

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON EDUCATION
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers

FROM: Councilmember David Grosso
Committee on Education

DATE: February 11, 2020

SUBJECT: Report on B23-0392, the “Students’ Right to Home and Hospital Instruction Act of 2019”

The Committee on Education, to which B23-0392, “Students’ Right to Home and Hospital Instruction Act of 2019”¹ was referred, reports favorably thereon, and recommends approval by the Council.

CONTENTS

I.	Background And Need.....	1
II.	Legislative Chronology.....	7
III.	Position Of The Executive.....	8
IV.	Comments Of Advisory Neighborhood Commissions	8
V.	Summary Of Testimony and Statements	8
VI.	Impact On Existing Law	10
VII.	Fiscal Impact.....	10
VIII.	Section-By-Section Analysis	10
IX.	Committee Action.....	11
X.	Attachments	11

I. BACKGROUND AND NEED

Introduction

On July 9, 2019, Councilmember David Grosso (At-Large), along with Councilmembers Todd, T. White, Nadeau, Cheh, and R. White introduced B23-0392, “Students’ Right to Home or Hospital Instruction Act of 2019.” As introduced, the bill would require every District of Columbia local education agency (LEA) to adopt and implement 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 or more consecutive or cumulative school days due to a physical condition or psychological condition. The bill would also require the Office of the State Superintendent of Education (OSSE) to promulgate regulations and administer an appeals process.

¹ The Committee has changed the short title of this measure from “Students’ Right to Home or Hospital Instruction Act of 2019” to reflect the inclusivity of a student’s right to both home and hospital instruction.

District of Columbia Public Schools Home and Hospital Instruction Program

District of Columbia Public Schools (DCPS) operates a Home and Hospital Instruction Program (HHIP) which “offers an individualized, blended-learning instructional model to students who are medically confined for two weeks or more.”² The stated purpose of HHIP includes “engaging the student, parents/guardians, medical professional, and school-based team with the goal of successfully transitioning the student back to their school of enrollment or appropriate school-based setting.”³

This current DCPS HHIP structure is described below:

Eligibility

According to the SY18-19 Parent Guide to Home/Hospital Instruction Program⁴, DCPS HHIP services are available to students who are:

- Enrolled in a DCPS school
- A resident of a ward of DC
- Placed in a private school by DCPS
- Attending a nonpublic school that is being monitored by DCPS
- Attending a dependent charter school (where DCPS is the LEA Representative) and receive SPED services

The parent guide further states that in order for students to be considered for HHIP services, they must meet the following criteria:

- Confined to the home and/or hospital for two weeks or more for medical reasons, including six weeks of post-partum recovery (extended to eight weeks for cesarean deliveries); OR
- Experienced intermittent absences that are equivalent to two weeks or more (based on historical or present data) due to chronic health impairments.

Upon meeting the criteria and completing and submitting all required forms, students may receive HHIP services to academically support them while they are medically confined and to assist in their transition back to school.

Referral

Parents/guardians, treating physicians, and the school-based HHIP Designee are required to complete and submit all necessary forms to successfully submit a HHIP referral. All five

² “SY2018 – 19 Parent Guide to Home/Hospital Instruction Program (HHIP).” *District of Columbia Public Schools*, Version 01.

³ Ibid.

⁴ Ibid.

required forms are listed and described in the replicated table below from the SY18-19 Parent Guide to HHIP. Parents/guardians can access these forms online.⁵

Name of Form	Purpose	Completed By...
Physician Verification	States diagnosis which is confining student to the home/hospital or causing intermittent absences, a specified timeframe with a detailed treatment plan, a transition plan, and contact information for the physician	Treating physician, psychiatrist, or licensed psychologist
Release of Records	Gives parental consent for treating physicians to share information with the DCPS HHIP team	Parents/Guardians
Parent/Guardian Agreement	Explains HHIP team expectations of parents/guardians and student while HHIP services are being given	Parents/Guardians
School Request for Service	Includes basic information about the student (e.g. date of birth, ID number, grade level) and contact information for the parents/guardians	School HHIP Designee
Immunization	Confirms the student's vaccinations are up-to-date	School nurse

In the case of a planned long-term student absence (e.g. scheduled upcoming student surgery and recovery), all forms should be submitted prior to the absence. In the case of an unplanned student absence (e.g. student accident), all forms should be submitted as soon as possible. All forms should be submitted to the HHIP Designee.

