

## 410 Ed. Law Rep. 849

West's Education Law Reporter

May 25, 2023

### Education Law into Practice

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## “HOME”-BASED INSTRUCTION: COMMON CONFUSION IN THE SPECIAL EDUCATION CONTEXT<sup>aa1</sup>

A common source of confusion among school districts, parents, and adjudicators under the Individuals with Disabilities Education Act (IDEA)<sup>1</sup> is the use of “home” in a set of terms that refer to various forms of instruction. As explained in the first part of this short article,<sup>2</sup> only one of these terms appears within the IDEA. Yet, the inconsistent and not carefully differentiated use of these terms has resulted in problems for school districts, parents, and, ultimately, adjudicators for assuring compliance with the central obligation under the IDEA to provide the plaintiff child with disabilities a free appropriate public education (FAPE) in the least restrictive environment (LRE) via an individualized education program (IEP). Moreover, the introduction of virtual instruction, which both cyber schools and the COVID-19 pandemic dramatically accelerated, potentially compounds the confusion among these three home variants.<sup>3</sup>

### I. Definitional Framework

This section provides an overview of these three different but potentially intersecting legal placement options. In addition to the potential intersection, another major contributing factor to the common confusion is the variance in the terminology for each one of these options. However, here these three labels are used uniformly according to the meanings explained in the next three subsections.

#### Homebound

Although sometimes labeled with different terminology, such as “home-based instruction” or “supportive instruction,” “homebound” herein refers to temporary instruction in the home under state law, usually for students generally instead of just those covered by the IDEA, based on a medical or other justifying reason excusing attendance for extended but not indefinite periods.<sup>4</sup> For example, Pennsylvania's regulations authorize school districts to \*850 provide temporary excusals for attendance for up to a renewable three-month period due to “mental, physical, or other urgent reasons” and require school districts to adopt policies that specify the instructional services available to students during that period.<sup>5</sup> Some state laws on their face show that the extent of instructional services is notably limited in comparison to regular school attendance.<sup>6</sup> However, only a minority of such state laws expressly distinguish the separable requirements for students covered by the IDEA or Section 504.<sup>7</sup> Among the \*851 varying other provisions, state laws that provide for physician statements typically reserve the ultimate decision to the district.<sup>8</sup> As an example of a particularly unusual variation, New Jersey's regulations require an “individualized program plan,” including present educational levels, measurable goals/objectives, and individually designed instructional activities, for each child in homebound instruction.<sup>9</sup>

To the extent that a student with disabilities meets the criteria for homebound instruction, the separable requirements of the IDEA, including but not limited to FAPE and LRE, remain applicable. For example, agency guidance serves as a reminder that homebound instruction constitutes a change in placement as of the eleventh day, thus warranting a prerequisite IEP meeting.<sup>10</sup>

## **Home Schooling**

Although also referred to as “home education” or “home instruction,” “homeschooling” here refers to state law provisions for a home-based alternative to compulsory public schooling regardless of whether the student has a disability. In comparison to homebound instruction laws, comprehensive compilations of homeschooling laws, are readily available, including those that provide such programs with private school status.<sup>11</sup> Moreover, these laws generally do not directly provide publicly funded special education services for students with disabilities under the IDEA or Section 504.<sup>12</sup> The common confusion concerns the extent of school districts' obligation for IDEA services to homeschooled students with disabilities.<sup>13</sup>

## **Instruction in the Home**

The IDEA legislation defines “special education” to include “[i]nstruction in the home.”<sup>14</sup> Subsequently, only as an abbreviated cross-reference, the IDEA regulations identify \*852 “home instruction” as one of the alternative placements in the required LRE continuum, with the listed sequence implying that it is on the restrictive side of the continuum.<sup>15</sup> For example, Texas' special education regulations refer to this placement in the LRE continuum alternatively as “homebound” or, for IDEA-eligible children from birth to preschool, “home instruction.”<sup>16</sup>

