

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

A new Chapter 25, STUDENTS’ RIGHT TO HOME AND HOSPITAL INSTRUCTION, of Subtitle A, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, of Title 5, EDUCATION, of the DCMR is added to read as follows:

CHAPTER 25 STUDENTS’ RIGHT TO HOME AND HOSPITAL INSTRUCTION

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2500 AUTHORITY AND PURPOSE

2500.1 This chapter is authorized by the Students’ Right to Home or Hospital Instruction Act of 2020, effective March 16, 2021 (D.C. Law 23-204, D.C. Official Code §§ 38-251.01 – 38-251.10)).

2500.2 The purpose of this chapter is to establish the requirements applicable to District of Columbia public schools and public charter schools for the adoption and implementation of a home and hospital instruction program that provides academic instruction and support to students who have been or will be absent from their school of enrollment for ten (10) or more consecutive or cumulative school days during a school year due to a health condition and to establish an appeal and mediation process, to be administered by the Office of the State Superintendent of Education (OSSE), for the approval or denial of an application for home or hospital instruction by the student’s local educational agency (LEA).

2501 HOME AND HOSPITAL INSTRUCTION PROGRAM

2501.1 Beginning in school year 2022-23, every LEA shall adopt and implement a home and hospital instruction program.

2501.2 An LEA's home and hospital instruction program shall:

- (a) Be designed by the LEA to promote a participating student's academic progress, allow the student to stay current with classroom instruction in core subjects to the greatest extent possible, foster coordination between the student's classroom teachers and the home or hospital instructors, and facilitate the rapid reintegration into classroom instruction when the student returns to school;
- (b) For a student with an individualized education program (IEP), ensure that home or hospital instruction is provided in accordance with the IEP; and
- (c) Provide content aligned to that being provided in the student's classroom at their school of attendance, including without limitation a nonpublic special education day school or residential facility.

2501.3 Each LEA shall designate at least one employee to manage the LEA's home and hospital instruction program.

2502 HOME AND HOSPITAL INSTRUCTION PROGRAM POLICY

2502.1 Beginning in school year 2022-23, every LEA shall adopt and implement a written home and hospital instruction program policy.

2502.2 A home and hospital instruction program policy shall:

- (a) Set forth the process for applying for home or hospital instruction;
- (b) Include the requirements for a medical certification and recertification of need;
- (c) Include information on the availability of appeal and mediation through OSSE for approval or denial of an application for home or hospital instruction;
- (d) Be published online on the LEA's website in a reader-friendly format;
- (e) Be provided to a parent after the parent makes an initial request for home or hospital instruction for a student in a school year and again after a subsequent request by the parent if the LEA has revised the policy; and
- (f) Be provided to a parent after the parent submits a first request for medical recertification of need in a school year and again after a subsequent request by the parent for medical recertification of need if the LEA has revised the policy.

2503 HOME AND HOSPITAL INSTRUCTION FOR STUDENTS WITH

DISABILITIES UNDER THE IDEA

- 2503.1 Nothing in this chapter shall be construed to supersede the requirements of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 *et seq.*) with regard to an LEA's obligation to determine the educational placement in the least restrictive environment for a student with a disability under the IDEA.
- 2503.2 When a parent makes a request for home or hospital instruction for a student who is suspected of being or is eligible for special education services under the IDEA, the LEA shall:
- (a) Provide the parent with notice of the procedural safeguards under the IDEA defined by 34 CFR § 300.504; and
 - (b) Consider whether the request for home or hospital instruction could impact the student's educational placement in the least restrictive environment, and if so, convene a placement determination team to review and revise the educational placement of the student, as appropriate, and to review and revise the student's IEP, as appropriate.
- 2503.3 If an LEA convenes a placement determination team to review whether the educational placement of a student with a disability should be changed, the determination and eligibility for home or hospital instruction shall be governed by the IDEA and any applicable District law or regulation governing IDEA rather than the standards in this chapter.
- 2503.4 If a student with a disability is placed in home or hospital instruction in accordance with the IDEA, the provision and duration of services shall be governed by the IDEA and any applicable District law or regulation governing IDEA rather than the standards in this chapter.

