

Homebound and Remote: Are They One in the Same Post COVID-19

IAASE Fall Conference
October 2021

Laura M. Sinars
lsinars@robbins-schwartz.com

Chicago
55 West Monroe Street, Suite 800
Chicago, IL 60603
p 312.332.7760
f 312.332.7768

Champaign-Urbana
301 North Neil Street, Suite 400
Champaign, IL 61820
p 217.363.3040
f 217.356.3548

Collinsville
510 Regency Centre
Collinsville, IL 62234
p 618.343.3540
f 618.343.3546

Lisle
550 Warrenville Road
Suite 460
Lisle, IL 60532-4311
ph: 630.929.3639
fax: 630.783.3231

Rockford
2990 North Perryville Road, Suite 4144B
Rockford, IL 61107
p 815.390.7090

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Homebound and Remote: Are They One in the Same Post COVID-19?

IAASE Virtual Fall Conference
October 2021

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ISBE Remote Instruction Guidance for 2021/2022 School Year



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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

ISBE Guidance regarding Remote Instruction dated August 31, 2021

• Who Must Receive Remote Instruction?

- Districts must provide remote instruction to any student who is under quarantine or excluded from school consistent with guidance or requirements from a local health department or the Illinois Department of Public Health. This includes students who are not in-person due to the district entering into an adaptive pause after consultation with the local health department.

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ISBE Guidance Regarding Remote Instruction dated August 31, 2021

• What Instruction is Required and/or Recommended for Students Learning Remotely?

- The remote learning requirements are the same as they were last year – specifically, five hours of a combination of instruction and schoolwork, with a strong recommendation that districts strive to provide all their students with at least 2.5 hours of synchronous learning with real-time instruction and interaction between students and their teachers.

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ISBE Guidance
Regarding
Remote
Instruction
dated August
31, 2021

• Must the District Adopt a Remote Learning Plan?

- Yes. The requirement for a remote learning plan under Section 10-30 is satisfied as long as the plan is adopted by the district superintendent, posted on the district's website, and periodically reviewed and amended, as needed, to ensure the plan meets the needs of all students.

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ISBE Guidance
Regarding
Remote
Instruction
dated August
31, 2021

• What Must the Remote Learning Plan Include Related to Hours and Type of Instruction?

- A district's remote learning plan must provide for five hours of a combination of instruction and schoolwork. ISBE strongly recommends that districts strive to provide all of their students with at least 2.5 hours of synchronous learning with real-time instruction and interaction between students and their teachers.

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Relevant
Provisions of the
School Code
Regarding
Homebound
Instruction
105 ILCS 5/14-
13.01(a)



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Standard for
Home or
Hospitalization
Instruction

- "...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..."

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Required Documentation from Parent/Guardian

- “In order to establish eligibility for home or hospital services, a parent or guardian must submit to the district a written statement from a physician licensed to practice medicine in all of its branches stating[:]
 - the existence of such medical conditions;
 - 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 statement in accordance with this Section, but instruction shall commence not later than 5 school days after the school district receives the physician's statement.”

REQUIRED

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Home and Hospital Instruction for IEP and 504 Students

- 105 ILCS 5/14-13.01(a) further states that: “[s]pecial 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.”

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Required Hours of Instruction/ Reimbursement

- In order for a district to be reimbursed for providing home and hospital instruction to eligible children, the “[e]ligible children... 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 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.”

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Homebound Services

- Instructional time shall be scheduled only on days when school is regularly in session, unless otherwise agreed by all parties.
- A school district is not obligated to provide home and hospital instruction when the referral for the services is presented when two weeks or less remains in the school year.
- Home or hospital instructors shall meet the requirements of 23 Ill.Adm.Code 1.610, Personnel Required to be Qualified.
- 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.

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Responding to Parent's Request for Homebound Services for a Student with an IEP



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Responding to Parent's Request for Homebound Services for a Student with an IEP

- Upon convening an IEP meeting, the IEP team must review the proffered physician's documentation, determine the overall appropriateness of a request for homebound placement in light of the student's needs, and, if deemed appropriate, determine the amount of homebound instruction required.
- Each determination must be made using the guidelines in 23 Ill. Adm. Code 226.300 and federal regulations pertaining to the continuum of placement options.
- Placement of the student in the LRE must remain a key factor in the team's analysis.

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Responding to Parent's Request for Homebound Services for a Student with an IEP

- If a student is determined to require homebound instruction, the team must develop a plan for delivery of instruction that is designed to provide the student with a free appropriate public education.
- When determining FAPE for the student, the District must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.
- FAPE includes consideration of the student's progress in the general education curriculum and towards the student's goals and objectives.