## **II. Relevant Case Law**

### **Confusion Between Homebound Instruction and Instruction in the Home**

Some court decisions incidentally and properly have referred to “homebound” instruction as a separable state law placement.<sup>17</sup> Others have used “home instruction” or “home services” to inferably refer to this same non-IDEA placement.<sup>18</sup> Conversely, other courts have used “home-bound instruction” to inferably refer to instruction in the home.<sup>19</sup>

Other decisions are also less than clear-cut in distinguishing between homebound instruction and instruction in the home. In some cases, the imprecise terminology did not appear to be significant in the determination of FAPE. For example, in a case arising in Texas, the Fifth Circuit referred to the IDEA placement option as “homebound instruction”<sup>20</sup> in concluding that the defendant district did not deny FAPE to the child when the delay in the IEP meeting was attributable to the parent's failure to timely fulfill the IEP team's request for more specific information from the child's attending physician to support his recommendation for this placement.<sup>21</sup> Similarly, in a case arising in South Carolina, the federal district court inferably was referring to instruction in the home in concluding that the IEP for a child with chronic bronchitis, which provided itinerant special education services in a substantially mainstreamed setting, with medical homebound instruction as needed, met the applicable standards for FAPE in the LRE.<sup>22</sup> As another variation of the same theme, the Eleventh Circuit upheld the school district's denial of the parent's request for “in-home” instruction, apparently concluding that this generic term referred to the IDEA placement in ruling that LRE called for an in-district placement.<sup>23</sup> In still other such cases, whether the loose use of terminology affected the outcome was unclear.<sup>24</sup>

**\*853** An old Sixth Circuit decision upheld an IEP for a child that provided for only five hours per week of instruction in the home,<sup>25</sup> but this ruling appears to be clearly questionable for more than one reason. First, regardless of whether the Supreme Court's standard for substantive FAPE has significantly changed,<sup>26</sup> the Sixth Circuit focused on an Ohio law that, in authorizing

“home instruction” for children with disabilities who are unable to attend school, equates five hours of such instruction to five school days for the purpose of state funding.<sup>27</sup> Just as this law does not preclude such placement for students with disabilities who are able to attend school, which the court concluded,<sup>28</sup> it does not limit or equate FAPE to five hours per week for these students, which the court failed to address.<sup>29</sup> Indeed, although the IEP represented an increase from a negligible one hour per week, the district's acknowledged reason for the increase was this changed limit in state funding, which does not accord with individualization as the controlling factor under the IDEA.<sup>30</sup> In another court decision that reflects the confusion between homebound instruction and the overriding FAPE and LRE requirements of the IDEA, the problem was the parties' and the courts' myopic focus on New Jersey's separate provisions for homebound instruction for general education students and homebound instruction for students with disabilities, without consideration of the IDEA's individualized requirements for FAPE in the LRE.<sup>31</sup> As a more recent court decision illustrates, the outcome of cases that appear to fuse or confuse homebound instruction and instruction in the home often depends on the specific legal theories and factual features, including the conduct of the parents as well as the district.<sup>32</sup>

Although the scope of this article does not extend to hearing and review officer decisions, a limited exception further clarifies the prejudicial problem in the foregoing Sixth Circuit's outdated decision.<sup>33</sup> In a much more recent Pennsylvania hearing officer decision, the school district responded to the continued aggressive behaviors of an elementary school child with an emotional disability by providing five hours per week of instruction at home for an extended period, apparently confusing instruction in the home with homebound instruction.<sup>34</sup> The hearing officer concluded that this provision constituted “a clear denial of FAPE,” \*854 resulting in a “significant award of compensatory education.”<sup>35</sup>

