The Multiple Legal Meanings of "Home Instruction" for Students With Disabilities: Legal Distinctions and Practical Considerations

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- **The confusing variations of terminology that connect "home" with instruction warrant special care in relation to students with disabilities.**
- **The underlying core of these varying terms amounts to three distinct placement options in relation to the Individuals with Disabilities Education Act (IDEA), here identified as homebound instruction, instruction in the home, and homeschooling.**
- **Homebound instruction and homeschooling are initially a matter of state law, whereas instruction in the home is entirely a matter of the IDEA.**
- **This article summarizes the state law and IDEA provisions for these three placements and the case law that shows the importance of understanding and applying the differences and intersections among these three meanings of home-based instruction.**

Key words: Free and Appropriate Public Education, Homebound Instruction, Home Instruction, Homeschooling, Least Restrictive Environment.

"Home instruction" has many meanings, with the need for clear differentiation essential in the connections to the Individuals with Disabilities Education Act (IDEA). The COVID-19 pandemic caused a period of in-home instruction for all students nationwide. This system-wide experience increased attention to not only the use of technology for instruction but also the potential multiple meanings of "home" in relation to the legal obligations of school districts for instruction under the IDEA and intersecting state laws. The inconsistent use of overlapping terminology, all being combinations of "home" with variations of "instruction," contributes to the common misinterpretation of three distinguishable placement options. Here are a few examples of state law variations of "home instruction" without consistent reference to the three distinct placements: "home-based instruction," "home education," "instruction conducted in the home," "instruction in the home," and even "supportive instruction."

This article has three successive parts for disentangling these confusing variations: (a) an illustrative case scenario, (b) an explanation of each of the three distinct placement options, and (c) practice recommendations for professional for special education leaders.

A useful starting point for duly differentiating these placements and showing the potential legal problems arising from their misapplication is the following case scenario. The core facts are derived from a recent court decision (*Christine C. v. Hope Township Board of Education*, 2021), with additions and adjustments for illustrative purposes. It serves as a springboard for the legal differentiation of the three oft-confused placements and the resulting practice recommendations.

Case Scenario

John Doe has a difficult background, including volatile friction between his parents, a period of homeschooling, and several changes in residence. Recently moving to a new district and enrolling John in the middle school during the early part of the summer break, his mother wanted to give

him a fresh start. For this reason, she shared with the school officials only his diagnosis of attention-deficit/hyperactivity disorder and limited information about his previous Individualized Education Program (IEP). She did not mention, much less provide records releases for, his diagnosed mood and intermittent explosive disorders and related behavioral problems, including incidents that required police intervention and, on one occasion, psychiatric institutionalization.

The school completed an expedited evaluation, concluding that he qualified as other health impaired, with related individual needs in reading, spelling, and other academic areas. Despite his mother's efforts to get him started "on the right foot," his teachers soon noted various behavioral issues, including compulsive lying and threatening harm to others and to himself. Initially, they accepted these behaviors as transitional, likely attributable to adolescent adjustment to a new environment. However, on October 6, he left class yelling "killing" threats at other students, hid from his teachers, and assaulted an assistant principal who stopped him from eloping from school. During the search, the principal locked down the school and called the police. After John's apprehension, the principal sent him home.

During the immediate investigation, the school officials found out more information about John's behavioral background, including his institutionalization and the rest of his previous IEP, which had included a behavior intervention plan. On October 7, the principal notified John's mother that his temporary placement was "homebound instruction" for the purpose of "ensur[ing] his safety and the safety of others." In the school code of that state, "homebound" refers to excusals from in-school attendance for defined temporary periods due to "mental, physical, or other urgent reasons" and requires a minimum of 5 hours per week of instruction to qualify for regular state attendance-based funding.

Due to staff shortages, the school had difficulty finding a qualified home instructor during John's first 10 days of homebound. Within that period, the school also explored with John's mother various alternative public and private placements without success. Starting on the 11th school day, an approved private company provided the homebound services to John for 5 hours per week.

Approximately 1 month later, after hiring a special education attorney, John's mother filed for a due process hearing. The resolution meeting and mediated settlement discussions were not successful.

