



Fagen Friedman & Fulfrost LLP

All Things Considered



In-Home Placement and Services for Students with Disabilities

www.f3law.com

What We'll Consider . . .

- Legal Principles and Types of In-Home Placements
- OAH Cases Addressing In-Home Placement and Services

Panama-Buena Vista Union School Dist.

Tehachapi Unified School Dist.

Antioch Unified School Dist.

Buena Park School Dist.

Noteworthy Recent Decisions Involving Charter Schools and In-Home Services and Placement



I. Legal Principles



Home or Hospital Instruction (“HHI”)

- California law distinguishes between individual academic instruction provided to a general education student who is at home or in hospital due to a temporary disability, and special education and related services provided in the home or hospital for a special education student with an IEP



HHI for General Ed Students

- “Temporary disability” makes school attendance impossible or inadvisable
- Instruction must be provided by teachers with valid California teaching credentials
- Five hours per week for ADA purposes
- Education Code does not address content of instruction that district must provide
 - CDE: Goal should be maintenance of student’s former level of performance during recovery

(Ed. Code, § 48206.3; Ed. Code, 44865; CDE, Home or Hospital Instruction (Sept. 2018))



HHI for Students with Disabilities

■ Eligibility

- Decision must be made by Student's IEP team if it believes such placement is necessary and it is LRE in which student can receive instruction or services
- No minimum amount of time that Student must be out of school before starting HHI
- One of the most restrictive placements on continuum

(Ed. Code, § 48206.3; Ed. Code, § 56361; Cal. Code Regs., tit.5, § 3051.4(a))



HHI for Students with Disabilities

■ Requirement for Medical Report

- IEP team must have medical report from student's physician (or treating psychologist) stating diagnosed condition and certifying that such condition prevents Student from attending less restrictive placement
- Report also must include projected calendar date for student's return to school
- Report is prerequisite for HHI placement

(Cal. Code Regs., tit.5, § 3051.4(a))



HHI for Students with Disabilities

- Review of Other Available Information
 - HHI is not automatic on receipt of doctor's note
 - IEP team must review all available information prior to placement decision
 - Rule applies even if Student's condition requiring HHI is temporary or short-term

(Cal. Code Regs., tit.5, § 3051.4(a), (c))



HHI for Students with Disabilities

■ Nature and Delivery of Services

- Number of instructional hours based on Student's unique needs (no minimum or maximum)
- May be provided by gen ed teacher, special ed teacher, RSP teacher, related services provider, as appropriate
- May be delivered individually, in small groups or by teleclass
- Team must meet to reconsider IEP prior to projected date for Student's return to school

(Cal. Code Regs., tit.5, § 3051.4(d), (e))



Services for Students with Chronic Illnesses or Acute Health Problems

- Acute health problem resulting in non-attendance for more than five consecutive days
- District must inform parents of availability of individual instruction to be delivered in home, hospital, through individual consultation, or by other instructional methods using advanced communication technology
- Must convene IEP meeting to determine appropriate services

(Cal. Code Regs., tit.5, § 3051.17)



Other Types of In-Home Education for Students with Disabilities

- Independent Study
 - Individualized alternative education to teach core curriculum, in which students generally work independently at home with supervision from certificated teacher
 - Must maintain written agreement for each student
 - Student with IEP may not participate in independent study program unless team includes such program as component of student's IEP

(Ed. Code, § 51745; Ed. Code, § 51747)



Other Types of In-Home Education for Students with Disabilities

■ Home Schooling

- Private school and public school options
- Parents can file private school affidavit
- Student with disability enrolled in private school does not have individual right to special education and related services
 - Instead is entitled to a proportionate share of equitable services as set forth in services plan

(34 C.F.R. § § 300.132-300.137; Ed. Code, § 48222; Ed. Code, § 48224)



In-Home Placement and LRE

■ LRE Overview

- To the maximum extent appropriate, students with disabilities should be educated with nondisabled students; and
- Special classes, separate schooling, or other removal from general educational environment occurs only if nature or severity of disability is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily

(34 C.F.R. § 300.114; Ed. Code, § 56040.1)



In-Home Placement and LRE

- Continuum of Placements
 - Districts must ensure that continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services
 - “Continuum of alternative placements” is range of potential placements in which a district can implement student’s IEP

(34 C.F.R. § 300.115; Ed. Code, § 56360)



In-Home Placement and LRE

- Before placing student on home instruction, IEP team must be assured that student has a medical or psychological condition that prevents him or her from receiving special education and related services in a lesser restrictive environment

(Anaheim Elementary School Dist. v. Student (OAH 2017) Case No. 2017010041)



II. OAH Cases Addressing In-Home Placement and Services



Panama-Buena Vista USD (OAH 2014)