2504 HOME AND HOSPITAL INSTRUCTION APPLICATION

- 2504.1 A parent seeking home or hospital instruction for a child may submit an oral or written request to the LEA in which the student is enrolled, provided that the LEA shall not grant the request until the parent submits a written application in accordance with this section.
- 2504.2 An application requesting home or hospital instruction shall include:
- (a) The student's name, and date of birth;
 - (b) The name of the LEA the student is enrolled in and the name of the student's current school of attendance;
 - (c) The parent's name, address, phone number, and email address as available;

- (d) A medical certification of need as defined in Section 2506;
- (e) The requested start date and duration of home or hospital instruction services;
- (f) The consent of the parent for disclosure of information contained in or related to the medical certification of need; and
- (g) The parent's signature.

2504.3 An application requesting home or hospital instruction shall not be considered complete unless it complies with all of the requirements in Section 2504.2.

2505 HOME AND HOSPITAL INSTRUCTION APPROVAL PROCESS

2505.1 Every LEA shall have in effect a home and hospital instruction approval process. The approval process shall require the LEA to:

- (a) Not later than two (2) school days after receipt of the request, document a parent's request for the LEA to provide home or hospital instruction for a student in the student's record;
- (b) Within two (2) school days after receiving a request:
 - (1) Make available to the parent a written application (that includes information on the requirements in Section 2504.2) for home and/or hospital instruction, as applicable; and
 - (2) Provide information to the parent explaining the process for submitting a written application for home or hospital instruction and obtaining a medical certification of need;
- (c) Deny an application for home or hospital instruction only if the application or a medical certification of need is missing information or otherwise incomplete, or if a student's IEP requires home or hospital instruction as the student's least restrictive environment under IDEA;
- (d) Review a completed application for home or hospital instruction and issue a written decision approving or denying a home or hospital instruction program application within five (5) calendar days of receipt of the completed application; and
- (e) Provide a written decision on the submitted application that:
 - (1) Includes a written explanation of the basis for the approval or denial;
 - (2) If the LEA approves the application, describes a written plan for the delivery of home or hospital instruction that includes the service

delivery location, service to be delivered, identification of virtual and/or in-person service delivery as the method of service, identification of the number of hours per week of direct instruction for eligible students according to the medical certification of need, and the schedule for service delivery;

- (3) States specifically, if the LEA denies the application, that the basis for the LEA's determination is that the application or medical certification of need was missing information or incomplete; and
- (4) Provides information on the right of a parent to appeal the LEA's approval or denial of the application to the Office of the State Superintendent of Education (OSSE).

2505.2 If home or hospital instruction is approved, during the provision of such instruction the LEA may make reasonable requests for information from the parent concerning the student's continuing medical need for home or hospital instruction and work with a student's parent to develop accommodations or measures that would permit the student to return to school.

2506 MEDICAL CERTIFICATION AND RECERTIFICATION

2506.1 A medical certification of need is a written statement, either on a form provided by OSSE or any other form containing this information, signed by a licensed physician, licensed nurse practitioner, licensed clinical psychologist, licensed mental health counselor or therapist, or physician assistant that:

- (a) States the signatory's license number;
- (b) Certifies that a student has been diagnosed with a health condition and explains how the health condition has caused or is anticipated to cause the student to be unable to attend in-school instruction, on a continuous, partial, or intermittent basis, at the student's school of enrollment or attendance for ten (10) or more consecutive or cumulative school days during a school year;
- (c) Contains a recommendation that the student receive home or hospital instruction, to the extent permitted by the student's health condition;
- (d) States whether there is a maximum number of direct instructional hours that the student may receive per week based on the student's health condition;
- (e) States the anticipated duration and frequency of the student's health condition, and the needed start date of services; and
- (f) States whether the student's health condition is anticipated to cause continuous, partial, or intermittent absence from school.

2506.2 A medical recertification of need is a written statement, either on a form provided by OSSE or any other form containing this information, signed by a licensed physician, licensed nurse practitioner, licensed clinical psychologist, licensed mental health counselor or therapist, or physician assistant that:

- (a) States the signatory's license number;
- (b) Verifies the continued need for home or hospital instruction and whether the student requires instruction in a home or hospital;
- (c) States whether there is a maximum number of direct instructional hours that the student may receive per week based on the student's health condition; and
- (d) States the anticipated duration and frequency of the student's health condition.

2507 DURATION OF SERVICES, TERMINATION, OR EXTENSION OF HOME OR HOSPITAL INSTRUCTION

2507.1 The home or hospital instruction services provided by an LEA pursuant to an approved application shall last no longer than the estimated duration of the student's health condition, as provided in the student's medical certification of need, or sixty (60) calendar days, whichever is less.