Parents/Guardians have ten calendar days to submit remaining forms after submitting the School Request for Services Form, otherwise parents/guardians and the HHIP Designee will receive an Incomplete Referral letter. The initial referral will be continued upon receipt of the missing documents.

Eligibility Determination

According to the SY18-19 Parent Guide to HHIP, the centralized HHIP team reviews HHIP referrals and ultimately determines eligibility. Eligibility determinations are made within five

⁵ "Home and Hospital Instruction Program (HIP) Forms." *District of Columbia Public Schools*, 26 February 2019, <https://dcps.dc.gov/node/1008962>.

instructional days of receiving the completed referral and after discussing the student's health condition with the medical provider who completed the Physician Verification Form.

If a referral is approved, a Beginning of Service Form is sent to the HHIP Designees and parents/guardians including service start and end dates as well as location of instructional services. The centralized HHIP team collaborates with the HHIP teacher(s) and Related Service Provider(s) (if appropriate). The HHIP teacher(s) communicates with parents/guardians within 48 hours to schedule classes. Instruction begins within 5 days of class scheduling.

If a referral is denied, a No Service Form is sent to the HHIP Designee and parents/guardians stating reasons for denial. The centralized HHIP team also calls parents/guardians to discuss ineligibility and next steps.

End of Service

HHIP services are discontinued after thirty calendar days unless a Medical Re-certification Form is completed by a medical provider. The school is notified that the student's service end date is approaching and informs the school of any transition actions (e.g. transition meeting, 504 Plan Referral, SPED evaluation, etc.). The End of Service Form is sent to HHIP Designee and parents/guardians. According to the DCPS 2016 Home and Hospital Instruction Program Handbook, the HHIP Designee will be notified of the student's approaching return to school date at least one week in advance. The HHIP Designee will communicate with the parent/guardian to inquire whether HHIP services need to be continued.⁶

Continuous Enrollment

Students who have completed at least nine months of the current school year with HHIP may be eligible for continued enrollment. In order to be eligible for continuous enrollment the following criteria must be met:

- Student must be enrolled in HHIP for at least nine months in current school year;
- Parents/guardians, the school, the HHIP centralized team, and the medical provider do not expect the student to return to school-based instruction due to a chronic illness and/or an illness resulting from their identified disability; AND
- Treating physician, psychiatrist, or psychologist must submit an updated Physician Verification Form stating that the student continues to be unavailable for school-based instruction despite treatment.

Eligible students will receive an enrollment packet prior to the end of the current school year. The parent/guardian is responsible for submitting enrollment paperwork during the first ten school days of the proceeding school year. After that period, the parent/guardian will receive a written notice stating that their child's services have been suspended.

⁶ District of Columbia Public Schools. "Home and Hospital Instruction Program Handbook." *District of Columbia Public Schools FY18 Performance Oversight Agency Response Attachments*, final version, August 2016.

Return to School Transition

If a student attempts to return to school prior to the date listed on the Physician Verification Form, they must receive written documentation from their medical provider stating that it is permissible to return to school.

School teams and HHIP staff members work collaboratively with parents/guardians and medical and/or community resources to coordinate reintegration back to school-based instruction, including any reasonable accommodations.

For HHIP students who were receiving special education services through an IEP, the HHIP Case Manager will work collaboratively with the school IEP team to complete the necessary steps to transition the student back to school-based instruction. An IEP meeting will be held for students to ensure that the IEP is updated.

Appeals

Parents/guardians have the right to appeal decisions made by the HHIP Program Office. The process is as follows:

1. A parent/guardian may send a written request for an appeal. Appeals must be sent to the Director of Academic Programs within ten business days of the date when the eligibility determination is provided to the parent or guardian.
2. The appeal will be reviewed by a three-member panel within the Division of Specialized Instruction.
3. The panel will issue a written response to the parent/guardian within fifteen business days of receipt of the appeal.

HHIP Implementation

Though DCPS operates a HHIP program that is informed by established policies and procedures, HHIP administrative and instructional services are not consistently implemented according to those policies and procedures. Public testimony from parents and advocates illuminate examples of HHIP implementation failures.