Facts

- Student with ID and SLI was involved in alleged incident with classroom aide
- Parent asked that Student be placed on HHI in February 2014 because he had PTSD
- District provided Parent with HHI “Request and Application” form
- Parent had psychiatric nurse complete form



Panama-Buena Vista USD (OAH 2014)

Facts (cont'd)

- District contacted Parent several times to advise that information must be provided by physician
- Parent did not provide any additional information at March 2014 IEP meeting
- Team discussed range of possible placements, including HHI
- Parent refused to allow contact with physician



Panama-Buena Vista USD (OAH 2014)

Issue

- Whether District denied Student FAPE in March 2014 IEP by:
 - Predetermining that Student would not be offered HHI due to psychological condition
 - Failing to timely notify Parent of information required for IEP team to consider HHI; and
 - Failing to offer HHI to Student



Panama-Buena Vista USD (OAH 2014)

Decision & Rationale

- ALJ ruled in District's favor on all issues
- District team members did not present only one "take it or leave it" placement option
- District made multiple offers to assist Parent in gathering information for HHI request and provided necessary instructions to complete documentation as soon as Parent indicated Student had health issues



Panama-Buena Vista USD (OAH 2014)

Decision & Rationale (cont'd)

- No apparent reason for Parent's confusion
 - Actions demonstrated "disregard of the information provided that goes beyond mere inattention or lack of understanding"
- No evidence to support need for HHI
- Even if Parent proved that Student required HHI, failure to provide required information prevented IEP team from making HHI placement

(Student v. Panama-Buena Vista Union School Dist. (OAH 2014) Case No. 2014040519)



Panama-Buena Vista USD (OAH 2018)

Practical Compliance Keys



- If HHI is possibility, act promptly to provide parent with all information necessary to submit request to IEP team for consideration
- Establishing communication between IEP team and physician can help team better understand diagnosis and physician's recommendations
- Assure parents that discussion with physician will be limited to main issue at hand



Tehachapi USD (OAH 2016)

Facts

- Student, who had spina bifida, hydrocephalus and bilateral club foot, enrolled in District's pre-kindergarten
- Foot surgery kept Student out of school for eight weeks in October 2013
- Student underwent another surgery on his feet in October 2014 and was unable to return to school for 12 weeks



Tehachapi USD (OAH 2016)

Facts (cont'd)

- During this latter period, misunderstanding arose as to whether Parent was withdrawing Student from school
- District did not offer HHI during either of Student's recovery periods
- School psychologist recalled making verbal offer of HHI at IEP meeting, but it was not documented



Tehachapi USD (OAH 2016)

Issue

- Whether District denied Student FAPE by failing to offer HHI when Student was home as result of surgeries from:
 - October 10, 2013 through December 5, 2013, and
 - September 10, 2014 through January 10, 2015



Tehachapi USD (OAH 2016)

Decision & Rationale

- ALJ determined that Student was entitled to HHI during his periods of isolation and post-surgical recovery
- Rejected District's argument that Parent did not present physician's note
 - District never told Parent that note was needed
- No evidence to support verbal offer of HHI



Tehachapi USD (OAH 2016)

Decision & Rationale (cont'd)

- ALJ also rejected argument that Parent disenrolled Student in Fall of 2014
 - Parent made it clear that she intended to return Student to school following his surgery
- ALJ awarded 105 hours of compensatory education, based upon five hours per week for 21 weeks

(Student v. Tehachapi Unified School Dist. (OAH 2016) Case No. 2015060035)



Tehachapi USD (OAH 2016)

Practical Compliance Keys



- Understand when IEP team has obligation to consider HHI by knowing law and keeping close track of extended absences, medical issues and hospitalizations
- Remember, for special education students, there is no minimum amount of time student must be out of school before starting HHI
- Document all discussions of HHI!



Antioch USD (OAH 2015)

Facts

- Middle-school Student with SLD and SLI had experienced difficulties with peer interaction
- Student was struck in nose during altercation in PE class
- Later complained of chest pains attributed to anxiety over incident
- Parents removed Student from school and doctor recommended HHI in May 2014



Antioch USD (OAH 2015)

Facts (cont'd)

- IEP team provided HHI for remainder of 2013-2014 school year (two weeks)
- District proposed placement in counseling-enriched classroom for ninth grade
- Parents sought continuation of HHI during all of 2014-2015, believing classmates who “bullied” Student would continue to pose threat to him on high school campus



Antioch USD (OAH 2015)

Issue

- Whether District:
 - Appropriately offered HHI to Student from May 2014 through the remainder of 2013-2014 school year; and
 - Denied Student FAPE by failing to offer HHI placement for 2014-2015 school year



Antioch USD (OAH 2015)

Decision & Rationale

- ALJ found for District on both issues
- Appropriate for Student to receive HHI during final two weeks of 2013-2014 school year because of severity of his anxiety prevented him from attending school
- But appropriate less restrictive placements were available for 2014-2015