The Three "Home" Placements

The three distinct legal placements that educators and parents sometimes refer to generically as "home instruction" or with a variety of other terms are (a) homebound instruction, (b) instruction in the home, and (c) homeschooling. Let's consider each one in the sequence that the hypothetical case seems to bring to the fore. A recent article in an education law periodical provides more in-depth legal analysis with extensive citations (Zirkel, 2023).

Homebound Instruction

Homebound instruction is not specifically addressed in the IDEA. Instead, it is a matter solely of state law or, in the absence of applicable state legislation or regulations, school board policy. In the states with applicable laws, the specified reasons, periods, and procedures vary but in most cases focus on medically justified health reasons, are limited to moderate periods, and have uniform minimum weekly amounts of instruction. The problems in applying these states laws include (a) the variance in their provisions, which include their differing terminology for homebound, including "home-based instruction" and "supportive instruction"; (b) their use of uniform statewide minimums, which easily lead to conflict with the individualized and often higher required levels under the IDEA; and (c) the failure of most of these state laws to separably address the superseding role of the IEP.

The hypothetical case illustrates several legal issues, starting with but extending beyond this cluster of state law problems. First, it is not entirely clear that John's situation fit this particular state law's allowable basis of "other urgent reasons," but in many other jurisdictions, the state law limits the allowable reasons much more narrowly to medically verified necessity, which would negate the district's use of homebound for John.

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Second, and more importantly in relation to John being a student with a disability, the services he received did not come close to the specifications of his IEP. Although only a minority of the state laws for

homebound instruction include this reminder, the IEP plays an overriding role in the provision of services to IDEA-covered students. Moreover, in addition to the initial total lack of services, the district's ultimate provision of 5 hours per week, although equating to the minimum in this state law for homebound instruction, obviously conflicts with the IDEA's substantive standard for free appropriate public education (FAPE) based on the absence of any individualized IEP team determination of specially designed instruction and related services that are "reasonably calculated to enable [John] to make progress appropriate in light of the [his] circumstances" (*Endrew F. v. Douglas County School District RE-1,* 2017, p. 399). The Supreme Court explained that this individualized focus is "at the core of the IDEA" (p. 400). Although "this prospective judgment" of the IEP team may have justified the content of the IEP for the period preceding October 6 and the initial segment of the homebound period, the additional information that came forth during this segment would warrant an increased level and scope of services for the subsequent segment. For example, in *Rayna P. v Campus Community School* (2018), the federal district court ruled that the school's provision of 12.5 hours of instruction at home during the 5 weeks when the student was on homebound due to pertussis was insufficient for her special education needs per the *Endrew F.* standard. Balancing her notable needs with the limitations of her health condition on her availability for instruction and the intensive 1:1 nature of the tutoring that the district provided, the court awarded her 2.5 hours of compensatory education for each school day that she was on homebound status.

Third, the case lacks the IEP team consideration of the overlapping IDEA provision for the least restrictive environment (LRE). Depending on applicable approach in the jurisdiction of the case, it may be the home, a private school, or a continuation of the middle school placement with additional supplementary aids and services would be the LRE, but the absence of the applicable consideration is clearly questionable.

Fourth, as a procedural matter that may well be fatal in terms of a resulting substantive loss to John or his parent's meaningful participation, the district's use of "homebound" in this case rather clearly amounts to a change in placement. For example, in the aforementioned case that provided a significant part of the illustrative scenario, the federal court concluded that the principal's unilateral removal of John for a more than de minimis period "clearly constituted" a change in placement under the IDEA, as interpreted in various federal appellate circuits (*Christine C. v. Hope Township Board of Education*, 2021, p. 6). The principal had not obtained informed consent of the parent to this change, and the IEP team had not met to duly effectuate it. The requisite loss to the parent in terms of meaningful participation is also rather clear, whether or not this procedural violation resulted in substantive loss to John.