Illustrating the aforementioned<sup>36</sup> separate source of confusion, which is the widespread technological advent of virtual instruction, a case in Pennsylvania addressed the issue of whether a cyber charter school was obligated to provide homebound instruction under state law to a student with an IEP upon the parent's request that included a psychiatrist's letter recommending homebound services due to the child's currently high level of anxiety. The cyber-charter school, which qualifies as a local education agency under the IDEA, provided entirely online instruction. The IEP for the student, whom the school determined to be eligible under the classification of other health impairment based on diagnoses of ADHD and anxiety, provided for not only virtual counseling 30 minutes per week but also, on an in-person basis, an aide for two hours per day and a behavior specialist for one hour per week. However, the parent did not utilize the two in-person services. Moreover, the parent refused to allow the school to get more specific information from the psychiatrist. The court ruled in favor of the cyber charter school on two alternative grounds: (a) the state's law for homebound instruction does not apply to “cyber schools where their students can access lectures and school work from any location and at any time of their choosing” and (b) if said law did apply, the cyber school “would have the discretion to deny the request, more so when denying the request was based on the insufficiency of the psychiatrist's letter and [parent's] refusal to consent to [the school] communicating with the psychiatrist.”<sup>37</sup>

Finally, a recent federal district court decision in New Jersey reflects the compounding or confounding effect of the current acute concern with regard to school safety on the use of homebound instruction for students with disabilities. In this case, the use of homebound conflicted with the requirements of the IDEA, which extend beyond instruction in the home to the special provisions for disciplinary changes in placement, such as the requirement of an expedited hearing to determine whether maintaining the current placement of the child is “substantially likely to result in injury to the child or others.”<sup>38</sup> In this case, a middle school student with an IEP, who had manifested increasing behavioral problems, had a culminating incident at school that included yelling, running out of class, hiding from his teachers, trying to leave the building, and admitting that he had assaulted a staff member at his former school. In response, the school administrators sent the student home, locked down the school, and called the police. They assigned the student to homebound instruction, but their efforts to find a home instructor or a private placement were unsuccessful until they were able to arrange homebound services from a private company seventeen school days later. After seven weeks of these services, he returned to school. During the interim, the parents filed for a due process hearing, claiming denial of FAPE and seeking compensatory education. The hearing officer determined that the district had engaged in a

procedural violation but concluded that no remedy was warranted as an equitable matter due to the district's diligent, good faith efforts and the absence of such conduct on the parents' part. On appeal, the federal court affirmed in part, concluding that the district's unilateral side-stepping of the aforementioned<sup>39</sup> applicable procedure for what amounted to a disciplinary change in placement was a \*855 procedural violation.<sup>40</sup> However, the court concluded that for two alternate reasons the hearing officer erred as a matter of law in failing to find that this procedural violation constituted a substantive loss to the student. First, the lack of the required expedited hearing for a danger-based interim alternate education setting was itself a substantive violation because the underlying "stay-put provision provides a substantive right to a stable learning environment."<sup>41</sup> Second, the more than ten-day period without any instruction at all was a violation of the substantive standard for FAPE.<sup>42</sup> As a result, the court ruled that the child was entitled to compensatory education, remanding the remedial issue to the hearing officer to factor the parents' delay in providing information about the severity of the child's behavioral problems into the calculation of the amount to which the child was entitled.<sup>43</sup>

### **Confusion on IDEA Obligation to Homeschooled Students**

After effectuating homeschooling for a child with disabilities, the parent's primary source of any entitlement under the IDEA depends on whether the state treats homeschooling as a private school.<sup>44</sup> In those states that do so, unless state law provides additional requirements,<sup>45</sup> the parent's entitlement is limited to the IDEA obligation to provide child find and at least some services to some students with disabilities, which is distinct from the individual right to FAPE.<sup>46</sup> In the other jurisdictions, the IDEA obligation is limited to child find.<sup>47</sup> Moreover, in the exercise of its child find obligation, school districts may not use the consent-override procedures of an IDEA due process hearing to evaluate the child.<sup>48</sup> The limited other possible legal entitlements to special education or related services include (1) the services provided to students with disabilities in private schools under the relatively few state laws that extend beyond the IDEA and that include homeschooling in that category;<sup>49</sup> (2) services provided to homeschooled students who qualify for dual enrollment as specified \*856 under state law;<sup>50</sup> and (3) funding under the variants of special education vouchers to the extent available under state law.<sup>51</sup> These options, including homeschooling qualifying as private schools, vary depending on state law, with none extending to all or even most states. Moreover, contrary to some sources,<sup>52</sup> neither the private school nor these other possibilities provide for continuity of the IEP and the associated parental rights under the IDEA.