During the joint public hearing on B23-0392 on October 21, 2019, a parent of a DCPS student testified that his child's HHIP services have never started on time in the last ten school years. For the 2019 – 2020 academic school year, his child's services began eight weeks after the school year began.⁷ This parent's spouse, who also testified at the same hearing, shared that despite filing 11 state complaints and four due process complaints that resulted in favorable decisions, DCPS has not complied with the decisions and OSSE has not enforced DCPS compliance.⁸

During the same hearing on October 21, 2019, Children's Law Center shared concerns about HHIP transparency for DCPS families. They testified, "We're aware of cases in which schools

⁷ "Joint Public Hearing, Committee of the Whole and Committee on Education." *Council of the District of Columbia*, 21 October 2019, Washington, D.C., https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=5190.

⁸ Ibid.

repeatedly raised truancy concerns about a sick child who had been absent from school for more than 10 days, yet never informed the parents of the option of requesting HHI... And while DCPS has posted a parent guide to HHI on its website, it has yet to publish its HHI handbook so parents can fully understand the process.”⁹

HHIP implementation failures aside, D.C. public charter schools are not required to establish a home and hospital instruction program. While some charter schools have chosen to establish their own program, others have not, and standardization across public charter schools’ home and hospital instruction programs does not exist. For example, some charter schools have published written HHIP policies while others have no written policies that guide their program implementation.

Home and Hospital Instruction Programs

Legislative and regulatory precedent exists in establishing home and hospital instruction programs. Code of Maryland Regulations Chapter 13A.03.05, Administration of Home and Hospital Teaching for Students, directs each Maryland local school system to “make instructional services available to students who are unable to participate in their school of enrollment...during convalescence or treatment time in a medical institution, or therapeutic treatment center, and at the student’s place of residence, or all of these.”¹⁰ The code further directs local school systems to determine the need for service and begin instruction as soon as possible and enumerates a minimum instructional hours for students in the program.¹¹

Virginia Administrative Code 8VAC20-131-180, Off-Site Instruction, establishes that “homebound instruction shall be made available to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist.”¹² It further ensures coordination in services for students who are eligible for special education or related services.

B23-0392 aims to promptly support students during their absence of ten or more consecutive or cumulative days due to a health condition to minimize interruption in a student’s academic coursework. It also aims to remove unnecessary barriers to instructional services by determining eligibility based on cumulative and consecutive absences, allowing diversity of medical professionals to certify the child’s medical need for home or hospital instruction, establishing the right to home and hospital instructional services for all D.C. students across DCPS and public charter schools, and allowing a medical certification of need to broadly consider a child’s health condition as a justification for home or hospital instruction. Finally, B23-0392 aims to offer opportunities for parent recourse in the event that an eligibility determination is denied.

The Committee Print

The Committee Print for B23-0392 contains several changes from the introduced bill. A description of the committee print, with explanations for substantive changes, follows.

⁹ Ibid.

¹⁰ COMAR 13A.03.05

¹¹ Ibid.

¹² 8 VAC 20-131-180

The Committee Print broadens reasons for student absence from “physical condition or psychological condition” to “health condition” to be more inclusive of diverse student health needs and to minimize the role of discretion in categorizing a student’s health need.

The Committee Print redefines “medical certification of need” to include a recommendation from a licensed physician, licensed nurse practitioner, licensed clinical psychologist, licensed clinical social worker, licensed mental health counselor or therapist, or physician’s assistant that a student receive home or hospital instruction.

The Committee Print includes “licensed mental health counselor or therapist” as a medical professional who can complete the medical certification of need to reflect the diverse medical professionals who students in D.C. visit.

The Committee Print expands home and hospital instruction programs’ intent to allow students to stay current with classroom instruction in core subjects to the greatest extent possible, to foster coordination between classroom teachers and home and hospital instruction teachers, to facilitate rapid reintegration into classroom instruction when the student returns to school, and to ensure coordination of home and hospital instruction with any special education or related services and accommodations for the student.

The Committee Print explicitly states that a student shall be eligible to receive home and hospital instruction and the LEA shall approve the application for home and hospital instruction if a medical certification of need has been submitted to the LEA to minimize the role of LEA discretion in the medical certification of need.

The Committee Print explicitly states that a medical recertification of need shall not be required for periods of less than 60 days for absences caused by the health condition as described in the preceding medical certification of need to minimize barriers to instruction for students whose health conditions are known to cause long-term absence from school.

The Committee Print provides the right to appeal an eligibility determination to parents only to prevent delay of academic instruction for students and to minimize the role of LEA discretion in the medical certification of need.

