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School Law Update:

Epidemic or Pandemic? – Navigating Requests for Homebound Instruction

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Illinois Alliance of Administrators of Special Education

Tinley Park, IL

- **What does the Illinois School Code require?**
- **Who makes the decisions about homebound placements?**
- **What makes a homebound program appropriate?**
- **How is homebound different from home schooling?**
- **What do the recent cases tell us?**

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NAVIGATING REQUESTS FOR HOMEBOUND INSTRUCTION

Key Questions Regarding Homebound Instruction

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 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 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.

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 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.
*** *** ***

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.

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.
>
> 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?

Home-Schooled Special Education Students

What Every District Needs to Know

Many school districts and school administrators understand that the federal Individuals with Disabilities Education Act ("IDEA") works together with state laws to provide the rights and obligations to a student with a disability. While the bulk of the regulations implementing special education under the IDEA come from the federal regulations in 34 C.F.R. Parts 300 and 301, the Illinois regulations, found in 23 Illinois Administrative Code Part 226 "Special Education", play a crucial role where the IDEA defers to state law in implementing the rights and obligations under the IDEA.

One area of the federal law that defers entirely to state law is issues relating to homeschooling. It is important to know these basics of homeschooling law as it relates to special education in Illinois in order to guide the district and parents appropriately in situations relating to homeschooling, which can frequently be in connection to an already contentious relationship and related to a revocation of consent.

Initially, it is very important to differentiate between homeschooling and homebound services through an IEP, and to explain this differentiation to any district staff that would potentially consent to homebound services through an IEP. Whenever a home education is an educational preference rather than an educational necessity for a particular student with a disability, the extent of special education rights under the IDEA and Section 504 for this group of students is entirely determined as a matter of state law. 71 Fed. Reg. 46,594 (2006).

Not all states equate homeschooling with a private placement. Illinois, at this time, does define homeschooling as a private placement. The Illinois School Code (105 ILCS 5/26-1 et seq.) states that children between the ages of 7 and 17 must attend public school; however, an exception is made for "…..any child attending a private or parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language." Based on this law, the Illinois Supreme Court held in 1950 that the phrase "private school" included home-schooling if the teacher (either the parent her or himself or a private tutor) were competent, the required subjects were taught, and the student received an education at least equivalent to public schooling. (*People v. Levisen*, 404 Ill. 574 (1950)).

School Districts do not have any power or obligation to determine whether a home school is in or out of compliance with the compulsory education law outside of truancy reporting requirements, but they are frequently involved in assisting the States Attorney if an investigation or proceeding is initiated based upon truancy. Once these proceedings are initiated by the local States Attorney, the Illinois Supreme Court has discussed the burden of proof that parents must meet:

> "Those who prefer this [homeschooling] method as a substitute for attendance at the public school have the burden of showing that they have in good faith provided an adequate course of instruction in the prescribed branches of learning. This burden is not satisfied if the evidence fails to show a type of instruction and discipline having the required quality and character. No parent can be said to have a right to deprive his child of educational advantages at least commensurate with the standards prescribed for the public schools, and any failure to provide such benefits is a matter of great concern to the courts."
> *People v. Levisen, id.*

The Illinois regulations, at 23 Ill. Adm. Code § 226.350 set forth the required service to parentally-placed private school students (homeschooled students):

> "Parentally-Placed Private School Students" shall be defined as set forth in 34 CFR 300.130. As noted in Section 226.100 of this Part, school districts shall conduct child find for parentally placed private school students in conformance with the requirements of 34 CFR 300.131. Each school district shall also conform to the requirements of 34 CFR 300.132 through 300.144. In fulfilling the requirements of 34 CFR 300.134 (Consultation) and 300.135 (Affirmation), school districts that are members of the same special education joint agreement are permitted to conduct jointly their consultation with private school and parent representatives. However, even when multiple districts' funds are pooled by a joint agreement, the amounts that are required to be used for services to parentally-placed private school students must be spent in accordance with each member district's "proportionate share" obligation. School districts that are members of the same special education joint agreement shall be prohibited from aggregating proportionate share funds when determining services for parentally-placed private school students.