At the other side of the potential intersection between homeschooling and the IDEA is the parents' possible change from homeschooling to have their child with disabilities attend public school. A pair of federal court decisions in the District of Columbia establish that school districts are obligated to make an offer of FAPE to a homeschooled child who qualifies as a student with a disability under the IDEA upon the parent's request, regardless of whether the parent enrolls the child in the school district directly before or after the request.<sup>53</sup> Thus, upon considering whether to enroll their child in public school, if the parents communicate to the school district a request for an offer of FAPE, the district must timely develop a proposed IEP for the child per the procedures applicable under the IDEA.

### **III. Conclusions**

The summary recommendations, which apply to parents as well as school districts, are as follows:

- Be clear and make clear in both your terminology and its application whether you are referring to homebound, instruction in the home, or homeschooling.

- In particular, focus on the FAPE and LRE obligations for instruction in the home as the primary consideration for students with disabilities.
- In doing so, avoid misinterpreting the requirements for homebound instruction or substituting them for instruction in the home; the controlling consideration is the individual needs of the child with disabilities, not state funding for homebound or any other applicable placement option.
- Similarly, avoid using a vague variant of homebound instruction or instruction in the home as a short-cutting or sidestepping of the applicable requirements for what amounts to a disciplinary change in placement for purportedly danger-based or other concerning behavior.
- For homeschooled students, consider not only the limited and varying intersection with the IDEA but also the potential application of other state law entitlements.
- For all three of these placement provisions, be aware of the use of technology, including cyber schooling, without assuming that virtual instruction automatically or necessarily equates to FAPE without additional individualized supports in comparison to in-person options.

**\*857** • Finally, remember that all three of these placement provisions represent the legal minimum, in contrast with the oft-preferable alternative of collaboratively and creatively developing mutually agreeable arrangements that exceed these minimums.

#### Footnotes

**a1** *Education Law Into Practice* is a special section of the Education Law Reporter sponsored by the Education Law Association. The views expressed are those of the author and do not necessarily reflect the views of the publisher or the Education Law Association. Cite as [410 Educ. L. Rep. 849 \(May 25, 2023\)](#).

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**1** [20 U.S.C. §§ 1401 \*et seq.\* \(2018\)](#). The corresponding regulations are at [34 C.F.R. §§ 300.1 \*et seq.\* \(2021\)](#). As a rather distant secondary matter, Section 504 of the Rehabilitation Act merits potential consideration. [29 U.S.C. §§ 794 \(2018\)](#); [34 C.F.R. §§ 104.31-104.40 \(2021\)](#).

**2** *Infra* Section I.

3 *See, e.g.*, S.C. Ann. Regs. § 43-248 (providing for virtual education program that expressly includes homeschooled and homebound students); Tenn. Comp. R. & Regs. 0520-01-03-05(2)(a) (providing for virtual district and charter schools for various purposes including homebound instruction).

4 This general meaning here does not include state law provisions for instruction of general (or special) education students who are removed from school for extended periods for disciplinary reasons and related case law. *E.g.*, Mich. Admin. Code r. 340.2(14)-(15); *Roslyn Union Free Sch. Dist. v. Jeffrey W.*, 740 N.Y.S.2d 451 (App. Div. 2002). In some state laws, the reasons include communicable diseases that pose a threat to the school environment. *E.g.*, Ga. Comp. R. & Regs 160-4-2-.31(2)(d); 702 Ky. Admin. Regs. 7.125 §12(11). However, the IDEA provision for interim alternate education settings for specified situations in the context of proposed disciplinary changes in placement (20 U.S.C. § 1415(k)(1)-(2)) is part of the confusion in relation to the requirements for homebound instruction and instruction in the home.