II. LEGISLATIVE CHRONOLOGY

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| July 9, 2019 | B23-0392, “Students’ Right to Home and Hospital Instruction Act of 2019” is introduced by Councilmembers Grosso Todd, T. White, Nadeau, Cheh, and R. White. |
| July 9, 2019 | B23-0239 is referred to the Committee on Education and Committee of the Whole with comments from the Committee on Health. |

- July 19, 2019 Notice of Intent to Act on B23-0392 is published in the *District of Columbia Register*.
- October 4, 2019 Notice of roundtable hearing on B23-0392 is published in the *District of Columbia Register*.
- October 21, 2019 The Committee on Education holds a public roundtable on B23-0392.
- February 11, 2020 The Committee on Education considers and marks up B23-0392.

III. POSITION OF THE EXECUTIVE

The following witnesses testified on behalf of the Executive.

Karri Larkin, Senior Deputy Chief of Specialized Instruction at the District of Columbia Public Schools, presented testimony opposing the bill as drafted due to what they say is duplicative or conflicts with their existing work. Larkin stated that HHIP includes a transparent referral process for families and that referrals are only denied when documentation is incomplete. And barrier to access is removed, or the medical evaluation does not indicate home or hospital instruction. Larkin state that DCPS thought it was inappropriate for OISSE to serve as an appeals board.

Shana Young, Chief of Staff at the Office of the State Superintendent of Education, presented testimony in opposition to the proposed bill, specifically section 6 and lines 110-111 which outline the data reporting requirements. Young stated that OSSE does not have the internal capacity to review medical records or history of overruling the advice of a students' doctor. OSSE believes that individual LEAs can handle their own appeals processes. OSSE also stated that the definition of physical condition and psychological condition should align with federal definitions.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from the Advisory Neighborhood Commissions.

V. SUMMARY OF TESTIMONY AND STATEMENTS

The Committee on Education held a public hearing on B23-0392 on Monday, October 21, 2019. The testimony summarized below is from that hearing. A copy of all written testimony received is attached to this report and the video recording of the hearing is available online at https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=5190. The Hearing Record is on file with the Office of the Secretary of the Council.

The following witnesses testified at the hearing:

Buck Logan, Special Counsel at Children's Law Center, presented testimony in support of the proposed bill. Logan spoke on the lack of transparency parents have when dealing with the Home or Hospital Instruction program (HHIP). Specifically, parents don't have sufficient information about when to request HHIP or understand the process for requesting HHIP services. Logan also stated that HHIP is being delayed or denied without justification, partly due to schools second guessing a certification submitted by a student's doctor. Logan also stated that even when students are found eligible, there's no legally minimum standards governing the quantity and quality of HHIP. Logan stated that Children's Law Center recommended that the bill require students to receive HHIP pending a denial appeal outcome. Logan testified that schools should be required to present evidence from a medical professional to rebut the certification from a student's doctor. Children's Law Center recommended allowing parents to take appeals to the Office of Administrative Hearings. Logan testified that Children's Law Center recommends that the bill specify the minimum amount of instruction for a student to receive under HHIP. Specifically, they recommend requiring LEAs to provide at least 5 hours per week of direct home or hospital instruction for K-5th grade, and 2 ½ hours per week per core subject for students in grades 6-12.

Margaret Kohn, Attorney at Law, testified that time between the request of the services through HHIP and the delivery of services needs to be changed. She also testified that the ability of education bureaucrats to override medical recommendations. Ms. Kohn gave an example of a high school student who had mental health and neurological needs who didn't receive response until 51 days after the school received the paperwork from the psychiatrist. She said that the student did not receive no home instruction. Another request was submitted during the summer months after the child was hospitalized again and HHIP did not respond until 76 days later with a letter denying eligibility. In Ms. Kohn's testimony, she included the timeline of the parents' efforts to obtain HHIP services, starting from April when the psychiatrist signs forms for the first request for Home instruction, to September when the second request was denied. She discussed the appeals process and stated that the bill does not include language to include a health or mental health professional on the appeals panel and that Office of the State Superintendent of Education (OSSE) should not be given total discretion in the selection of the members for the panel. Ms. Kohn provided suggestions on wording in the bill, specifically, she stated that the phrase "academic and or adaptive life skills as appropriate" be used rather than the term "academic instruction." She also suggested that the term "support" should be defined in the definition of Home or Hospital instruction program.

