

Margaret A. Kohn
Attorney at Law
619 Pennsylvania Ave. SE, 2nd Floor
Washington, DC 20003
202-544-1200/202-544-1201 FAX
Margaret.Kohn07@gmail.com

Admitted in DC, MD

October 21, 2019

Testimony of Margaret A. Kohn Esq.
At the Committee on Education of the D.C. City Council regarding
the Students' Rights to Home or Hospital Instruction Act of 2019

Thank you for providing this opportunity for citizens to comment on the proposed Home or Hospital Instruction Act of 2019, ("HHIP legislation, B23 0392.") I am an attorney with over 30 years of experience representing parents and guardians of children with disabilities who have disputes with public schools here in the District of Columbia and in Maryland. The current Home or Hospital Instruction Program ("HHIP") does not serve children and adolescents well, and desperately needs to be reformed.

The two most important things that need changing are the long lag time between the request for services and the delivery of services, and the ability of education bureaucrats with no medical or mental health credentials or training to over ride the recommendations of primary care physicians, pediatricians, obstetricians, nurse practitioners, physician assistants, psychiatrists, psychologists, and licenced clinical social workers that a student requires home or hospital instruction. To illustrate these problems, let me tell you what happened to a request for HHIP services initiated by parents of a high school age student at the beginning of April, 2019.¹ The high school age student has complex mental health and neurological needs and attends a non-public school with funding from OSSE. Prior to the request the student had experienced four hospitalizations and many behavior challenges at school during SY 2018-19. The treating

¹ I have represented this family over many years. Although they are unable to testify themselves, they consented to my sharing their recent experiences with HHIP because they hope that other families do not encounter the same frustrations and disrespectful treatment they endured. No personally identifiable information is included.

psychiatrist signed the DCPS paperwork on April 1, 2019, indicating that HHIP services² at home were necessary for mental health reasons for this student after she was discharged from the hospital. That document was received by the non-public school on April 2, 2019. DCPS did not respond to the request until May 23, in an IEP meeting about the student, **51 days later**. The response was oral.

The student could not and did not return to school during April and May, but received no home instruction from DCPS. At home she was stable emotionally, enabling the necessary psychiatric treatment to take place. However, in June, she was hospitalized again for approximately 16 days. The psychiatric team treating the student at the Adolescent Psychiatric unit at CNMC, also recommended HHIP services for the student. Their recommendation for HHIP services for the student was submitted to HHIP by the parents who renewed their request for HHIP services in writing on June 28, 2019, relying on the recommendations of the inpatient psychiatric team.

HHIP did not respond to the second request in any way until **76 days later**, when a letter from HHIP arrived for the parents denying eligibility again.³ The repeated and extended delays in this process detailed in the timeline below are indefensible and counter productive.

TIME LINE OF PARENTS' EFFORTS TO OBTAIN HHIP SERVICES

April 1, 2019	Community psychiatrist signs form justifying Home instruction for two months.
---------------	---

²The student's mental health had deteriorated during the fall of 2018 and there were increasing incidents of unsafe and aggressive behaviors during the school day. The student was dismissed early into the custody of a parent on several occasions and was escorted by the school to a hospital for mental health treatment on more than one occasion. The student was hospitalized for psychiatric treatment on several occasions. Upon discharge from a hospitalization in March, 2019, the parents requested HHIP .

³ In this letter HHIP cherry-picked information from the submissions of the community based psychiatrist and the CNMC team to justify a second denial ignoring the medical justification for home instruction.

April 2, 2019	Non-Public School receives psychiatrist's recommendation for HHIP Services.
April 29, 2019	Parents seek update on status of Request for HHIP services. Progress Monitor informs parents delay is due to inability of HHIP to speak with psychiatrist.
May 13, 2019	HHIP contacts Progress Monitor and Non-public school counselor stating that the student can return to school and plans for that will be developed when more information is provided. This information was neither sent to the parents nor shared with them until May 23, 2019.
May 22, 2019	Community Psychiatrist sends DCPS a supplementary letter explaining need and justification for HHIP.
May 23, 2019	HHIP response denying HHIP services is delivered at IEP team meeting by the HHIP Manager, telephonically. Parents request reconsideration of the denial towards the end of the meeting.
May 24, 2019	DCPS Progress Monitor sends parents the HHIP May 13, 2019 email.
June 4, 2019	DCPS Progress Monitor informs parents in an email that based upon her conversations with the HHIP Manager, the student does not meet criteria for HHIP and, therefore, was denied the services. DCPS minutes of the May 23, 2019 IEP team meeting were delivered to the parents.
June 5, 2019	Parents submit a letter to the DCPS Progress Monitor formally requesting of denial of HHIP services and a written explanation for the decision.