Finally, to the extent that the change in placement was disciplinary upon exceeding 10 consecutive school days, the IDEA (2019) requires specific procedural protections, including a manifestation determination (§ 1415[k]). Although the IDEA provides for a safety valve of a 45-day interim alternative educational setting (IAES), the district had not shown that John's assault on the administrator resulted in serious bodily injury, which is limited to substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of a bodily function (§ 1415[k][7]). In the absence of the other two special circumstances, which are for weapons or illegal drugs, the district did not have the option of a unilateral IAES, which would have required the IEP team's, not the principal's, determination (§ 1415[k][2]). The fourth special circumstance, which John's actions most likely suggest, is if "maintaining the current placement of the child is substantially likely to result in injury to the child or to others" (§ 1415[k][3][A]); however, this IAES option requires the district to initiate an expedited due process hearing to establish preponderant proof of the requisite substantial likelihood (§ 1415[k][4][B]). Without determining whether the district would meet its evidentiary burden, the *Christine C.* (2021) court ruled that the failure to adhere to this provision was a procedural violation that resulted in a substantive denial of FAPE based on the unequivocal right to stay put.

Instruction in the Home

The overlapping but separable meaning that underlies the illustrative case scenario is what the IDEA briefly and alternatively refers to in two ways: (a) in the statutory definition of "special education" as including "[i]nstruction . . . in the home" (§ 1401[29]) and (b) in the IDEA regulations' (2021) description of the LRE continuum as including, on the restrictive side, "home instruction" (§ 300.115[b][1]).

Whether the district sought placement in the home, as in the illustrative case scenario, or the parent sought it, the considerations include the procedural and substantive requirements not only for FAPE, which may extend to related services in addition to specially designed instruction, but also for LRE. As this regulatory reference to the LRE continuum makes clear, this placement is, along with "instruction in hospitals and in institutions," on the restrictive side, requiring consideration of less restrictive placement options that are satisfactory with the use of supplementary aids and services.

Due to the paucity of other applicable court rulings in which the district sought the in-home placement, a Pennsylvania hearing officer decision will suffice as an example in addition to the illustrative case scenario. In this Pennsylvania case, the school district responded to the continued aggressive behaviors of an elementary school child with emotional disabilities by providing 5 hours per week of instruction at home for an extended period, apparently confusing instruction in the home with homebound instruction. The hearing officer concluded that this placement constituted a denial of FAPE in the LRE, resulting in a significant award of compensatory education (*Greater Johnstown School District*, 2015).

On the other side, the 11th Circuit Court of Appeals provided a pair of examples in which the parents sought such a placement. In the first case, the 11th Circuit upheld the school district's denial of the parents' request for in-home placement for a child with intellectual disabilities and health issues including nonspecific immunity deficiency, concluding that the in-district placement offered FAPE in the LRE (*Stamps v. Gwinnett County School District*, 2012). In the second case, the 11th Circuit ruled that the district's proposed in-school placement of a child with autism was FAPE in the LRE rather than the parents' insistence on an in-home placement due to the child's special diet (*A.K. v. Gwinnett County School District*, 2014).

In other cases, the parent unilaterally kept their child at home and lost their IDEA claim based on unreasonable conduct. For example, in a Sixth Circuit case, the parent refused to send his daughter to school upon finding iPad messages between her and another student in her special education class that contained sexual content. The district acceded to his request for services at home but only on a temporary basis while convening IEP teams to develop a placement that provided for her safety. In response to his various procedural and substantive challenges to the district's successive IEP proposals, the lower court found that the core problem was the delay in implementing the final, mutually agreed-upon IEP and that this delay was attributable to the parents' unreasonable conduct. Affirming the lower court's decision, the Sixth Circuit concluded that "[the parent] cannot fault the . . . school district for failing to implement this plan earlier because he unilaterally failed to accept it" (*Alvarez v. Swanton Local School District*, 2020, p. 3).

Homeschooling

Mentioned only in the background of the illustrative case scenario, homeschooling, like homebound instruction, is primarily a matter of state law. Unlike homebound instruction, various Internet sources provide overviews of the various homeschooling laws. However, these sources are mostly from advocacy organizations for homeschooling, thus warranting caution in differentiating the specific provisions of the laws from the interpretation and guidance of the organization. Although these laws and the related court decisions vary widely, they generally do not provide for publicly funded special education services for students with disabilities. Indeed, they rarely address the student's special education status. Exemplifying the rare exception, Pennsylvania's law (24 PA. CONS. STAT. § 1327.1) conditions the school district's approval of the parents' homeschooling application on endorsement by a certified special education teacher or school psychologist.