2507.2 Notwithstanding Section 2507.1, a parent may request an extension to a student's home or hospital instruction for additional periods of no more than sixty (60) calendar days each by submitting a medical recertification of need at least five (5) calendar days before the date on which the parent desires the extension to commence.

2507.3 A request to extend home or hospital instruction services must include:

- (a) The number of calendar days that services are requested to be extended, not to exceed sixty (60) calendar days;
- (b) A medical recertification of need, including the estimated duration of the student's health condition, except when the request is for a period of extension that extends services to a date that is less than sixty (60) calendar days after the date home or hospital instruction commenced.

2508 HOME OR HOSPITAL INSTRUCTION SERVICE DELIVERY AND ATTENDANCE

2508.1 An LEA shall begin delivering home or hospital instruction to a student whose application has been approved no later than five (5) school days after the LEA approved the application.

- 2508.2 An LEA shall identify and provide a minimum number of hours per week of direct instruction for an approved student based on the medical certification or recertification of need.
- 2508.3 The LEA may adjust the minimum required amount of direct instruction based on the student's schedule and amount of in-school instruction the student is expected to receive.
- 2508.4 Direct instruction shall be provided in-person by a home or hospital instructor, except that with the consent of the parent, direct instruction may be provided by a home or hospital instructor via real-time videotelephony or asynchronous learning.
- 2508.5 An LEA may provide direct instruction via videotelephone in real-time or asynchronous learning without a parent's consent in the following circumstances:
- (a) During a public emergency, including a public health emergency, declared by the Mayor of the District of Columbia;
 - (b) When the student has been diagnosed with a communicable disease as defined in 22-B DCMR Chapter 2, or any superseding regulation;
 - (c) When a household member has been diagnosed with a communicable disease as defined in 22-B DCMR Chapter 2, or any superseding regulation, if the student is to receive instruction at home;
 - (d) When the LEA determines that safety concerns prevent in-person instruction; or
 - (e) When the student is receiving medical treatment outside of the District of Columbia.
- 2508.6 An LEA may satisfy the provisions of this section through employing staff to provide instructional services to a student, contracting with private providers to deliver instructional services, contracting with other LEAs to provide instructional services, or combining any of the foregoing delivery options.
- 2508.7 An LEA shall maintain a student receiving home or hospital instruction on the regular attendance roll and count the student as medically excused, except when a student is not available for home or hospital instruction, in which event the student may be counted absent.
- 2508.8 The LEA shall ensure due deference to the medical opinions set forth in the medical certification of need, including any medical opinions regarding the return of the student to in-school instruction when medically feasible, including the use of accommodations or supports recommended by the medical professional.

2508.9 Upon return of the student to in-school instruction, an LEA may propose accommodations to allow the student to remain in school. Such accommodations must be agreed upon in writing by the medical professional signing the medical certification of need who agrees that such accommodations meet the medical needs of the student and permit in-school instruction.

2509 MEDIATION AND APPEALS

2509.1 A parent may appeal an LEA's decision to approve or deny a request for home or hospital instruction by submitting a written request for an appeal to OSSE. An appeal to OSSE shall be submitted within ten (10) calendar days of receipt by the parent of the LEA's written decision. The written request for an appeal shall:

- (a) Include the student's name, date of birth, universal student identification number (USI), and the name of the LEA of enrollment and school of attendance at the time of the appeal request;
- (b) Describe how the denial or approval decision made by the LEA was not made in accordance with this chapter;
- (c) Include a copy of the medical certification or recertification of need in support of the request for home or hospital instruction; and
- (d) Include a copy of the written decision of the LEA.

2509.2 If a parent appeals a decision by the LEA to approve a request for home or hospital instruction, the appeal shall be limited to the LEA's decision to approve and shall not include an appeal of the LEA's written plan for implementation of home or hospital instruction.

2509.3 Upon receipt of the parent's request for appeal, OSSE shall provide mediation between the parent and the LEA. OSSE shall provide the parent notice of the proposed mediation date and an opportunity to request an alternative date for mediation. Proposed mediation times must fall within Monday through Friday, 9:00 am through 05:00 pm.

2509.4 The LEA, through the attendance of an authorized decision maker, shall participate in mediation with the parent. OSSE shall deny the appeal of a parent who fails to participate in mediation.