June 7, 2019	Parents send the same letter sent to the DCPS Progress Monitor on June 5 to the HHIP Manager.
June 10, 2019	Student is admitted for psychiatric inpatient treatment
June 17, 2019	DCPS Progress Monitor sends parents copy of HHIP letter denying HHIP services.
.	
June 26, 2019	Student is discharged from hospital.
June 28, 2019	Parents send another request to DCPS for HHIP services based upon a recommendations for HHIP services contained in a letter from the inpatient psychiatric team who treated the student as an inpatient between June 10 and June 26, 2019 which was included with the parents' request.
September 12, 2019	HHIP Manager denies Parents' request for HHIP services in writing and, for the first time, states that an appeal is possible.

The time line described above is admittedly the sequence of events for only one student. But I know that requests for services are often denied until the HHIP staff speaks with the health care provider who signs the paperwork recommending HHIP services. The language of the new legislation makes is clear that once the signature of the licensed health care provider is provided with the recommendation for HHIP services, no further communication with the provider is required. (Section 4d). I think that is very important. Public Charter Schools as well as the largest DC LEA, DCPS, must be required to process the requests for HHIP services in an expeditious manner as is required by the language of the Bill under consideration.

I have been practicing in this field long enough to remember when there was a pediatrician who worked for DC Government who was involved in many of the decisions about the education of students with significant health issues, including decisions about whether HHIP was necessary. Today, there is no medical or mental health input whatsoever from within DCPS

because DCPS does not employ any physicians or other licensed health care providers and chooses not to contract with such professionals. Instead, educators or administrators with no health care certification or licensure, are over-riding the decisions and recommendations of licensed health care providers. I think it is a disgrace; we must do better for the children and adolescents in the District of Columbia enrolled in DCPS schools. As my client told me, after reviewing a draft of this testimony, “ I don't have anything to add other than the feeling of extreme betrayal because of the absurdness of non-medical professionals making decisions like this. If you like you can quote me. I mean if [student’s name] does not fit the profile of a student that qualifies for HHIP, who would?”

It goes without saying that Public Charter Schools, as publically funded entities, must not be permitted to delegate to non-medical staff the ability to override recommendations of medically trained and licensed professionals, including mental health professionals, when it comes to the need for HHIP services.

Appeals Process

With regard to the appeals process (Sec. 6), I am concerned that the appeal design in the statute will be one in which the review will be conducted only by other educators or bureaucrats without health or mental health care training and expertise. The language in the proposed legislation mandates a three member panel within OSSE without any further guidance.. There is no requirement that such a panel include at least one professional trained and licensed for the health or mental health issues that form the basis for the HHIP service request. There is also no requirement that any of the three individuals have any knowledge of the range and variety of disabilities that students with IEPs might have which must be considered in conjunction with the request for home instruction. And there is no provision that the members of the reviewing body will have experience with elementary and secondary school design and organization.⁴ The statutory language should provide for more specificity about the qualifications of the individuals

⁴After all, OSSE has responsibilities for Child Care facility licensing, credentialing of child care center staff ,a host of post secondary school programs and functions within the District of Columbia, as well as supervision and monitoring of LEA compliance with OSSE policies and regulations.

who are designated to serve on the appeal panel to address the experience and knowledge base I just described. OSSE should not be given total discretion in the selection of members of the appeal panel(s).

Academic Instruction and Support

A. Academic Instruction

The language of the bill varies with regard to whether the instruction required is “academic instruction” or simply “instruction.” See the heading of the bill academic instruction and supports vs. the definition of Home or Hospital Instruction in the definition section 2 (1) which requires “instruction and support,” omitting the word “academic,” and section 3(a) where “academic” reappears before the term “instruction.” As you know, there are many students with disabilities whose educational program is focused on the acquisition of basic adaptive life skills such as learning to eat, sit, crawl, walk, communicate their basic needs, or become toilet trained. Those students may not be ready for academic instruction, but they are no less entitled to Home or Hospital Instruction when a health or mental health condition prevents them from attending school. I recommend that the legislation use the phrase “academic and or adaptive life skills as appropriate” rather than the term “academic instruction,” or simply use the unadorned term “instruction.”

B. Support

The term “support” in the definitions Section 2 (1) and in the Section 3(a) definition of Home or Hospital instruction program is not defined. I trust that “support” includes the related services that are in the IEP of a student with a disability, to the extent that provision of that service is feasible for the child (rather than feasible for the entity providing the service due to staffing issues) during the period of time when the health or mental health condition(s) interrupt school attendance. Some of the related services may be contraindicated by the health or mental health conditions, and would not be provided were that true. Moreover, just as the instructional services will not be equal in duration to the full instructional week at school, the related services may not be as frequent at home or in the hospital as they are mandated by the IEP in school. I hope that my assumption is shared by the sponsors of this bill. It would be helpful to add

additional definitions to make it explicit that “support” includes but is not limited to related services that are contained in an IEP for a child who qualifies for HHIP services.

In conclusion, legislation to reform the current HHIP program is sorely needed. Thank you for allowing me to share my concerns with you today. If you have questions or would like further clarification, please do not hesitate to contact me.

Respectfully,

Margaret A. Kohn