed.³⁵ Instead, the ALJ concluded that the district should have held IEP meetings, informed the Parents of the availability of homebound instruction placement under the child's IEP, and determined whether related services were needed during the time that the Student health issues required them to be educated in the home.³⁶

PRACTICE TIPS: Pitfalls and Opportunities

Pitfalls

³⁰ See, e.g. Cal. Code of Regulations, tit. 5, § 3051.17, subd. (c)

³¹ See, e.g. Cal. Code of Regulations, tit. 5 § 3051.4, subd. (a)

³² *Student v. Buena Park Sch. Dist.*, Cal. Office of Admin. Hearings, Case No. 2016090918, 117 LRP 16952 (Apr. 24, 2017). Note, however, that Despite the ALJs clear conclusion that the District denied the student a FAPE for two years, the ALJ awarded only 40 hours of compensatory academic instruction and 76.6 hours of group speech and language. *Id.* at 42

³³ *Id.* at 33-34.

³⁴ *Id.* at 37.

³⁵ *Id.*

³⁶ *Id.* at 37-38.

Although the landscape of home/hospital and homebound instruction varies greatly from state to state, there are several common pitfalls that riddle that landscape to prevent students in this vulnerable population from receiving a meaningful education. Especially for those students that qualify for special education, it has been the experience of the authors of this whitepaper that the following occur with some frequency:

- 1) Not holding an IEP at all to place a child in homebound instruction placement;
- 2) Requiring a doctor's "prescription" for homebound instruction placement under an IEP;
- 3) Utilizing the state law constructs for minimum instruction to dictate how much services a child with an IEP receives rather than considering the child's unique needs;
- 4) Perpetual/long-term placement in the home without reassessment or a doctor's requirement that the student not return to school;
- 5) Failing to assess appropriately or at all;
- 6) Provision of services by unqualified personnel;
- 7) Failing to provide related services.

Pitfalls also appear for the population of children in general education that truly only require home/hospital instruction as prescribed for a temporary disability: (1) confusion as to what is required to trigger home/hospital instruction, (2) delays in the start of services, (3) lack of communication between the school and the child's medical team, and (4) lack of knowledge of home/hospital instruction as a possibility.

Opportunities/Practice Ideas

Regardless of whether a child with medical needs qualifies for an IEP under the IDEA, there are ways in which to bolster their chances of actually receiving the services they need during an arguably tumultuous period.

- (1) Medical Provider Involvement: Perhaps an obvious, but often overlooked necessity for the education of children with medical needs is to involve the medical provider as much as possible. A child's physician is necessary to trigger

most state's home/hospital instruction provisions under the general education construct, in developing an individual health plan, in determining whether a child with an IEP should be placed on homebound instruction placement, and determining when and if a child should return physically to school.

Accomplishing this level of involvement can be challenging; however, Learning Rights Law Center has made headway by developing a Medical/Legal Partnership with children's hospitals in the area. We provide training to providers and families, consultation, on-site legal intakes and brief services, as well as direct representation for qualifying families. The medical providers become more knowledgeable about special education, their responsibility in the development of IHPs, IEPs, and triggering home/hospital and homebound Instruction, refer patients for legal assistance when needed, and are able to communicate directly with Learning Rights regarding specific patient's needs. Both families and providers also become aware of children's educational rights, including the distinction between home/hospital instruction as a general education service, vs. homebound instruction placement under special education.

- (2) Planning: When possible, plan ahead if a child is going to require home/hospital or homebound instruction placement. The following steps may be taken ahead of time so that services are in place: obtain and complete any paperwork that will be required by the school; obtain the medical team's "prescription" or recommendation that a child must stay at home or in a hospital setting and if so, the anticipated length of time it will be required; if a child has an IEP, request an IEP team meeting to discuss homebound instruction placement, and consider inviting a member of the child's medical team to attend the IEP as well.
- (3) Consider requesting specific accommodations (such as those listed above or others).
- (4) Know the state's rules and be able to articulate the distinction between home/hospital and homebound instruction placement.
- (5) In the Due Process context, consider arguing predetermination if the IEP team limits the offer of services to the general education program minimums (whether under state law or local district policy).

- (6) If an IEP fails to offer appropriate educational services consider providing a 10 day notice of seeking private services and intent to seek reimbursement.
- (7) Consider submitting state public records requests to gather information about available programs/parameters.
- (8) Legislative advocacy establishing and/or raising minimum instruction levels for all students under home/hospital instruction.

CONCLUSION

There is frequent confusion between the rigid requirements and provision of instructional services under home hospital instruction rules and the highly flexible structure for providing students with complex medical needs an individualized program with all necessary related services under the IDEA and Section 504 of the Rehabilitation Act of 1973. Understanding the general structure of the law within these distinct systems can enable students and their representatives to facilitate the development of a meaningful educational program for medically impacted students. Additional work is needed to highlight this distinction in a variety of forums, including legislative advocacy, citable legal proceedings, and grassroots efforts including, where applicable, medical-legal partnerships to better inform the medical community of the availability and limits of available programs.