Antioch USD (OAH 2015)

Decision & Rationale (cont'd)

- Offer of placement in counseling-enriched classroom on high school campus would meet Student's unique needs in the LRE
- HHI would not allow Student to interact with peers in any significant way
- Even if HHI were LRE, physician's letters did not contain all required information

(Student v. Antioch Unified School Dist. (OAH 2015) Case No. 2014120518)



Antioch USD (OAH 2015)

Practical Compliance Keys



- LRE: Consider whether student can continue education at school with addition of classroom accommodations, IEP services, or NPS placement (or some service at home and some at school)
- If team believes student can be educated in less restrictive setting, make appropriate placement offer, even if parents refuse to consent



Buena Park SD (OAH 2017)

Facts

- Parent removed Student with Down syndrome from District's SDC
- Told physician that she did not like District's placement; physician provided note recommending three-month home schooling
- District placed Student on HHI from April to June 2014, with 1 hour per day of instruction
- No IEP team involvement and IEP was not amended to reflect any placement change



Buena Park SD (OAH 2017)

Facts (cont'd)

- For 2014-2015, Parent again provided physician's notes and District continued HHI under same terms (1 hour per day of instruction with no other services)
- Same arrangement for 2015-2016
- IEP team was not notified that Student might need HHI as IEP placement



Buena Park SD (OAH 2017)

Issue

- Whether District denied FAPE by unilaterally deciding, without involvement of Parents or IEP team, that Student would receive five hours per week of HHI, only, with no other services or extended school year instruction



Buena Park SD (OAH 2017)

Decision & Rationale

- ALJ found for Parents
 - District knowingly and unilaterally decided, without Parental participation or consent, to deny provision of services from March 2014 to September 2016 based on belief that Student was not attending school as result of temporary medical disability
 - Based on erroneous interpretation of HHI law
 - Failed to hold IEP team meetings to consider need for HHI, thereby denying Parent's meaningful participation in IEP process



Buena Park SD (OAH 2017)

Decision & Rationale (cont'd)

- If District had convened IEP team meeting, other outcomes were possible:
 - Team might have changed placement from SDC to HHI and made arrangements to provide services in home or elsewhere if Student could travel; or
 - Team might have concluded HHI was not LRE for Student, and could have: (1) reached agreement to return Student to school; or (2) filed for due process to implement SDC placement over Parent's objections

(Student v. Buena Park School Dist. (OAH 2017) Case No. 2016090918)



Buena Park SD (OAH 2017)

Practical Compliance Keys



- Make sure staff are aware of distinction between HHI for general education students and for students who have IEPs
- Establish process to ensure IEP team receives copies of any information provided by physician
- IEP team must ensure that all of student's identified educational needs are addressed while student is receiving HHI



Other Noteworthy Decisions

Dehesa ESD and Community Montessori Charter School (OAH 2016)

- Unilateral decision to move 7-year-old Student with autism from Charter School Learning Center to independent home study program denied FAPE
- Move was change of placement, not location
- Learning Center had 24 students with instruction from credentialed teacher; Parent, who had no training as teacher, was primary instructor in home

(Student v. Dehesa Elementary School Dist. and Community Montessori Charter School (OAH 2016) Case Nos. 2016030188 and 2016070924)



Other Noteworthy Decisions

Kern County Superintendent of Schools (OAH 2016)

- Renewed offer of placement for high school Student with ED in Charter School home-schooling program denied FAPE
- Student struggled during previous year, lashing out at Parent and refusing to attend special ed and counseling services outside home
- IEP meeting should have been convened to consider continuum of other placement options

(Student v. Kern County Superintendent of Schools (OAH 2016) Case No. 2016040211)



Other Noteworthy Decisions

High Tech High and Desert/Mountain SELPA (OAH 2013)

- Charter School's decision to provide home instruction to high school Student with anxiety and depression denied FAPE
- Knowledge of Student's condition, frequent absences and school refusal should have triggered mental health assessment, which likely would have helped determine less restrictive placement

(Student v. High Tech High and Desert/Mountain SELPA (OAH 2013) Case No. 2012020045)



Take Aways . . .



- In-home placement and services can pose challenges for IEP teams and other school staff
 - Communications with parents and physicians
 - Procedural compliance
 - LRE
 - IEP implementation



Take Aways . . .



- Team members should anticipate that discussion of in-home placement might be emotional experience for parents, particularly if student has serious illness or poses significant behavioral issues
- Be cognizant of issues over which disputes typically arise, understand what the law requires and, most importantly, strive to build trusting partnerships with parents



F3 Student Awards™

Student Art Contest: Celebrate Success



Information in this presentation, included but not limited to PowerPoint handouts and the presenters' comments, is summary only and not legal advice. We advise you to consult with legal counsel to determine how this information may apply to your specific facts and circumstances.