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The legal entitlement for homeschooled children to any special education or related services under the IDEA or related state laws is limited almost entirely to those states in which the homeschool qualifies as a private school. The IDEA leaves this determination to state discretion (e.g., *Hooks v. Clark County School District*, 2000). Within this limited subgroup of states, the entitlement to such services is still further limited based on the applicable state and federal laws.

First, in a few of the states that provide homeschoolers with the requisite private, or "nonpublic," school status, state law provides certain services to students with disabilities. For example, Michigan law (MICH. COMP. LAWS § 380.1296) requires provision of auxiliary services, defined to include various specified related and ancillary services for students with disabilities, on an equal basis to students in nonpublic schools, and those homeschools that apply and qualify as nonpublic schools are entitled to these services. As another example, New York law (N.Y. EDUC. LAW § 3602-c[2-c]) expressly includes approved homeschools in legislation that provides state funding for special education.

Second, in a state that provides homeschooling with the requisite private school status, certain services may be available to students with disabilities if the state laws also provide for dual enrollment. For example, the state of Washington's regulations (WASH. ADMIN. CODE § 392-134-005) requires school districts to provide "ancillary services" to "[a]ny student who is participating in [homeschooling] to the extent that the student is also enrolled in a public school for the purpose of taking any course or receiving any ancillary service, or any combination of courses and ancillary services."

Third and applicable to all states, the entitlement is limited to the child find and equitable services provisions of the IDEA [§ 1412[a][10][A]). Child find requires the offer to provide an evaluation to homeschooled children reasonably suspected of eligibility under the IDEA. However, in some cases, the evidence is insufficient to show a child find violation for homeschooled students, just as for district in-school students (e.g., *Ja. B. v. Wilson County Board of Education*, 2023). Moreover, the IDEA regulations (2021) specify that if the parent refuses consent or does not respond to the request for consent, the school district may not use the consent override procedure under the IDEA and need not consider the child as eligible (§ 300.300[d][4]). Similarly, court decisions before and after this 2006 regulation have ruled that school districts may not compel the evaluation of a homeschooled child when the student's parent has not provided consent (*Durkee v. Livonia Central School District*, 2007; *Fitzgerald v. Camdenton R-III School District*, 2006).

In turn, the equitable services provision requires the district of location, which is typically the district of residence for homeschooled students, to provide a limited, proportionally based amount of services on a total basis for the IDEA-eligible nonpublic school students. As the IDEA regulations make clear, the equitable services provision does not provide "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" (§ 300.130[a]), and due process hearings are not available for this specific issue (§ 300.140[a]). Moreover, any such services are conditional upon parental consent, whether via the general consent requirement for initial services or revocation option, which are also not subject to due process hearings (§ 300.300[b]).

The final possible entitlement for homeschooled students with disabilities does not depend on private-school status. Specifically, various state laws provide special education vouchers or other financial relief, such as education savings accounts or tax credits. However, the primary form of relief, which is vouchers under various names, typically includes a waiver of FAPE and the procedural safeguards of the IDEA (e.g., National Council on Disability, 2018).

Conversely, if the parents of a homeschooled child with disabilities are considering returning the child to public school, a pair of federal court decisions in the District of Columbia ruled that the IDEA obligates the district to develop a proposed IEP upon due request from the parents for an offer of FAPE, without a prerequisite of enrollment (*Hawkins v. District of Columbia*, 2008; *Rizio v. District of Columbia*, 2022).

Practice Recommendations

Based on the foregoing legal analysis, the following set of suggestions is a starting point for special education leaders' consideration. These recommendations are not at all exhaustive or absolute, instead serving only—like the illustrative case scenario—as a springboard for the discussion and deliberation.

General

1. As an overall matter, first examine the use of "home" in the instructional provisions in state law and local policy to assess the coverage in relation to general and special education.