5 22 Pa. Code § 1125. This regulation cross refers to a state statute that provides funding for homebound instruction at a prescribed rate to the extent funding is appropriated. 24 Pa. Cons. Stat. § 25-2510.1. For the related state guidance, which distinguishes homebound instruction from “instruction conducted in the home” and “home education programs (home schooling),” *see* <https://www.education.pa.gov/K-12/Homebound%20Instruction/Pages/default.aspx>. This guidance does not include any specific allocation of time for this instruction, but it mentions that, due to its state funding procedure of counting one hour of homebound instruction as a day of attendance only upon a minimum of five hours for the week but that district may provide more than this minimum without state education department permission. <https://www.education.pa.gov/K-12/Homebound%20Instruction/Pages/Structuring-Homebound-Instructions.aspx>.

6 *E.g.*, Ariz. Rev. Stat. Ann. § 15-901(b)(vii) (requiring a minimum of four hours per week); Ga. Comp. R. & Regs 160-4-2-.31(4) (requiring a minimum of three hours per week to count as attendance); Mich. Admin. Code r. 340.2(11) (providing for state attendance-based funding if the child is in general, not special education, and receives at least two forty-five-minute periods of individualized instruction from a certified teacher); N.Y. Comp. Codes R. & Regs. tit. 8, § 100.22(e)(2) (requiring minimums of 10 and 15 hours per week for elementary and secondary students, respectively); S.C. Ann. Regs. § 43-241 (“The [State Education] Department shall fund a maximum of five periods per week of medical homebound instruction”); Tenn. Code Ann. § 49-10-1101 (requiring a minimum of three hours per week); Vt. Code R. § 7-1-1A:1252 (requiring minimums of six hours per week for elementary students and two hours per subject per week of secondary students). In some state laws, the prescribed minimum is one-on-one, thus coming closer to the school's typical larger number of hours for group instruction. *E.g.*, N.J. Admin. Code § 6A:16-10.2(d) (requiring 1:1 instruction for at least 10 hours per week plus at least 10 hours of “additional guided-learning experiences” per week, although expressly specific to general education students for specified reasons other than temporary or chronic health conditions).

7 *E.g.*, 005-18-17 Ark. Code R. 17.10.2.5-.2.6 (requiring implementation of the child's IEP if entitled to homebound instruction); 14 Del. Admin. Code § 930(1.2)-(1.3) (extending homebound instruction to IDEA and § 504 students but not to supersede or equate to the separable obligations under these federal laws); Minn. R. 3525.2325 (confusing combination of minimum standards but connected to the child's IEP); N.J. Admin. Code § 6A:16-10.1(c)(4)(5) (requiring the home instruction, if for health reasons, to be consistent with the IEP “to the extent appropriate to meet the New Jersey Student Learning Standards,” and also requiring IEP meeting upon 30 days and reevaluation upon 60 days), *id.* § 6A:14-4.8 (requiring at least 10 hours per week on 3 separate days); Tenn. Comp. R. & Regs. 0520-01-02-.10(2)(c) (differentiating the requirements under the IDEA, including “instruction in the home” and LRE); 8 Va. Admin. Code § 20-81-130(C) (providing both “home-based instruction” and “homebound” instruction, as determined by the IEP team, for students qualified for each one); Vt. Code R. § 7-1-5:2364.7 (providing for homebound instruction for qualifying students based on IEP team determination). Conversely, an occasional state law provides confusing treatment concerning this relationship. *E.g.*, Fla. Stat. § 1003.1(3)(a) (defining exceptional students as including homebound students); Fla. Admin. Code Ann. r. 6A-6.03020(2) (entitled “Exceptional Student Eligibility for Students Who Are Homebound ...” but expressly reserved for students aged 3-5, as contrasted with those in grades K-12, who are eligible under the IDEA); *cf.* 005-18-17 Ark. Code R. 17.02.2.4; Cal. Code Regs. tit. 5, § 3051.4; Conn. Agencies Regs. § 10-76d-15; 14 Del. Admin. Code § 925(13.1.6); Ill. Admin. Code tit. 23, § 226.300; Kan. Admin. Regs. § 91-40-1(dd); N.C. Gen. Stat. § 115C-106.3(5a); 19 Tex. Admin. Code § 89.1005(c)(2) (seeming to fuse homebound instruction and instruction in the home for students with IEPs).