Molly Whalen, Executive Director the DC Association for Special Education, testified in support of the bill. They also agreed with Children's Law Center on their recommendations to clarify that the HHIP policies cover partial or intermittent absences that can add up to 10 or more days, and require LEAs to provide parents with a copy of the HHIP policies once they request services or a student accumulates 10 days of absences due to a medical condition.

Taalib-Din Uqdah presented testimony on his experience with a child with multiple disabilities his disapproval of the proposed legislation. Mr. Uqdah suggested adding language to lines 12-25, after the phrase "Instruction program" to read "*with a streamlined enrollment*

process for the neighborhood school or other least restrictive environment (LRE)” and after the phrase “cumulative school days” to read “or any student who is reasonably expected to continue in the program on an indefinite or long term basis” due to a “medical,” physical or a psychological condition...Mr. Uqdah attached a copy of his 20011 complaint to the Chief of Special Education at the OSSE.

The following witnesses submitted written testimony and did not testify at the hearing:

Two Rivers Public Charter School submitted testimony highlighting their concerns with the proposed bill. Their testimony stated that the language around “medical certification of need” is too vague and suggested that OSSE develop a standardized form to include a statement and rationale that justifies the need for the student to be out of school, length of times for HHIP services, and contact information for the recommending clinician. They recommended clarity around a timeline for re-certification of the placement. Two Rivers recommended allowing LEAS to create plans that would take the needs of individual students into account. They stated that the council fails to take into account technology that may be more amenable to families and conducive to the child’s learning when the bill specifies that LEAs can deliver “instruction by virtual means only when necessary.” They asked for clarification regarding services for general education versus special education students. Two Rivers also expressed concerned over the funding for the new requirement, stating that LEAs received no additional funding for providing the service.

Nirmal N. Maitra, Medical Student at Georgetown University School of Medicine and Co-founder of Heroes for Hearts Inc., submitted testimony in support of Maitra’s testimony described the effects of missing school and explained why it is important to reduce the amount of school time a student will miss and give students the ability to access a quality education during their time out of school.

VI. IMPACT ON EXISTING LAW

The attached legal sufficiency issued by the District's General Counsel Office states that the bill is legally and technically sufficient for Council consideration. Bill 23-0392 does not amend existing D.C law; it adds new sections to the code.

VII. FISCAL IMPACT

B23-0392 was sequentially referred to the Committee on Education and to the Committee of the Whole. As such, the Committee of the Whole shall provide a fiscal impact at their markup.

VIII. SECTION-BY-SECTION ANALYSIS

Section 1 States the short title of B23-0392 as the “Students’ Right to Home and Hospital Instruction Act of 2019.”

<u>Section 2</u>	Provides terms used in this legislation.
<u>Section 3</u>	Provides overview and intent for a home and hospital instruction program.
<u>Section 4</u>	Provides eligibility determination process to receive home and hospital instructional services.
<u>Section 5</u>	Provides process for continuing and terminating home and hospital instructional services.
<u>Section 6</u>	Provides appeals process to be administered by OSSE.
<u>Section 7</u>	Provides delivery of home and hospital instruction program services.
<u>Section 8</u>	Provides instruction for maintaining student attendance during home and hospital instruction.
<u>Section 9</u>	Provides instruction for coordination between healthcare institutions that admit students eligible to receive home or hospital instruction and the student's LEA.
<u>Section 10</u>	Provides instruction for LEAs to publish written home and hospital instruction program policies.
<u>Section 11</u>	Provides rulemaking authority to OSSE.
<u>Section 12</u>	Provides the fiscal impact statement.
<u>Section 13</u>	Provides the effective date.

IX. COMMITTEE ACTION

On February 11, 2020, the Committee on Education held a meeting to consider B23–0392, the “Students’ Right to Home and Hospital Instruction Act of 2019.” The meeting was called to order at XX pm and B23–0392, XXX were the items on the agenda. After ascertaining a quorum, Councilmember Grosso discussed the background for B23-0392.

Chairperson Grosso then closed debate and moved the draft committee prints for B23–0392, with leave for staff to make technical changes. The measure was approved unanimously.

X. ATTACHMENTS

1. Secretary’s Referral Memo

2. B23–0392 As Introduced
3. Written Testimony and Comments
4. Legal Sufficiency Determination
5. Committee Print for B23–0392
6. Comparative Print