Depending on the jurisdiction, home-based options are formally applicable to general education inclusively or to students with disabilities specifically. Special

education leaders need to be especially but not exclusively aware of those options specific to students with disabilities. Among the reasons for this nonexclusive focus are that (a) some special education students may be entitled the more universal home-based provisions either alone or in combination with those specific to students with disabilities, thus requiring careful compliance or coordination, and (b) coordination with general education is also essential on an institutional, not just individual, level for a systemwide continuum rather than silo-like separation. Such careful and current review and revision for the postpandemic and high-technology period should include stakeholder input, school board approval, and effective professional development

2. For students with disabilities, check your state law and local policy to determine the specific procedural and substantive requirements for each of the three placement options.

Avoid the uncritical acceptance of the surface labels that are variations of "home instruction." Instead, be careful to decipher the varying terminology, focusing on which of the defined placements the state law and local policy is addressing. Moreover, if you find that your local district policy provisions do not conform to either the state law or IDEA requirements, take appropriate action within the district for due revisions. In addition, if you detect conflicts between the state law provisions and IDEA, consider alerting the appropriate state education agency representatives.

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3. Recognize that the recent institutionalization of distance learning can facilitate the appropriate effectuation of these placement options.

The pandemic has provided a powerful lesson in the use of technology for blurring the traditional boundaries of the school and other settings, including the home. For students with disabilities, technology may facilitate each of the three placement options. Yet, as the pandemic also revealed, school districts must be ready to make creative and effective exceptions for in-person delivery to meet the individual needs of these children in conformity with the IDEA.

Homebound Instruction

4. For what is defined above as "homebound instruction," review and apply with due care the specific standards in the state law and local policy, including their relationship to the overriding requirements of the IDEA.

Use a two-step, flowchart-like process. First, determine whether the child qualifies for the specified eligible standards for homebound instruction. Second, if the child is eligible, apply the standards for the minimum level and scope of services in tandem with the procedural and substantive standards of the IDEA. Conversely, if the child does not clearly qualify under the applicable standards for homebound instruction, make sure to adhere to IDEA requirements for FAPE. For example, in a Texas case, the Fifth Circuit Court of Appeals ruled that the district met the substantive standards for FAPE upon denying homebound services due to lack of sufficient medical documentation and adhering to the IEP team requirements in local policy and the IDEA (*Renee J. v. Houston Independent School District*, 2019).

5. If, instead, either the parents or your district is seeking a change in placement for another reason, make sure to follow the applicable requirements under the IDEA.

For example, if, as in the illustrative case scenario, the district is seeking a disciplinary change in placement, make sure to adhere to the applicable procedures, including those for a purportedly danger-based IAES. Similarly, if the district is seeking what an adjudicator would consider the placement referred to above as "instruction in the home," make sure that the requirements for LRE as well as FAPE warrant this placement option.

Instruction in the Home

6. If the parent or the district seeks instruction in the home, be especially although not exclusively careful with regard to LRE.

The IEP team needs to recognize the relatively polar opposite position of instruction in the home as compared with the fully integrated side of the LRE continuum. Would another, more integrated placement option provide FAPE with appropriate supplementary aids and services?

Homeschooling

7. If the child with disabilities is homeschooled in conformity with the applicable state law, determine whether the homeschool qualifies as a private, or nonpublic, school for the purpose of any special education or related services.

If so, and the child is not already identified as eligible, make sure, per the district's child find obligation, to conduct timely evaluation upon reasonable suspicion of eligibility if the parent provides consent. In addition, if homeschooling meets the requisite status in your state and the child is IDEA eligible, either as a result of child find or as already determined, make sure to provide whatever services are required by your state law and by the equitable services provision of the IDEA and subject to any applicable parental consent. Those homeschooled children who receive such services need to be included in the annual count that the IDEA equitable services regulations require (§ 300.130[c]).

8. Regardless of whether homeschooling qualifies for private school status, consider providing special education and related services beyond state and federal requirements with consent of and collaboration with the parents.

As generally applies under the IDEA and state laws, the requirements represent the "must," not the "may." These requirements prohibit providing less, not more. In some circumstances, depending on your local district's resources and values, including professional ethics, you may find as a matter of discretion that your district "should" provide more than the minimum requirements for the benefit of the child, the relationship with the child's parents, and the district's position of trust with its constituent community.

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Conflict of Interest Disclosure: The author declared no relevant or material financial interests related to the research described in this article.

Funding Disclosure: The author received no financial support for the research, authorship, and/or publication of this article.