Illinois law directs districts to follow the following regulations:

34 CFR 300.130: Definition of parentally-placed private school children with disabilities.

> Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in § 300.13 or secondary school in § 300.36, other than children with disabilities covered under §§ 300.145 through 300.147.

§ 300.131 Child find for parentally-placed private school children with disabilities.

> **(a) General**. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.
>
> **(b) Child find design**. The child find process must be designed to ensure—
>
> (1) The equitable participation of parentally-placed private school children; and
>
> (2) An accurate count of those children.
>
> **(c) Activities**. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.
>
> **(d) Cost.** The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under § 300.133.
>
> **(e) Completion period**. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with § 300.301.
>
> **(f) Out-of-State children**. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

34 CFR §§ 300.132 through 300.144 (Title and/or Summary Provided):

- 34 CFR 300.132 – Provision of services for parentally-placed private school children with disabilities.
- 34 CFR 300.133 – Expenditures. (Proportionate Amount)

- 34 CFR 300.134 – Consultation. (Timely and Meaningful Consultation)

- 34 CFR 300.135 – Written affirmation.

- 34 CFR 300.136 – Compliance.

- 34 CFR 300.137 – Equitable services determined.

  (a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

  (c) Services plan for each child served under §§ 300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must—

  (1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 300.138(b); and

  (2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

- 34 CFR 300.138 – Equitable services provided.

  (b) Services provided in accordance with a services plan.

  (1) Each parentally-placed private school child with a disability who has been designated to receive services under § 300.132 must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that the LEA has determined, through the process described in §§ 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

  (2) The services plan must, to the extent appropriate—

  (i) Meet the requirements of § 300.320, or for a child ages three through five, meet the requirements of § 300.323(b) with respect to the services provided; and

  (ii) Be developed, reviewed, and revised consistent with §§ 300.321 through 300.324.

- 34 CFR 300.139 – Location of services and transportation.

- 34 CFR 300.140 – Due process complaints and State complaints.

  (a) Due process not applicable, except for child find.

  (1) Except as provided in paragraph (b) of this section, the procedures in §§ 300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§ 300.132 through 300.139, including the provision of services indicated on the child's services plan.

  (b) Child find complaints—to be filed with the LEA in which the private school is located.

  (1) The procedures in §§ 300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in § 300.131, including the requirements in §§ 300.300 through 300.311.

  (2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of this section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the SEA.

  (c) State complaints.

  (1) Any complaint that an SEA or LEA has failed to meet the requirements in §§ 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in §§ 300.151 through 300.153.

  (2) A complaint filed by a private school official under § 300.136(a) must be filed with the SEA in accordance with the procedures in § 300.136(b).

- 34 CFR 300.141 – Requirement that funds not benefit a private school.

- 34 CFR 300.142 – Use of personnel.

- 34 CFR 300.143 – Separate classes prohibited.

- 34 CFR 300.144 – Property, equipment, and supplies.

Notice that the Illinois regulations specifically speak of the situation where parents are homeschooling their child following a refusal to accept an offer of FAPE by a school district in 23 Ill. Admin. Code Section 226.340 by again referring to the federal regulations:

Nonpublic Placements by Parents Where FAPE is at Issue:

This Section shall apply to students with disabilities who have been, or are to be, placed in a non-public facility by their parents following the parents' refusal to accept an offer of FAPE by a school district. For such students, the reimbursement obligations and other requirements set forth at 34 CFR 300.148 shall be applicable. If a determination is made by a hearing officer or court of law that the school district is not obligated to provide special education or reimbursement to such a student, the school district shall treat the student as a student defined by Section 226.350 of this Part.