2509.5 If the mediation does not resolve the issues raised by the appeal within eight (8) school days following OSSE's receipt of the appeal or such other time as mutually agreed to by the parties, the appeal shall be reviewed by a three (3)-member appeals panel within OSSE.

2509.6 The following requirements shall apply to review of an appeal by the three (3)-

member appeals panel convened by OSSE:

- (a) The parent shall have the burden of proof. If a parent is appealing the approval by the LEA of a request for home or hospital instruction, the parent shall be required to submit evidence from a qualified health professional in order to rebut the presumption in favor of the medical certification supporting the application;
- (b) There shall be a presumption in favor of the medical opinion set forth in the medical certification of need submitted in support of the request for home or hospital instruction;
- (c) In instances where the medical certification of need submitted in support of the request for home or hospital instruction is deemed by the LEA to be incomplete or missing information, the LEA shall have the burden of proof in seeking to rebut the presumption in favor of the medical opinion set forth in the medical certification of need through the submission of evidence from a qualified health professional;
- (d) The parent may request an opportunity for oral argument before the appeals panel; and
- (e) The appeals panel shall issue a final written decision no later than ten (10) school days following receipt of the appeal.

2509.7 An LEA shall implement the decision of the appeals panel, as applicable, no later than five (5) calendar days following issuance of the decision.

2509.8 An LEA that fails to implement a decision of the appeals panel within five (5) calendar days following issuance of the decision will be subject to OSSE's review of the LEA's home and hospital instruction program and corrective actions to address any identified noncompliance with the requirements of this chapter. Corrective actions required of the LEA may include revisions to LEA policies and required training or technical assistance.

2510 LEA REPORTING

2510.1 All LEAs shall annually report to OSSE,

- (a) All parent requests for home or hospital instruction; including student names, USI, and date of request;
- (b) Approvals and denials made by the LEA to provide home or hospital instruction, including the outcome of each reported request;
- (c) The reason for each denial of a request for home or hospital instruction;

- (d) A list of the names of each licensed pediatrician, licensed nurse practitioner, licensed clinical psychologist, licensed mental health counselor or therapist, or physician assistant who provided the medical certification of need for each request for home and hospital instruction; and
- (e) Whether instruction was provided in-person or via real-time videotelephony for each approved request for home or hospital instruction.

2599

DEFINITIONS

2599.1

When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Direct Instruction – instruction provided by a home or hospital instructor either in-person or via real-time videotelephony.

Health condition – a physical or mental illness, injury, or impairment that prevents a student from participating in the day-to-day activities typically expected during school attendance.

Home or hospital instruction – academic instruction and support provided to a student participating in a home and hospital instruction program, which includes but is not limited to direct instruction.

Home and hospital instruction program - a program that provides instruction and support to students who cannot or for whom it is anticipated that they cannot attend in-school instruction, on a continuous, partial, or intermittent basis, from their school of enrollment for ten (10) or more consecutive or cumulative school days during a school year due to a health condition.

IDEA - the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. §§ 1400 *et seq.*), as amended, and its implementing regulations.

IEP – an individualized education program.

Individualized education program - a written plan that specifies special education programs and services to be provided to meet the unique educational needs of a child with a disability, as required under section 614(d) of IDEA (20 U.S.C. § 1414(d)).

In-school – instruction that takes place when the student is either physically present in the educational institution in which the student is enrolled or assigned by the student’s LEA to attend, or when the student is receiving instruction remotely, excluding remote learning as part of a home or hospital instruction program pursuant to this chapter or in accordance with the IDEA.

LEA – local education agency, which as used herein includes the District of Columbia Public Schools and any individual or group of public charter schools operating under a single charter in the District of Columbia.

Parent - a parent, guardian, or other person who has custody or control of a student enrolled in a school or in an LEA, who is eighteen (18) years or older and for whom educational rights have transferred, or an emancipated minor.

Chapter 21, COMPULSORY EDUCATION AND SCHOOL ATTENDANCE, of Subtitle A, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, of Title 5, EDUCATION, of the DCMR is amended as follows:

Section 2102, ABSENCES, is amended as follows:

A new subsection 2102.5 is added to read as follows:

2102.5 If a student is receiving home or hospital instruction in accordance with D.C. Official Code § 38-251.01 *et seq.* and Chapter 25, Subtitle A, of Title 5 of the District of Columbia Municipal Regulations, the LEA shall maintain the student on the regular attendance roll and count the student as medically excused, except when a student is not available for home or hospital instruction, in which event the student may be counted by the LEA as absent.