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Responding to Parent's Request for Homebound Services for a Student with an IEP

- The child's circumstances include the impact of the student's health condition to participate and engage in instruction.
- The student's IEP Educational Services must be revised to provide for the instruction and services to be provided in the homebound placement.
- The student's IEP Placement should be revised to list homebound placement/instruction and provide the LRE rationale for this placement.

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Responding to Parent's Request for Homebound Services for a Student with an IEP

- 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 not necessary during the home or hospital instruction due to the child's condition.
 - The amount of instructional time shall be determined in relation to the child's educational, physical and mental health needs.
 - The amount 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.
 - If 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.

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Responding to Parent's Request for Homebound Services for a Student Who Does Not Have an IEP

- The decision regarding a request for homebound services should be made by a team of individuals, not just one person.
- If the student has a 504 Plan, the 504 team should be convened to consider the request.
- If the student does not have a 504 Plan or an IEP, a team should be gathered to include an administrator, a teacher, a nurse and other relevant persons.
- "Other relevant persons" could include a central office administrator to promote consistency and a school mental health provider if the reasoning for homebound is due to a mental health condition, i.e. anxiety.

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COVID Home Instruction Considerations

- Student has a diagnosed medical condition (IEP, 504, healthcare plan, or newly diagnosed condition)
- Medical condition causes the student to be at increased risk of severe illness if he/she contracts COVID-19
- Healthcare provider has determined student should not attend school
- Relevancy of vaccination status to determination

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COVID Home Instruction Considerations

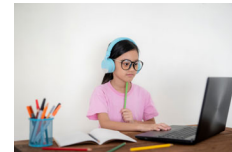
- Describe the elements of the diagnosed medical condition that increases the student's risk of severe illness due to COVID-19
- Explain the impact the diagnosed medical condition has on the student's ability to attend in person instruction
- Consider the duration of the condition
- Can the student attend in person learning with accommodations (i.e. increased social distancing, shortened school day, alternative schedule)

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COVID Home Instruction Considerations

- What will home instruction look like in the 2021-2022 school year?
 - Raised expectations after remote last year?
 - In-home services versus virtual or combination thereof?
 - Impact of Delta variant?



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Other Considerations

- Consider developing your own Homebound Form instead of utilizing the ISBE Medical Certification for Home/Hospital Instruction Form 34-58.
 - Do not guarantee the provision of homebound upon receipt of medical certification
 - Diagnosis alone does not qualify the student; there needs to be a connection between the medical condition and the reason the student is unable to attend (i.e. what is the impact of the student's condition on their ability to participate in school)
 - Provide clear indication on form of whether absences will be intermittent
 - Length of time should be in weeks, not "through end of school year" etc.
 - Require parents to also sign the form, along with physician

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Other Considerations

- Clearly document in the IEP, 504, or meeting notes the reasons for granting or denying the parent's request for homebound services, with reference to the criteria specified in state and federal regulations.
- Where the medical condition necessitating the request for homebound is not related to the student's eligibility for special education or 504 services, the IEP or 504 should clearly document this information.

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Other Considerations



- Document the IEP, 504 or school team's basis for denial in cases where the student's physician has "prescribed" or otherwise recommended homebound instruction for the student.
- Request additional information from the physician in cases where the medical or mental condition and its impact are uncertain and request updated information when the duration of the condition may be lengthy.
- Do not leave a student on homebound for an extended period. Convene meetings to consider alternatives to getting the student back to a less restrictive environment.

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Other Considerations

- Determine what related services can and will be provided during the duration of the homebound instruction.
- Conduct check-ins with your homebound tutors.
- Adjust the homebound schedule as necessary based on the student's medical condition, physician appointments, medication changes, etc.
- Remember that while school districts are not required to replicate services and instruction as though the student were receiving them at school, homebound is not one-size-fits all and must be individualized (i.e. do not give all students on homebound 1 hour per day/5 days per week).

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Illinois Hearing Officer Decisions



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*Chicago Public
School District
299, LRP (SEA
IL. 2017)*

- Student is a fifteen year-old female student eligible for special education services under OHI, ED, and SLD. In 2010 she was diagnosed with cyclical vomiting syndrome (“CVS”).
- At the beginning, the CVS was fairly well controlled and only resulted in one hospitalization a year of a few days. Before the CVS occurs, the student becomes more anxious, has headaches and is exhausted. The student also has a chronic complex regional pain syndrome, which results in color changes and severe pain, as well as a generalized anxiety disorder, migraine condition and sun downing mood disorder.
- Due to the severity of the CVS in combination with other conditions, the student has not attended school for two years and had to repeat 8th grade.