23 Ill. Admin. Code § 226.340

34 CFR 300.148 – Placement of children by parents when FAPE is at issue:

(a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.
(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§ 300.504 through 300.520.
(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that

enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—

(1) If—

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement—

(1) Must not be reduced or denied for failure to provide the notice if—

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to § 300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if—

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

In 2011, the Office of Special Education and Rehabilitative Services issued guidance titled "Questions and Answers on Serving Children with Disabilities Place by their Parents in Private Schools." 111 LRP 32532 (OSERS 4/1/11). A copy of this guidance is provided in these materials.

Practical Protections – Revocation of Consent

The IDEA grants parents the right to consent to the provision of special education and related services. 34 CFR 300.300 (b)(1). Conversely, parents may revoke this consent at any time. 34 CFR 300.9 (c)(1). Upon revocation of consent for continued special education and related services, the district:

- May not continue to provide special education and related services to the child, but must provide prior written notice before ceasing services.
- May not use mediation or due process procedures in order to obtain a ruling that services may be provided to the child.
- Will not be considered to be in violation of the requirement to make FAPE available to the child because of a failure to provide further services.
- Is not required to convene an IEP team meeting or develop an IEP for the child.

34 CFR 300.300(b)(4)

Parents must provide revocation of consent in writing. For example, a parent's placement of a child in a private school when FAPE is at issue, without a written revocation, does not count as a revocation of consent. 34 CFR 300.300 (b)(4); and 73 Fed. Reg. 73,014 (2008). It is to the district's advantage to secure a revocation of consent for services when a parent decides to remove their child to homeschool. If a parent does revoke consent for services, a district cannot simply terminate the provision of special education and related services. The district must first provide parents with prior written notice that explains the change in the educational program that will result from the parents' revocation. 34 CFR 300.300 (b)(4)(i). The provision of this notice gives parents the information and time to consider fully the ramifications of the revocation of consent. 73 Fed. Reg. 73,008 (2008).

The fact that a parent has previously revoked consent does not completely absolve a district of its child find duties. However, child find will not be triggered unless there is evidence that the student has new or different needs than those

previously identified and addressed in the IEP for which consent was revoked. See Houston Indep. Sch. Dist., 114 LRP 44750 (SEA TX 06/23/14) (child find was not triggered because the student's behaviors after the parent revoked consent were substantially similar to behaviors the student exhibited over several previous years).

Practical Protections – When Parents Do Not Revoke Consent

If a parent abruptly decides to homeschool a child, the situation may be such that a parent will not provide a written revocation of consent. It is very important that the District take precautions to avoid the event where a parent later brings a due process somehow relating to their own decision to homeschool their child. Carefully following the regulations set forth above will protect the District. But further protections can provide the documentation that will provide a record of strong support for the District.

First, send a written statement describing the parents decision to homeschool with a general description of their right to services under the IDEA if they decide to re-enroll the student. Send this documentation through certified mail, with a return receipt.

Include a copy of the procedural rights. A signature page requesting parents confirmation that they have made the decision to homeschool and have received a copy of their procedural rights with a postage-paid envelope and return date will provide strong protections against the district, and every effort should be made to secure this.

When FAPE is at issue, usually meaning a due process complaint is pending, the decision of the hearing officer will determine whether or not a child was unilaterally privately placed, and whether or not the student should be allowed only the more limited protections under the IDEA and state law due to such a placement. If a hearing officer decides that FAPE was not provided, that unilateral placement will not be a private school, and the requested relief may include the placement costs. Typically there are not outstanding costs involved with homeschooling, but you can imagine the situation where parents have taken extraordinary measures that are potential liabilities to the district when FAPE is at issue, and/or where a sympathetic situation would lead a hearing officer to grant extraordinary compensatory relief. Districts absolutely should not be liable in these situations, but a failure to follow the procedures and regulations opens up this liability in an unsettled area of the law.

Conclusion:

Utilizing the practical guidance set forth above, and having a working knowledge of the regulations relating to homeschool students and how the IDEA and Illinois state law connect in this area will help district and special education cooperatives reduce liability in these situations that seem to be ever-increasing in number.