

73 IDELR 28

118 LRP 26949

**In re: Student with a Disability
Wisconsin State Educational Agency**

18-027

May 11, 2018

Related Index Numbers

**250. HOME INSTRUCTION AND
HOMEBOUND SERVICES**

265.010 Development of IEP

**265.025 Participants in/Procedures for IEP
Meeting**

113.05 Change of Placement

Judge / Administrative Officer

**Carolyn Stanford Taylor, Assistant State
Superintendent**

Ruling

A Wisconsin district failed to properly determine placement for a student with a disability when it changed the student's placement to homebound, and then to a shortened school day, outside of an IEP meeting.

Meaning

A student does not need to be physically unable to leave home to qualify for homebound services. Homebound is available to students when an IEP team determines it is appropriate. Here, the district failed to hold an IEP team meeting to determine whether homebound services were appropriate for the student who was ill and had surgery. In addition to that procedural violation of the IDEA, the district then improperly informed the parent that the homebound services would no longer be provided because the student was physically able to leave the house.

Case Summary

A Wisconsin district failed to properly determine placement for a student with a disability when it changed the student's placement without an IEP meeting. The student with an unknown disability had

an existing IEP for the 2017-18 school year. However, from November 2017 to January 2018, the student fell ill and was excused from school to have surgery. In that time, the student did not receive education services. Outside of an IEP meeting, the district and parent agreed to homebound services, which were to start Jan. 15, 2018. Subsequently, the district decided to no longer provide the student with homebound services. The parent filed a due process complaint, alleging that the district failed to properly determine placement for the student. The IDEA requires that a group of persons, including the parents, and other persons knowledgeable about the child, the evaluation data, and the placement options, make the placement decision. 34 CFR 300.116(a)(1). An IEP team may decide to change the placement of a student with disabilities to home instruction if, during an IEP team meeting, it is determined that homebound services are necessary for the student because the student is unable to attend school. Here, without conducting an IEP meeting, the district and the parent agreed to the student's placement in the home. The state ED noted that the district then unilaterally decided to remove the student from placement on homebound instruction, asserting that it no longer had to provide the student with homebound because the student was physically able to leave the house. The district then placed the student on a shortened school day, the state ED pointed out, without holding an IEP meeting or revising the IEP. The hearing officer determined that the district failed to properly determine placement for the student when it changed the student's placement to homebound and to a shortened school day outside of an IEP team meeting. The state ED ordered the district to develop a corrective action plan to ensure that all placement decisions are made through the IEP team process and provision of home-based services for students with IEPs be based on individual students needs determined through an IEP meeting.

Full Text

IDEA Complaint Decision

On March 12, 2018, the Department of Public Instruction (department) received a complaint under state and federal special education law from [] (complainant) against the [] (district). This is the department's decision regarding that complaint. The issue(s) are whether the district, during the 2017-2018 school year:

- Properly developed and implemented an individualized education program (IEP) for a student with a disability regarding vision and homebound services; and
- Properly determined placement for a student with a disability.

A district meets its obligation to provide a free and appropriate public education (FAPE) to a student with a disability, in part, by providing special education and related services. Districts must provide FAPE to each student with a disability by developing a program based on the student's unique needs that is reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances, documenting that program in the IEP, and implementing the program articulated in the IEP. In Wisconsin, the IEP team determines placement for a student with a disability. Districts must consider the impact of student absences on the ability of the student to make progress in the general education curriculum and toward IEP goals. If a student is absent from school for a prolonged period of time, the district must convene an IEP team meeting to discuss the student's IEP and determine if it is necessary to modify the program or placement in order to ensure the continued provision of FAPE.

On September 19, 2017, the IEP team met and developed the IEP which outlined a variety of special education services, including vision services. From November 29 to December 15, the student was ill and medically excused from school. On December 17, the student had surgery and the parent provided a medical excuse for an additional four weeks. During this time, there was no IEP team meeting and the student did not receive any educational services.

On January 8, the parent inquired as to whether some of the services in the student's IEP could be provided at home. District staff responded and stated that homebound services should be considered. Outside of an IEP team meeting, district staff and the parent agreed on homebound services, which were scheduled to begin on January 15. District staff notified the parent that they would provide homebound services temporarily, but doctor verification was required to receive homebound services on a long term basis.

Homebound instruction for a student with a disability is part of a continuum of educational placements. An IEP team may decide to change the placement of a student with disabilities to homebound instruction if, during an IEP team meeting, it is determined that homebound services are necessary for the student because they are unable to attend school. The amount of homebound instruction provided must be based on the student's unique needs. While the parent's may bring medical information for consideration at the IEP team meeting, the IEP team does not need to receive verification from a medical professional before changing the student's placement to homebound instruction and medical professionals cannot prescribe district homebound instruction for students.

On January 15, the student did not attend the first scheduled session of homebound instruction due to illness. On that same date, district staff informed the parent that homebound services would no longer be provided because the student was physically able to leave the house, and instead the student would receive services at school on a shortened day schedule. This determination was made outside of an IEP team meeting and without revising the student's IEP to reflect this change. The student attended one day of school on January 17. On January 22, 2018, the IEP team met to discuss medical updates for the student. After the meeting, the parent removed the student from the district. The district failed to properly develop and implement an IEP for a student with a disability regarding vision and homebound services

when it did not have an IEP meeting between November 29 and January 22 to consider the effect of the student's absences on the provision of FAPE. The district also failed to properly determine placement for a student with a disability when it changed the student's placement to homebound and to a shortened school day outside of an IEP team meeting.

The student is currently enrolled in home-based private education, therefore student-specific corrective action is not required. However, if the student re-enrolls in the district, the district must determine compensatory services for the missed instructional time between November 29, 2017, and January 22, 2018. Within 30 days from the date of this decision, the district must develop a corrective action plan and submit it to the department to ensure that all placement determinations are made through the IEP team process and provision of homebound services for students with IEPs be based on individual students needs determined through an IEP team meeting.

The corrective action plan must also include professional development and a review and revision of policies and procedures to ensure that medical documentation may be considered, but is not required when determining homebound placement for students with IEPs, and that homebound is available when an IEP team determines it is appropriate, rather than only when the student cannot physically leave home.

All noncompliance identified above must be corrected as soon as possible, but in no case more than one year from the date of this decision. This concludes our review of this complaint. This decision is final for the IDEA State Complaint process. These issues may be addressed through other dispute resolutions, including mediation and due process hearings. For more information, visit the department's website at <http://dpi.wi.gov/sped/dispute-resolution> or contact the special education team at (608) 266-1781.