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*Chicago Public
School District
299, LRP (SEA
IL. 2017)*

- Medical experts testified that the student is unable to attend school due to her CVS condition. Such experts also testified that the student is more alert during the school day and more mentally available to participate in tutoring during the school day.
- Additionally, the student requires extracurriculars to improve her social skills, anxiety and mood disorder.
- During the 2015-2016 and 2016-2017 school years, the student was absent 81 days and 104 days (through March 13, 2017), respectively.

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*Chicago Public
School District
299, LRP (SEA
IL. 2017)*

- The homebound instruction program for CPS is only offered after regular school hours, up until 7:00 p.m., and provides one hour of instruction based on a five-hour school week.
- Additionally, no make-up homebound services are provided since this program is intended to be temporary. The homebound plan developed by the IEP does not take into consideration the student's IEP and related services.
- Furthermore, the District failed to revise the IEP consistent with the student's program and placement.

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*Chicago Public
School District
299, LRP (SEA
IL. 2017)*

- Due to the parameters and restrictions in place regarding the CPS homebound program, the hearing officer found the District denied the student a FAPE when the team did not consider the unique needs of the student in developing the individualized homebound program.
- Student was, therefore, awarded 330 hours of compensatory services to be provided over a two-year time frame during regular school hours.

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*C.S. v.
Rockford Public
School District
205, 108 LRP
42815 (SEA IL
2008)*

- Parent kept son, C.S., out of school for four months and requested a due process hearing when District denied homebound instruction. The due process hearing officer held that the IEP for C.S., which did not provide for homebound instruction, was reasonably calculated to confer on him an "educational benefit" within the meaning of IDEA.
- The hearing officer additionally found that the parent's request from a physician for homebound instruction, which referred to C.S.'s Autism, depression, discomfort and an unidentified "current illness" and recommended homebound services for the remainder of the year, was insufficient, as none of these medical conditions required him to need in-home instruction.

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*C.S. v.
Rockford Public
School District
205, 108 LRP
42815 (SEA IL
2008)*

- Furthermore, even if the documentation was sufficient, homebound instruction for C.S. was very unlikely to confer on him any educational benefit, and would have placed C.S. in an environment far more restrictive than a classroom setting. Thus, an IEP that provided for homebound instruction for C. S. would itself violate IDEA.
- The note's indication that the student "having been more depressed and not comfortable at school" is irrelevant, as the Court notes that such are not illnesses requiring absences from school, but merely a descriptive of the student's moods at school. The doctor letter did not document "any illness or condition that required the student to be absent from school for even one day, much less four months."

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*In re Trico
Community
Unit Sc. Dist.
176, 108 LRP
42817 (SEA IL
2008):*

- The hearing officer held that a homebound IEP failed to provide a FAPE, where IEP goals were for a student with PTSD from a concussion she received in a school fight, to successfully participate in public school setting, but the objectives did not take effect until she returned to school.
- The record reflected that the student needed more than the minimum five hours of homebound only because she spent so much time completing assignments that she was teaching herself.
- Her homebound tutor testified that he did not believe five hours of tutoring was sufficient to meet her needs. Additionally, the District failed to monitor her progress on IEP goals during homebound. Therefore, the hearing officer ruled that the homebound IEP and the services thereby provided violated FAPE.

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Court Decisions



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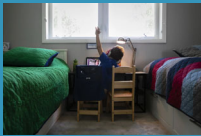
*Marshall Joint
School District
No. 2 v. C. D.,
616 F.3d 632
(7th Cir. 2010)*

- “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 IDEA dictates a full review by an IEP team composed of parents, regular education teachers, special education teachers and a representative of the school district.”

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*K.K. v.
Pittsburgh
Public Schools,
64 IDELR 62
(3rd Cir. 2014)*



- K.K. was a high-achieving, academically gifted high school senior.
- K.K. was diagnosed with gastroparesis midway through her junior year, which caused intermittent hospitalization and thus the student’s temporary inability to attend class, leading the district to provide her homebound services.
- K.K. successfully completed her junior year under these circumstances, and she began her senior year generally symptom-free. She took a very a rigorous course load, which included advanced placement work in English, Japanese, Chinese, calculus, physics, European history, and biology. Within a few weeks, she relapsed, and her parents eventually requested homebound instruction again.