8 *E.g.*, Ga. Comp. R. & Regs 160-4-2-.31(3) (requiring that the district consider the physician recommendation and permitting the district to require a HIPAA release); Tenn. Comp. R. & Regs. 0520-01-02-.10(2)(b) (allocating the decision to the district after considering the recommendations of the student's physician). *But cf.* Conn. Agencies Regs. § 10-76d-15(d) (providing for third-party mechanisms for resolution of disputes regarding physician's recommendation).

9 N.J. Admin. Code § 6A:16-1.3 (definitions). Yet, the subsequent, specific provisions for homebound for health reasons do not repeat this requirement, and the specific reasons for homebound for specified other reasons refer only to “a written plan for delivery of instruction.” *Id.* §§ 6A:16-10.1, 6A:16-10.2.

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

11 For the widely varying provisions of these state laws, including those that treat homeschooling as private schools, see Home School Legal Defense Association, Homeschool Laws by State [https://hslda.org/legal?gclid=CjwKCAjw5dqqBhBNEiwA7PryaNXAfr0VOt58jYgM-wAUw51O9FY\\_mHVIpg3suMvFktpsdEBchoCVjwQAvD\\_BwE](https://hslda.org/legal?gclid=CjwKCAjw5dqqBhBNEiwA7PryaNXAfr0VOt58jYgM-wAUw51O9FY_mHVIpg3suMvFktpsdEBchoCVjwQAvD_BwE); Homeschool.com, State Homeschooling Laws, <https://www.homeschool.com/articles/state-homeschooling-laws/>.

12 Conversely, one of the limited connecting provisions is in the opposite direction. 24 Pa. Cons. Stat. § 1327.1 (conditioning district's approval of home schooling on endorsement by a certified special education teacher or school psychologist). Similarly, an occasional case includes consideration of the child's disability in determining whether the child qualifies for homeschooling under state law. *E.g.*, In re Isaiah Carroll, 24 IDELR 941 (Ohio Ct. App. 1996) (upholding lower court decision that the two siblings remain in their school district special education placements).

13 One of the contributing factors is inaccurate publicly available information, such as advocacy sources that suggest that parents of IDEA-covered students are entitled to continue the child's IEP upon moving from school district enrollment to homeschooling. *See, e.g.*, National School Choice Week Team, How to Continue Your IEP, Even If You Start Homeschooling (2023), <https://schoolchoiceweek.com/how-to-continue-your-iep-if-you-start-homeschooling/>. For the applicable obligations, *see infra* notes 44-53 and accompanying text.

14 20 U.S.C. § 1401(29) (2018). The regulations repeat this definitional language. 34 C.F.R. § 300.39(a)(1) (2021).

15 34 C.F.R. § 300.115(b)(1) (“The continuum [of alternative placements] must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions”).

16 Tex. Admin. Code § 89.1005(c)(2).

17 *E.g.*, R.E. v. Brewster Sch. Dist., 180 F. Supp. 3d 262, 271-72, 337 Educ. L. Rep. 62 (S.D.N.Y. 2006) (finding that physician's order as a result of change in medication regimen rather than district's programming was the reason for the “homebound” instruction); Macomb Cnty. Intermediate Sch. Dist. v. Joshua S., 715 F. Supp. 824, 827, 54 Educ. L. Rep. 1189 (E.D. Mich. 1989) (mentioning that the review officer properly noted that the child was not eligible under state law for “homebound” education).

18 *E.g.*, Integrated Design & Elec. Acad. Pub. Charter Sch., 570 F. Supp. 2d 28, 32-34, 237 Educ. L. Rep. 194 (D.D.C. 2008) (using both “home services” and “home instruction” to refer to homebound instruction).

19 *E.g.*, Granite Sch. Dist. v. Shannon M., 787 F. Supp. 1020, 1023, 1028, 64 Educ. L. Rep. 496 (D. Utah 1992).

20      *Renee v. Houston Indep. Sch. Dist.*, 913 F.3d 523, 529, 361 Educ. L. Rep. 925 (5th Cir. 2019).

21      *Id.* at 532.

22      *Tracy v. Beaufort Cnty. Bd. of Educ.*, 335 F. Supp. 2d 675, 690-91 (D.S.C. 2004).

23      *A.K. v. Gwinnett Cnty. Sch. Dist.*, 556 F. App'x 790 (11th Cir. 2014); *cf. Stamps v. Gwinnett Cnty. Sch. Dist.*, 481 F. App'x 470 (11th Cir. 2012) (upholding denial of parents' request for placement “at home” in light of both FAPE and LRE).

24      *E.g., Hale v. Poplar Bluffs R-1 Sch. Dist.*, 280 F.3d 831, 161 Educ. L. Rep. 778 (8th Cir. 2002) (finding violation of stay-put but no denial of FAPE in interchangeably using “homebound” and “home schooling” for what may have been instruction in the home).

25      *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 64 Educ. L. Rep. 43 (6th Cir. 1990).

26      *See, e.g.*, Perry A. Zirkel, *The Supreme Court's Decision in Endrew F. v. Douglas County School District RE-1: A Meaningful Raising of the Bar?*, 341 Educ. L. Rep. 545 (2017).

27      *Ohio Rev. Code* § 3323.12.

28      *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d at 626.

29      Instead, the court questionably reasoned that there was “no dispute over whether the revised IEP will enable Emily to benefit educationally.” *Id.* at 628. Similarly, the Sixth Circuit's conclusion that “the mainstreaming concept is inapplicable” because the child cannot be educated in a regular classroom ignored the intermediate LRE placement options between it and instruction in the home. *Id.*

30      *Id.* at 622.

31      N.J. Dep't of Educ. Complaint Investigation C2012-4341, 59 IDELR ¶ 294 (N.J. Super. Ct. App. Div. 2012) (ruling that child was entitled to the specified minimum of special education services under the state homebound law for students with disabilities because the child requires “home instruction” as a result of a disability rather than as a result of a chronic medical condition).

32      *Alvarez v. Swanton Local Sch. Dist.*, 78 IDELR ¶ 272 (6th Cir. 2021) (rejecting various FAPE claims of parent who insisted upon keeping her child at home and impeded the district's attempts to implement in-school return); *Richardson v. Omaha Sch. Dist.*, 77 IDELR ¶ 135 (W.D. Ark. 2020) (rejecting various FAPE claims of parent who unilaterally kept her child at home and focused on the implementation issue based on the teacher's alleged falsification of timesheets).

33      *Supra* notes 25-30 and accompanying text.

34      The five hours per week was apparently attributable to a misinterpretation of the Pennsylvania state law for homebound instruction, thus focusing on the district's state funding rather than the child's individual needs. *Supra* note 5.

35      *Greater Johnstown Sch. Dist.*, 115 LRP 17340, at \*7, 9 (Pa. SEA 2015). The hearing officer also reminded the parties that the IDEA's LRE obligation, including careful consideration of other options to maximize interaction with nondisabled students to an appropriate extent, is critical for both instruction in the home and homebound instruction for students with disabilities. *Id.* at 7.

36 *Supra* note 3 and accompanying text.

37 Price v. Commonwealth Acad.-Cyber Charter Sch., 74 IDELR ¶ 286, at \*7 (E.D. Pa. 2019).

38 20 U.S.C. § 1415(k)(3). This dangerousness standard is derived from *Honig v. Doe*, 484 U.S. 305 (1988), which established a judicial alternative to an expedited due process hearing.

39 *Supra* note 38 and accompanying text.

40 Christine C. v. Hope Twp. Bd. of Educ., 78 IDELR ¶ 74, at \*5-6 (D.N.J. 2021).

41 *Id.* at \*15.

42 *Id.* at \*9 (citing *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386 (2017)).

43 *Id.* at \*8-13.

44 *E.g.*, *Hooks v. Clark Cnty. Sch. Dist.*, 228 F.3d 1036, 1040, 147 Educ. L. Rep. 870 (9th Cir. 2000) (ruling that whether homeschooling qualifies as an IDEA-qualifying private school is left to state discretion); *see also* Questions and Answers on Serving Students with Disabilities Placed by Their Parents in Private Schools, at item I-1 (OSEP/OSERS 2022), <https://sites.ed.gov/idea/idea-files/questions-and-answers-on-serving-children-with-disabilities-placed-by-their-parents-in-private-schools/>. Child find also extends to the district of residence, not just the district of location for the private school. *Id.* at item I-2. This distinction is largely only academic, because in most cases of homeschooling, the district of residence coincides with the district of location.

45 *See, e.g.*, *Andes Cent. Sch. Dist. v. King*, 59 IDELR ¶ 48 (N.Y. Sup. Ct., Albany Cnty. 2012). The requirements are even more variable and complicated under state laws that allow for dual enrollment. *E.g.*, *Veschi v. Nw. Lehigh Sch. Dist.*, 772 A.2d 469 (Pa. Commw. Ct. 2001).

46 20 U.S.C. § 1412(a)(10)(A); 34 C.F.R. §§ 300.130-300.144.

47 Although not specifically mentioning homeschooled children, the IDEA's child find regulation expressly applies to all children in the state suspected of meeting the eligibility standards. 34 C.F.R. § 300.111. For a recent example, see *Ja.B. v. Wilson Cnty. Bd. of Educ.*, 61 F.3d 494 (6th Cir. 2023) (ruling that district did not violate its child find obligation to student after parent withdrew the student for homeschooling).

48 34 C.F.R. § 300.300(d)(4)(I); *see also* *Durkee v. Livonia Cent. Sch. Dist.*, 487 F. Supp. 2d 313, 387, 221 Educ. L. Rep. 129 (W.D.N.Y. 2007) (ruling that “the IDEA does not permit a school district to compel the evaluation of a student for determination of that student's eligibility for publicly-funded special education services where the student's parent has objected to such an evaluation and has refused to accept publicly-funded special-education services”).

49 *E.g.*, *N.Y. Educ. Law* § 3602-c(2-c) (expressly including student homeschooling for this purpose as a “nonpublic school”).

50 *E.g.*, *Wash. Admin. Code* § 392-134-005 (providing “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”).

51      *E.g.*, National Council on Disability, Choice and Vouchers: Implications for Students with Disabilities (2018), <https://ncd.gov/publications/2018/school-choice-report-series>.

52      *Supra* note 13 ("How to Continue Your IEP ....").

53      Rizio v. District of Columbia, 80 IDELR ¶ 68 (D.D.C. 2022); [Hawkins v. District of Columbia, 539 F. Supp. 2d 108, 231 Educ. L. Rep. 76 \(D.D.C. 2008\)](#); *see also* Letter to Goldman, 53 IDELR ¶ 97 (OSEP 2009), <https://sites.ed.gov/idea/idea-files/policy-letter-march-26-2009-to-missouri-attorney-teri-b-goldman/> (interpreting the IDEA to trigger the obligation for proposing an IEP at least upon re-enrollment).

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