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*K.K. v.
Pittsburgh
Public Schools,
64 IDELR 62
(3rd Cir. 2014)*

- The District identified K.K. as a qualified student with a disability under Section 504 and included homebound services in her 504 Plan. Parents also submitted a psychologist's diagnoses that K.K. suffered from anxiety.
- Around this time, Parents also expressed concern related to the quality of the homebound instruction provided, as the tutor could not provide instruction in all of K.K.'s advanced classes, which led to K.K. dropping two courses and attempting to self-teach or learn others via her private tutor.

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*K.K. v.
Pittsburgh
Public Schools,
64 IDELR 62
(3rd Cir. 2014)*

- K.K. relapsed a couple times during her senior year, and by May and parents decided that she would complete her studies at home with the assistance of private tutoring. In June, K.K. graduated and was accepted into and matriculated at a well-known university that fall. In college, however, K.K.'s anxiety disorder persisted, and she finished her first year on academic probation—a result she attributes in large part to what she considered the substandard quality of instruction provided by the District during her senior year of high school.
- After withdrawing from college, her parents filed for due process. The hearing officer found in favor of the school district; the parents lost again on appeal to the federal district court and, again, appealed.

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*K.K. v.
Pittsburgh
Public Schools,
64 IDELR 62
(3rd Cir. 2014)*

- The Third Circuit Court of Appeals held that K.K. was not entitled to relief under Section 504, as the district's attempts to accommodate the student's disabilities did not amount to a denial of FAPE.
- Specifically, the Court ruled that the homebound services provided "a modest approximation of the high-caliber instruction" the student received when she attended school. Consistent with the law, the services provided were never intended to be a substitute for in-school attendance and instruction, but rather "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."

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*B.F. v. Fulton
County School
District, 2008
WI 4224802
(N.D.Ga.)*

- Student is a middle school student diagnosed with anxiety. Student's IEP provided for a one-on-one aide. The parent wanted the aide to be the same person the entire school day, however, the school had one aide for the majority of the school day and a second aide for the last two periods of the school day. Parent then requested that the student be placed on homebound for the last two periods of the school day.
- The first homebound form submitted listed the reason for homebound as "Aspergers Syndrome." The District twice asked for a homebound certification that included the justification or reason for the homebound, since the District regularly educated students with Aspergers Syndrome within its schools.

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*B.F. v. Fulton
County School
District, 2008
WL 4224802
(N.D.Ga.)*

- Parent waited two months and then submitted a doctor letter indicating the student's middle school years were more difficult than expected and because of the change in personnel (i.e. aides), the student was now experiencing PTSD, and if he had to come back to school and experience such personnel, he would experience trauma.
- The letter went on to state that the student should receive homebound until the case manager and second aide were replaced. Parent provided yet another homebound form still indicating Aspergers Syndrome as the condition preventing attendance at school, but also asked that the student be allowed to attend chorus at school.

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*B.F. v. Fulton
County School
District, 2008
WL 4224802
(N.D.Ga.)*

- The Court found the District's denial of homebound was appropriate and the student was not eligible for homebound services.
- The Court held that the first request was inappropriate, because Aspergers Syndrome alone was a not sufficient reason to grant the request.
- Furthermore the recommendation that the student attend school for all but the last two periods of school was based on the parent's disagreement with the school, not a medical or psychological reason preventing attendance.
- Finally, the Court found that the doctor's letter requesting homebound was insufficient where the psychiatrist noted that the student could attend school under certain circumstances.

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QUESTIONS?



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LAURA M. SINARS

PARTNER, CHICAGO

312.332.7760

lsinars@robbins-schwartz.com

Laura Sinars focuses on special education and students' rights law. She counsels and represents public school districts at IEP meetings, due process hearings and mediation. She also represents districts at student expulsion and residency hearings. Laura has defended district decisions regarding evaluations, services and placement of special education students in due process hearings. She has successfully prevailed in hearings to defend against parents' unilateral private placements. In the area of student rights, Laura has assisted clients with routine student issues related to records, discipline, health and 504 questions. She has also assisted clients with building strong residency and discipline cases which proceed to hearing and has successfully defended districts' decisions in state and federal courts. Laura has represented districts before federal and state agencies including the Illinois State Board of Education, the Illinois Guardianship and Advocacy Commission and the Office for Civil Rights.

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RECENT PUBLICATIONS

Contributing author, "Special Education," *Illinois School Law*, IICLE (2005, 2010, 2012 and 2015)



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J.D., University of Notre
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B.A., University of Notre
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U.S. Court of Appeals for
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U.S. District Court for the
Central District of Illinois

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois