

# Improving “Alternative Education For Disruptive Youth” In Pennsylvania

by Education Law Center – PA

**ModelsforChange**  
Systems Reform in Juvenile Justice

Prepared by the Education Law Center – PA.

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## Models for Change

Models for Change is an effort to create successful and replicable models of juvenile justice reform through targeted investments in key states, with core support from the John D. and Catherine T. MacArthur Foundation. Models for Change seeks to accelerate progress toward a more effective, fair, and developmentally sound juvenile justice system that holds young people accountable for their actions, provides for their rehabilitation, protects them from harm, increases their life chances, and manages the risk they pose to themselves and to the public. The initiative is underway in Illinois, Pennsylvania, Louisiana, and Washington, and through action networks focusing on key issues, in California, Colorado, Connecticut, Florida, Kansas, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Texas, and Wisconsin.



# Improving “Alternative Education for Disruptive Youth” in Pennsylvania

Education Law Center — PA

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# Executive Summary

Pennsylvania's program of alternative education for disruptive youth ("AEDY") is at a crossroads. Created about fifteen years ago, the program has grown dramatically, to the point that it now serves some 30,000 students in 614 locations – the equivalent of the third-largest school district in the state. In recent years, moreover, the Pennsylvania Department of Education has taken significant steps to increase its support to, and oversight of, these programs.

But AEDY programs are uneven. Some are reportedly highly successful, while others are seriously flawed. This variation exists because AEDY lacks a legal and policy structure sufficient to ensure that the funds devoted to it are effectively spent, that student needs are consistently met, and that only those students who truly need AEDY services are assigned to these programs – and then only for the length of time necessary. In some respects, too, practices within AEDY programs are at odds with provisions of federal and state law, including certain provisions of the No Child Left Behind Act, federal laws relating to children with disabilities and English language learners, and state laws relating to school discipline. These would be significant problems even in a small program, but they are especially serious where, as here, hundreds of millions of taxpayer dollars – not to mention the educational well-being of tens of thousands of children – are at stake.

How should this situation be remedied? As we note in this report, we are not convinced that Pennsylvania's model of alternative education, which focuses solely on students who have committed serious offenses and groups those students together in separate settings, is the best approach. We favor exploration of a broader concept of alternative education that could provide a variety of options for students

who have difficulty in the regular environment. Some Pennsylvania school districts are experimenting with such programs, apparently with positive results.

But whether troubled youth are sent to separate "AEDY" programs or served within a broader range of alternative options, these students have a right to programs of the same high quality as those provided to their peers. As we have noted, the Pennsylvania Department of Education ("PDE") has made a commendable effort to improve practices in AEDY programs. But more is needed.

In this report, we propose legal and policy changes that will ensure that alternative programs are adequately supported and monitored; that their services are consistently comparable to those offered to other Pennsylvania students; that students are placed in these programs only when their needs justify the assignment; that the programs operate in a manner that is consistent with applicable federal and state laws; and that, in a number of other respects, programs meet the high standards that the state has set for all of Pennsylvania's public education programs – and justify the taxpayers' investment of funds. **Our recommendations are summarized in the following chart.**

These recommendations are eminently "doable." Some have already been implemented for public school students other than those in AEDY programs. Other recommendations could be carried out through some reworking of existing policies. Still others require legislative or regulatory action, in some instances along lines already taken by other states. All of our recommendations, we believe, reflect what is known about good practice, and will help improve a program that is very much in need of attention.

**Alternative  
Education Issue**

**Policy Reform Recommendations**

**Criteria for  
placement**

The General Assembly should amend the definition of “disruptive student” to ensure that the category will be applied only to students who commit serious offenses. Neither “disregard for school authority” nor “habitual truancy,” in the absence of serious and repeated disruptive behavior, should be a basis for assignment to AEDY. “Misconduct that would merit suspension or expulsion” is also an excessively broad criterion. With respect to students with disabilities, the AEDY statute should be amended to refer to the correct sections of the federal Individuals With Disabilities Education Act (IDEA) regulations.

PDE should amend the AEDY Basic Education Circular (“BEC”) to comply with the IDEA, which requires that students who show signs of a possible disability, but who have not yet been evaluated, not be transferred to alternative schools except in certain special circumstances.

PDE should make clear in the BEC that assignment to AEDY can be based only on misbehavior that occurs at school or a school-sponsored activity.

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**Overrepresentation**

PDE should determine whether students of color, students with disabilities, or any other group are disproportionately represented in individual AEDY programs and in the AEDY program as a whole. To the extent that such disproportions are found, PDE should investigate the reasons and require corrective action.

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**Due process  
procedures**

The General Assembly should provide that the decision to transfer a student to an AEDY program for disruptive students is appealable to court.

PDE should monitor AEDY programs frequently to ensure that students are provided with required due process procedures.

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**School day**

PDE should revise its interpretation of the AEDY statute to require that all AEDY programs operate for a full school day.

The General Assembly should amend the AEDY statute to eliminate any possible ambiguity on the issue of the right of students in AEDY programs to receive a school day of equal length to that provided to all other students.



**Alternative  
Education Issue**

**Policy Reform Recommendations**

**Content and  
outcomes of AEDY  
programs**

PDE should require that AEDY programs use approaches of proven effectiveness in both academic and behavioral areas, *e.g.*, individualized academic plans and positive behavioral support programs.

PDE should make clear to AEDY programs that the use of restraints, seclusion, physical or verbal abuse, and corporal punishment are forbidden in AEDY programs; should require that any program in which an employee is discovered to have used such approaches report the incident; and should take immediate corrective action in response to any such reports.

PDE should establish clear performance targets relative to student outcomes, both academic and behavioral, in AEDY programs. Data collection should be aligned with these targets.

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**Services to students  
with disabilities**

PDE should closely and frequently monitor the extent to which each AEDY program is complying with special education laws. This monitoring should include collecting data not only on the numbers of students served but also on the types of disabilities represented, the nature of the programming provided, the availability of related services, and the like. The monitoring should also include frequent site visits. To the extent that deficiencies are found, PDE should require prompt correction. Alternatively, if PDE is unable to conduct such monitoring, it should prohibit the placement of students with disabilities in AEDY programs.

PDE should inform school districts of all legal requirements applicable to students with disabilities, including not only those requirements currently addressed in the BEC, but also the requirement that no student be placed in a 20-hour-per-week program for whom an appropriate education cannot be provided in that setting; requirements applicable to “protected handicapped students;” the 45-day limit on stays in AEDY programs for certain students with disabilities; and other applicable rules.

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**Services to English  
language learners  
 (“ELL”)**

PDE should include, in its BEC and Guidelines, information on services that must be provided to ELLs in AEDY programs, and should require reporting concerning the numbers of ELLs served by each program and the services offered.

**Alternative  
Education Issue**

**Policy Reform Recommendations**

**Staff qualifications**

PDE should establish competencies and preparation requirements for all personnel in AEDY programs, and should gather information from AEDY programs to determine whether these requirements are being met.

The General Assembly should amend the AEDY statute to conform with federal law, by providing that personnel in private AEDY programs will no longer be exempt from certification and “highly qualified teacher” requirements.

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**Progress reviews  
and length of stay**

PDE should monitor AEDY programs frequently to ensure that adequate procedures are in place for reviewing student progress; that the student, his or her parents, and representatives of the student’s home school participate in the review process; and that reviews occur at least every semester.

PDE should adopt a performance target relative to students’ lengths of stay in AEDY programs.

PDE should raise the 20% annual-return target to a figure that would better promote the statute’s goal of returning students to the regular environment.

PDE should adopt targets, and collect data, on the academic and behavioral success of students once they return from AEDY programs to regular school.

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**Safety**

PDE should require that AEDY programs report incidents involving school violence, weapons possession, and controlled substances on the same basis as all other schools.

PDE should establish performance targets for AEDY programs in the area of school safety.

**Alternative  
Education Issue**

**Policy Reform Recommendations**

**Family engagement**

PDE should develop requirements and performance measures for family engagement for AEDY programs.

PDE should make clear to AEDY programs that they are obligated, no less than regular schools, to carry out the parent-involvement activities required by the No Child Left Behind Act.

PDE should develop information on students' and families' rights within AEDY programs, on how to resolve problems, and on how to obtain help from PDE when problems are not resolved at the local level. PDE should ensure that this information is provided to all families whose children are assigned to AEDY programs.

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**Public reporting**

PDE should make publicly available the data that it collects concerning AEDY programs, including information on the extent to which each program meets criteria and performance targets established by PDE.

PDE should publicize the results of any studies or reports that it commissions concerning AEDY programs.

PDE should provide timely annual reports to the General Assembly on AEDY programs, as required by the current law. These reports should include the data and analyses described above, and should be readily available to the public.

The General Assembly should amend the AEDY statute to make clear that PDE's annual reports on the effectiveness of AEDY programs must be based, to the maximum extent possible, on reliable and objective data.

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**PDE support,  
monitoring and  
enforcement**

PDE staffing should be increased so that the agency can provide adequate monitoring, support and oversight to AEDY programs.

PDE should develop clear performance targets for AEDY programs, as noted throughout this report.

The General Assembly should amend the AEDY statute to require that PDE monitor all AEDY programs on an ongoing basis, respond to allegations or findings of deficiencies in such programs, mandate that corrective action is taken if deficiencies are found, and terminate programs if deficiencies are not corrected.

**Alternative  
Education Issue**

**Policy Reform Recommendations**

**Funding**

PDE should design and implement a process for determining whether AEDY programs are adequately and equitably funded.

If the grant program is restored, PDE should distribute the funds on a competitive basis in order to promote the development of high-quality programs.

If the General Assembly determines that statutory change is necessary in order to allow for the distribution of grant funds on a competitive basis, it should make the necessary changes.

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**Legal structure for  
AEDY**

The General Assembly should amend the AEDY statute to the extent necessary to ensure that these recommendations are implemented. If regulations are needed, the General Assembly should grant regulatory authority to the State Board of Education.

The General Assembly should amend the law to make clear that all AEDY programs require PDE approval, regardless of whether the program receives grant funds.

The General Assembly, the State Board of Education, and PDE should consider developing a broader definition of alternative education that would involve a continuum of options for students who need different types of educational experiences.

# About the Education Law Center of Pennsylvania

Founded in 1975, the Education Law Center of Pennsylvania (ELC-PA) is a non-profit legal advocacy organization dedicated to ensuring that all of Pennsylvania's children have access to a quality public education. ELC-PA works with individual students and their families; student, parent, and community organizations; family-serving professionals and advocacy organizations; and others concerned with helping children overcome access barriers and improve school quality. We focus on children who are disadvantaged by the public education system, such as children in poverty, children of color, children with disabilities, English language learners, children who are in the child welfare and juvenile justice systems, homeless children, and others.

Over our 35-year history, we have advised thousands of families; collaborated with school districts, charter schools, intermediate units, and the Pennsylvania State Board of Education and Department of Education to resolve problems and improve policy; worked with members of our General Assembly on legislative matters; and brought legal action, including a number of precedent-setting cases in both federal and state courts, in situations where other approaches proved inadequate. Much of our most successful work has been carried out in conjunction with grass-roots organizations and advocacy groups.

Areas of particular emphasis for ELC-PA include eliminating barriers to school access, through challenges to illegal or unreasonable

residency and enrollment policies; ensuring that children with disabilities receive the services to which they are entitled, in the least restrictive setting; promoting fairness in school discipline; obtaining special services for English language learners; and revamping Pennsylvania's system of school funding to promote greater equity and adequacy. These are, moreover, simply examples; more information on our work, current projects, campaigns and cases is found on our website, [www.elc-pa.org](http://www.elc-pa.org).

Finally, the issue addressed in this report – alternative education for disruptive youth – is one with which we have had extensive experience. Over the nearly fifteen years since Pennsylvania created AEDY, we have worked with hundreds of families of students placed in, or referred to, AEDY programs. We have had frequent dealings with school officials who operate AEDY programs; testified before a legislative committee reviewing AEDY; litigated several issues relative to AEDY programs; developed training materials on AEDY for lawyers and the public; and reviewed reports on AEDY generated both by the State and by external investigators. We have also worked closely with staff of the Pennsylvania Department of Education over a period of several years as the Department has endeavored, with assistance from the John D. and Catherine T. MacArthur Foundation, to improve its administration of AEDY programs. We have drawn on these experiences in arriving at the observations and recommendations contained in this report.

# Section One:

## Why this report?

Fifteen years have passed since Pennsylvania began to promote the development of alternative education programs for “disruptive” youth (“AEDY”). Over that period, the number of programs has increased significantly. Currently, 614 programs are in operation, in 64 of Pennsylvania’s 67 counties.<sup>1</sup> These programs serve about 30,000 students;<sup>2</sup> if these students were assigned to a single school district, it would be the third-largest in the state (after Philadelphia and Pittsburgh).

Models for Change, a national initiative of the John D. and Catherine T. MacArthur Foundation, funded the Education Law Center-PA (ELC) to conduct a review of alternative education law and policy in Pennsylvania. ELC welcomed this opportunity because of our concern, based on contacts with hundreds of Pennsylvania children, parents, and professionals, that some of these programs were providing inadequate educational services, and that some students were being inappropriately assigned for relatively minor offenses. At the same time, we believed that alternative education, properly designed and delivered, could be a valuable part of Pennsylvania’s system of public education.

This is an appropriate time for a review of alternative education. Pennsylvania’s alternative education statute, enacted in 1997, deserves a fresh look. Also, the public education landscape is changing in ways that have significant implications for all students, including those in alternative education. In addition, the General

Assembly must decide this year whether to restore funding for the AEDY grant program, having eliminated it in the FY 2010 budget – and if so, on what terms. For all of these reasons, and others, the moment has come to determine what changes are needed in the laws and policies that support AEDY.

In conducting our review, we examined not only existing laws and policies, but also several studies and surveys concerning AEDY programs. These studies provide useful information about AEDY, although they do not allow us to make conclusive judgments about how well any specific AEDY program is performing, much less about the effectiveness of AEDY statewide. In part, this is because of a shortage of data, the state having collected relatively little information on these programs. Indeed, the fact that so little data is available after fifteen years and the expenditure of millions of dollars is itself a serious legal and policy concern – a point that we discuss in more detail below.

But while the available studies and surveys cannot form the basis for a comprehensive verdict on the nature or effectiveness of AEDY, they do enable us to identify issues that should be addressed through reforms in alternative education laws and policies. Our own experience serving families with children in the public education system also helped us identify some key AEDY problems. We discuss these issues, and our recommendations for addressing them, in subsequent sections of this report.

# Section Two: Alternative education: some numbers

In the chart on the next page, we provide some of the publicly-available data concerning alternative education programs for disruptive youth in Pennsylvania. A caveat: on some points, the most recent available data is several years old; on other points (including such important issues as the academic success of students in AEDY programs), almost no information at all is available. Thus, while the chart describes the general size and shape of AEDY, it also shows how little is known about this multi-million-dollar state program.

|   |   |
|---|---|
| Number of students served in AEDY programs (school year 2005-06 data) <sup>3</sup>  | 29,601  |
| Number of AEDY programs statewide (current data) <sup>4</sup>   | 614   |
| Growth in number of AEDY programs between 1999-2000 and 2009-10 school years <sup>5</sup>                                 | 200%  |
| Number of counties that now have AEDY programs (current data, out of 67 counties total) <sup>6</sup>                      | 64  |
| Amount of state education funding and local tax funds currently spent on AEDY programs                                    | Unknown, but probably at least \$380,000,000 <sup>7</sup> |
| Additional funding provided to AEDY programs via state grants, school year 2007-08 <sup>8</sup>                           | \$19,000,000  |
| Approximate proportion of AEDY costs covered by state grant program (2007-08 figures) <sup>9</sup>                        | 5%  |
| % of AEDY students who are African-American or Latino (2005-06 data) <sup>10</sup>  | 46.8%   |
| % of state public school population who are African-American or Latino (2005-06 data) <sup>11</sup>                       | 22.6%   |
| % of AEDY students who need special education (2005-06 data) <sup>12</sup>  | 37.5%   |
| % of state public school population who need special education (2005-06 data) <sup>13</sup>                               | 15.1%   |
| % of AEDY students who are English language learners  | Unknown   |
| % of AEDY students who returned to the regular classroom during school year 2005-06 <sup>14</sup>                         | 22.6%   |
| % of AEDY students who achieved scores of “proficient” or above on state assessments <sup>15</sup>                        | Unknown   |
| % of AEDY students who increased their grade point average by 5% (or any figure) while in the program <sup>16</sup>       | Unknown   |
| % of AEDY students who “achieved treatment goals” (2005-06) <sup>17</sup>   | 10%   |
| % of AEDY students who showed improved academic and behavioral performance upon returning to regular school <sup>18</sup> | Unknown   |



# Section Three: A brief history of AEDY in Pennsylvania

Alternative education programs for students with behavior problems have existed for years in Pennsylvania. Until the mid-1990's, these programs were not a matter of state concern. Instead, they operated entirely under the control of school districts, and were funded in the same way as other school programs – *i.e.*, mainly through a combination of local tax revenues and state education subsidy dollars.

In 1995, as part of a “safe schools” initiative, the state began to provide some special state funds for alternative education programs for disruptive youth.<sup>19</sup> Two years later, the General Assembly enacted the state’s first law on alternative education, Act 30 of 1997 – later codified in Article XIX-C of the Pennsylvania School Code (“Article XIX-C”).<sup>20</sup>

Article XIX-C created a special, state-level grant program for AEDY programs. School districts could apply for funds from this program, which were used to supplement the funds available through the usual local and state sources. (For simplicity, we refer in this report to “districts” as the main providers of AEDY programs. However, the statute also permits combinations of districts, as well as charter schools, to provide these programs.)<sup>21</sup>

Article XIX-C also set forth, for the first time, requirements concerning the student

population to be served in AEDY programs and the general nature of the instruction to be provided. Recipients of grant funds were required to comply with these requirements as a condition of receiving grant funds from PDE.

Subsequently, in 2000, the Legislature enacted Article XIX-E of the School Code,<sup>22</sup> authorizing districts to purchase AEDY services, at their option, from private “alternative education institutions” approved by PDE.

The enactment of Articles XIX-C and XIX-E led to dramatic growth in the number of AEDY programs. In 1999-2000, 306 programs applied for and received grant funds;<sup>23</sup> ten years later, the figure is 614. The programs are operated by districts, consortia of districts, charters, and intermediate units,<sup>24</sup> and are located in a variety of settings, including regular schools, separate school facilities, and therapeutic and mental health facilities.<sup>25</sup> Under a separate statutory mandate, AEDY programs are also provided to pretrial detainees in adult correctional facilities.<sup>26</sup> Even the delivery of AEDY services on-line is under consideration at this point.<sup>27</sup>

The expansion of AEDY programs has involved considerable expense. In 2002-03, for example, Pennsylvania allocated \$26.2 million in special grants to alternative-

education programs.<sup>28</sup> By 2007-08, the figure had declined to the still sizeable figure of approximately \$19 million.<sup>29</sup> These grant funds, moreover, represent only a very small part (we estimate 5%) of the total amounts spent on AEDY programs, which also include state basic and special education subsidy dollars as well as local tax revenues.<sup>30</sup> Although we have found no reports that total up these amounts, they are likely in the hundreds of millions.<sup>31</sup>

In the most recent (FY 2010) state budget, which contained significant cuts due to the recession, grant funding for AEDY programs was eliminated entirely. But large amounts of local and state dollars are still being spent on AEDY programs. Undoubtedly, moreover, the General Assembly will be asked to restore funding for the AEDY grant program in FY 2011.

The expansion of AEDY has also brought increased activity by the Pennsylvania Department of Education (PDE). No longer simply a conduit of grant funds, PDE now issues guidelines, collects data, organizes conferences, distributes information on best practices, and in other ways provides support and some measure of oversight to AEDY programs. These efforts extend not only to the school districts that are legally responsible for the programs, but also to the private providers that operate some programs under contract to districts.

Some of this work has been assisted by the John D. and Catherine T. MacArthur Foundation, which provided financial support for a Special Assistant who has focused on issues affecting youth in and emerging from the juvenile justice system.

As a result of PDE's efforts, districts and private providers alike are now subject to increased accountability for legal compliance and positive results. This is important progress, even though – as we explain in more detail below report – we believe that AEDY programs are still not consistently held to sufficiently high standards.

Finally, all of this has occurred against a backdrop of other, broader changes. Over the fifteen years since it began to support AEDY, Pennsylvania has also undertaken major improvements in its public education system as a whole, by developing academic standards, instituting new assessments, creating instructional frameworks and support systems, raising teacher quality, adopting a new funding formula and increasing annual funding levels, and other means. These reforms, which we discuss in more detail below, are aimed at all students, including those in AEDY programs.

In summary, alternative education programs for disruptive youth have become a significant part of our state's rapidly-changing public education system.

# Section Four:

## Legal and policy issues

In this section, we discuss a series of key issues in alternative education law and policy. As to each, we first *describe* the approach currently taken by existing law and policy. We then draw upon various reports concerning Pennsylvania's AEDY programs, as well as on our own direct experience, to identify *issues and problems* that we believe deserve attention. Finally, where appropriate, we make *recommendations* for changes.

An introductory word is needed concerning the laws and policies to which we refer in this discussion. They include:

- State laws and regulations, such as Articles XIX-C and XIX-E<sup>32</sup> and Chapter 4 of Pennsylvania's education regulations (academic standards and assessment).<sup>33</sup> Articles XIX-C and XIX-E are found at Appendix 1 to this report.
  - Federal laws and regulations, such as the No Child Left Behind Act<sup>34</sup> and the Individuals With Disabilities Education Act.<sup>35</sup>
  - PDE's Basic Education Circular on AEDY programs for Disruptive Youth (hereafter the "BEC"). This document, which is found at Appendix 2, explains PDE's interpretation of applicable laws.<sup>36</sup>
  - PDE's 2009-10 Guidelines on Alternative Education for Disruptive Youth (hereafter "PDE Guidelines").<sup>37</sup> These guidelines describe PDE's requirements for AEDY programs for disruptive youth.
- A comment is also necessary concerning our reference to reports and surveys concerning existing AEDY programs. Most of our references are to the following five items:
- *Survey and Analysis of Alternative Education Programs*, a report by Nathaniel S. Hosley, Lock Haven University, prepared for the Center for Rural Pennsylvania, dated July 2003 ("Hosley I").<sup>38</sup>
  - *Pennsylvania Alternative Education for Disruptive Youth Evaluation Report*, by Christina Ager, Arcadia University, *et al.*, prepared for the Pennsylvania Department of Education, dated September 2006 ("Ager").<sup>39</sup>
  - *Alternative Education for Disruptive Youth, 2005-06 Annual Report for Public Schools*, Pennsylvania Department of Education, dated April 2008 ("PDE annual report"). This is the most recent report that PDE has made publicly available.<sup>40</sup>
  - Results of a survey of over 300 juvenile probation officers and other juvenile justice professionals,

conducted by the Education Law Center in 2008 (“ELC survey”).<sup>41</sup>

- *Survey and Analysis of Alternative Education Programs II*, by Nathaniel S. Hosley, *et al.*, Lock Haven University, prepared for the Center for Rural Pennsylvania, dated September 2009 (“Hosley II”).<sup>42</sup>

As we have mentioned, we make no attempt here to summarize, much less synthesize, the *findings* of these studies and surveys. In part because there are few agreed-upon goals or measures for AEDY programs in Pennsylvania, and in part because of data limitations, the authors of these reports have pursued different questions and obtained different results. While all of the reports contain valuable information, none purports to provide a comprehensive picture of the “state of alternative education” in Pennsylvania, nor can they be readily combined to do so. We use the reports simply to help us identify issues and problems that require consideration in our own review.

## Nature and purpose of alternative education

Before discussing the specifics of Pennsylvania’s program of alternative education for disruptive students, we pause to discuss the program’s overall thrust – and some possible alternatives. AEDY is focused, of course, exclusively on disruptive students. But not all alternative education programs in the United States, nor even all alternative education programs in Pennsylvania, share this focus. On the contrary, around the country, “alternative education” refers to a variety of types of programs, serving a range of students who need educational services that are somehow

different from those provided in mainstream programs.<sup>43</sup>

Although this report is mainly about ways in which Pennsylvania’s program for disruptive youth could be improved, the biggest improvement of all might come if the state were to adopt a broader, more flexible concept of alternative education. By promoting a wider range of alternative programs, Pennsylvania could contribute to the success not only of disruptive youth but also of the many students who are not doing well in school and who could use a more individualized approach. These might include students who have not committed any act of misconduct; students who have caused some difficulty in school, but who, with some help, might “turn around” before something more serious occurs; students who might choose a more therapeutic environment, as well as those who might be placed involuntarily; older students who are on the verge of dropping out, or who have dropped out, but who would be willing to return to a program that better met their needs as young adults; and combinations of these and other groups.

Some Pennsylvania school districts have taken the initiative to create such programs. In Philadelphia, for example, Project U-Turn has collaborated with the School District to create “accelerated high schools” for older students who have dropped out of school but want to return – evidently with considerable success.<sup>44</sup>

By promoting a broader concept of alternative education, the state could provide better services both to disruptive youth and to other students who need something different from “regular” school. We also believe that all participants would benefit from an alternative education program that was not solely constructed for, and solely composed of, students who have engaged in serious misconduct in school. Our final

section, entitled “Reshaping the legal structure supporting alternative education,” includes a recommendation that the General Assembly, State Board and Department of Education consider revising the state’s alternative education along these lines.

With this caveat, we turn to a discussion of specific issues and problems in the AEDY program as it currently exists.

## Criteria for placement

**The current approach.** To be eligible for placement in AEDY, a student must meet the following statutory definition of “disruptive”:

A student who poses a clear threat to the safety and welfare of other students or the school staff, who creates an unsafe school environment or whose behavior materially interferes with the learning of other students or disrupts the overall educational process. The disruptive student exhibits to a marked degree any or all of the following conditions:

- (i) Disregard for school authority, including persistent violation of school policy and rules.
- (ii) Display or use of controlled substances on school property or during school-affiliated activities.
- (iii) Violent or threatening behavior on school property or during school-affiliated activities.
- (iv) Possession of a weapon on school property, as defined under 18 Pa.C.S. Section 912 (relating to possession of weapon on school property).
- (v) Commission of a criminal act on school property or during school-affiliated activities.

- (vi) Misconduct that would merit suspension or expulsion under school policy.
- (vii) Habitual truancy.<sup>45</sup>

**Issues and problems.** The General Assembly’s intent appears to have been to limit AEDY programs to students who commit serious misbehavior, who do so in an especially problematic or repeated fashion (“to a marked degree”), and for whom – as a later section of Article XIX-C states – “other established methods of discipline have been utilized and have failed, unless the seriousness of the student’s behavior warrants immediate placement.”<sup>46</sup> Certainly, the statutory language includes such students within its scope.

However, some parts of the definition can also be read to cover students whose offenses are less serious. According to PDE, 40.3% of placements in AEDY programs were based on either subsection (i) (“disregard for authority”) or subsection (vi) (“misconduct that would merit suspension or expulsion”).<sup>47</sup> So long as schools can assign students to AEDY programs for something as vague as “disregard for authority,” or for *any* act that could lead to suspension (smoking? improper language?), it is impossible to ensure that AEDY programs are actually being reserved for students who repeatedly engage in serious misconduct – and in fact no statistics are available on that point.

What the available statistics *do* show is that “violent behavior” and “possession of a weapon” – the types of misconduct that, we assume, most concerned the Legislature – account for a relatively *small* proportion of placements (19.3%).<sup>48</sup> Anecdotally, ELC’s experience also suggests that alternative-education placements are used in some cases of minor misbehavior. Examples from our caseload include an eighth-grade girl who used her pen to poke a boy who was

teasing her; a nine-year-old, never previously in trouble, who hit a teacher on the arm; and a student who pushed a security guard away when the guard grabbed his recently sprained arm.

The removal from school of students who have committed minor misconduct contravenes the intent of the General Assembly as well as good educational practice. As PDE points out:

In all but a few cases, a student's local school setting is the most appropriate environment for receiving an education. Every effort must be made to provide students appropriate services in the least restrictive setting possible. Alternative education placements are temporary in nature [and] should be considered **only** when all other avenues have been exhausted ...<sup>49</sup>

Also problematic is the fact that the statute covers students who are "habitually truant." A substantial percentage of AEDY placements, 15.6%, are made on this basis.<sup>50</sup> Yet habitual truancy is a different sort of problem from disruptiveness. Indeed, habitual truancy is probably more accurately described as a *symptom* of one or more of a number of possible problems (family problems, school failure or frustration, mental health issues, transportation difficulties, financial barriers, and so on), most of which have nothing to do with disruptiveness at all.

We know of no evidence that alternative programs designed for *disruptive* youth are also appropriate for students who are not disruptive, but simply truant. Moreover, while there are reports that attendance improves to some (often unspecified) degree for students assigned to AEDY programs,<sup>51</sup> these reports do not show that attendance improves for those students assigned on the basis of "habitual truancy" – much less that

AEDY services are appropriate for non-disruptive students.

Further, some districts use alternative education placements for students whose misbehavior is unconnected to the school program, or for students who are returning from juvenile justice placement resulting from misbehavior unrelated to school. The Commonwealth Court has addressed these practices, holding that (1) placement is appropriate only if the student *currently* meets the "disruptive" standard<sup>52</sup> and (2) schools may not discipline students at all for misbehavior unconnected to the school program.<sup>53</sup> In ELC's experience, however, many districts are unaware of, or choose not to follow, these court decisions.<sup>54</sup>

Recently, PDE notified districts that placement in AEDY cannot be based solely on the fact that a student is returning from a juvenile justice program.<sup>55</sup> This was an important step, but because the statute is confusing on this point, the misunderstanding persists – as do misunderstandings concerning whether students can be disciplined for behavior not connected with school, an issue that PDE has *not* clearly addressed.<sup>56</sup>

Finally, Article XIX-C provides, somewhat cryptically, that students eligible for special education under the federal Individuals With Disabilities Education Act can be deemed "disruptive" only "as provided for in 22 Pa. Code § 14.35 (relating to discipline)." But 22 Pa. Code § 14.35 no longer exists, having been repealed nearly ten years ago. At minimum, the statute should be amended to make the correct reference, which would be to federal regulations.<sup>57</sup>

Even with this amendment, however, districts would not have sufficient guidance on how, in light of federal law, they should handle students with disabilities. PDE's Basic Education Circular addresses this

issue in some detail, but omits at least one important point -- the district's obligation under IDEA to ensure that a student who has shown indications of having a disability be evaluated before placement in an alternative program is considered (except in certain special circumstances).<sup>58</sup> This omission is especially significant given PDE's finding that 24.7% of those AEDY students who need special education were not identified until *after* placement.<sup>59</sup> This relatively high figure suggests that some districts may be choosing, in the case of some students who show signs of disabilities, to move the student first and get to the evaluation later -- an educationally problematic and in some circumstances illegal approach.

#### **Recommendations.**

- The General Assembly should amend the definition of "disruptive student" to ensure that the category will be applied only to students who commit serious offenses. Neither "disregard for school authority" nor "habitual truancy," in the absence of serious and repeated disruptive behavior, should be a basis for assignment to AEDY. "Misconduct that would merit suspension or expulsion" is also an excessively broad criterion. With respect to students with disabilities, the AEDY statute should be amended to refer to the correct sections of the federal IDEA regulations.
- PDE should amend the AEDY Basic Education Circular ("BEC") to comply with the federal Individuals With Disabilities Education Act (IDEA), which requires that students who show signs of a possible disability, but who have not yet been evaluated, not be transferred to alternative schools

except in certain special circumstances.

- PDE should make clear in the BEC that assignment to AEDY can be based only on misbehavior that occurs at school or a school-sponsored activity.

## **Overrepresentation of students with disabilities and students of color**

**The current approach.** PDE has in its possession data from which it could determine whether students of color and students with disabilities are overrepresented in AEDY programs. Thus far, however, PDE has released no information on this subject, and appears to have taken no action on the question.

**Issues and problems.** PDE's most recent annual report suggests that overrepresentation may, in fact, be a problem. The total percentage of children with disabilities in AEDY is 37.5% -- well over *one-third* of the entire AEDY population.<sup>60</sup> By contrast, the incidence of students with disabilities in the public school system as a whole is 15.1%.<sup>61</sup> In other words, students with disabilities appear in AEDY programs at well over *twice the rate* at which they are found in Pennsylvania's public education system as a whole.

Whether this is a significant disproportion requires further analysis for a number of reasons, including the possibility that AEDY programs are located disproportionately in districts that serve higher numbers of students with disabilities. But the figures are troublesome, since they suggest that students with disabilities -- perhaps especially students classified as having

social and emotional disturbance – may be ending up in alternative education because their needs are not being properly addressed in regular schools.

PDE appears not to have investigated this issue. Indeed, PDE's entire comment on the fact that over one-third of the students in AEDY programs have disabilities is the following: "Identification of Special Education needs enables Alternative Education Staff to properly assist, teach and counsel students, thus securing more positive outcomes."<sup>62</sup> Obviously, this statement does not even acknowledge that an overrepresentation problem may exist.

Moreover, overrepresentation of students with disabilities is more than a problem; it can also constitute a violation of federal law. Regulations under Section 504 of the Rehabilitation Act of 1973, for example, prohibit the state, or any local education agency, from discriminating against persons with disabilities.<sup>63</sup> A program that removes students with disabilities from the regular school environment and places them in a separate (and stigmatizing) setting at a disproportionate rate would appear to violate these regulations. The Individuals With Disabilities Education Act (IDEA) also contains provisions aimed at preventing disproportionate discipline of students with disabilities, and specifically requires the State to review disciplinary data to determine whether such disproportions exist and, if so, to take remedial action.<sup>64</sup> Disproportionate discipline may also violate state anti-discrimination laws.<sup>65</sup>

PDE has also been silent on the issue of overrepresentation of students of color. PDE's 2005-06 report shows these rates as 36.3% (African-American) and 10.5% (Latino), respectively, for a total of 46.8% – nearly half – of the AEDY population.<sup>66</sup> In the general population, by contrast, African-American and Latino students account for

only 15.5% and 5.7%, for a total of 21.2%.<sup>67</sup> Thus, African-American and Latino children are represented in AEDY programs at well over *twice the rate* that they appear in the overall population. Yet PDE's report contains no comment on this issue.<sup>68</sup>

Like the figures on the prevalence of students with disabilities, these figures require more analysis. But doing that analysis is a matter of urgent importance, because if African-American and Latino students are really being removed from regular schools at higher rates than other students, the next step should be an investigation of why this is occurring. Like disproportions in the area of disabilities, racial and ethnic disproportions can constitute violations of federal law – including regulations under Title VI of the Civil Rights Act of 1964, which apply to the state as well as to individual school districts<sup>69</sup> – as well as state statutes.<sup>70</sup>

### **Recommendation.**

- PDE should determine whether students of color, students with disabilities, or any other group are overrepresented in individual AEDY programs and in the AEDY program as a whole. To the extent that such disproportions are found, PDE should investigate the reasons and require corrective action.

## **Due process procedures**

**The current approach.** Under Article XIX-C, a student whom school officials propose to transfer to an AEDY program has the right to a hearing.<sup>71</sup> The purpose of the hearing is to give the student an opportunity to show why he or she does not meet the definition of a disruptive student and should not be transferred.<sup>72</sup>



**Issues and problems.** The Commonwealth Court has ruled that, unlike expelled students, students transferred to AEDY programs have no right to appeal the decisions made at their hearings.<sup>73</sup> This produces the strange result that a student expelled for one month has a right of appeal, but a student transferred to an alternative school for a year has none. The student has no recourse, it appears, even if the decision is based entirely on hearsay evidence, or is made by a less-than-impartial official, or is made at a hearing at which the student is not given a chance to question the witnesses or evidence against him. In sum, the district can make multiple errors in the hearing process – but there is nothing that the student can do about it. Because injustices inevitably happen, this problem should be corrected.

ELC has also learned, through many discussions with parents and probation officers, as well as from the survey described above, that many students are transferred to AEDY programs without any hearing. Obviously, this does not reflect a problem in the statutory language. It is, however, a reminder that without adequate monitoring and accountability, and in the absence of any right to appeal, students have no protection when a district fails to follow the rules.

### **Recommendations.**

- The General Assembly should provide that the decision to transfer a student to an AEDY program for disruptive students is appealable to court.
- PDE should monitor AEDY programs frequently to ensure that students are provided with required due process procedures.

## **School day**

**The current approach.** Article XIX-C permits programs – public and privately operated – to “operate outside the normal school day,”<sup>74</sup> and to “modify” the requirements of other state statutes “related to the number of days or hours of instruction.”<sup>75</sup>

**Issues and problems.** It seems unlikely that, in enacting these provisions, the General Assembly intended to authorize AEDY programs to operate for a *shortened* school day. The General Assembly probably intended, instead, to provide districts with flexibility in scheduling, and perhaps to allow for work and service learning arrangements.

But because the language is unclear, it is possible to interpret the statute as permitting districts to provide students in AEDY programs with a reduced educational program. PDE has adopted exactly that interpretation, having notified districts that AEDY programs must provide only 20 hours of academic instruction, plus 2½ hours of counseling, per week.<sup>76</sup> This comes to a total of 22½ hours of service per week, or 4½ hours per day (assuming a five-day week). (To be sure, this is an improvement when compared with the situation in 2008-09 and before, when PDE approved programs that offered as little as 15 hours of instruction per week.<sup>77</sup> PDE’s decision to increase the figure from 15 to 20 hours was, certainly, a positive step.)

However, all other students in Pennsylvania middle and high schools go to school for a minimum of 5½ hours per day, *i.e.*, 27½ hours per week.<sup>78</sup> PDE’s 22½-hour rule for AEDY programs means that AEDY students can still be provided with only about 82% of the time in school that is offered to their peers, even though AEDY students have

been found to have significant special needs.

We were unable to locate current information about how many alternative programs actually operate on a shortened-day schedule. The most recent information available, from Hosley's 2003 study, indicates that at that time, the number was substantial.<sup>79</sup> More current data would be helpful – but in the meantime, this seems to us a matter for serious concern. While we recognize that the *content* of the school day in an AEDY program may differ in some ways from that in regular school (*e.g.*, there may be more emphasis on counseling and behavior-shaping), we know of no research basis for the idea that students who commit acts of misconduct need less service, overall, than do other students. We also note the examples of various other states that require that AEDY programs provide an equal amount of, or more, service than that provided to regular school students.<sup>80</sup>

### Recommendations.

- PDE should revise its interpretation of the AEDY statute to require that all AEDY programs operate for a full school day.
- The General Assembly should amend Article XIX-C to eliminate any possible ambiguity on the issue of the right of students in AEDY programs to receive a school day of equal length to that provided to all other students.

## Content and outcomes of AEDY programs

**The current approach.** According to Article XIX-C, AEDY programs are intended to provide sound academics and counseling,

with the goal of changing behavior and enabling the student to return to regular school.<sup>81</sup> PDE has emphasized these educational and rehabilitative purposes, instructing programs that they must provide a course of study consistent with the Pennsylvania academic standards, as well as a counseling and behavioral component.<sup>82</sup>

PDE has not, however, prescribed any particular types of instructional or behavioral services that AEDY programs are expected to provide. PDE has also established no targets for student academic or behavioral progress, apart from an expectation that students will be returned to the regular school environment at a minimum rate of 20% per year.<sup>83</sup>

PDE does collect data from AEDY programs, mainly on issues of student achievement, behavioral progress, and so forth.<sup>84</sup>

### Issues and problems.

*Content of the services provided in AEDY programs.* While more research is needed on AEDY programs, and especially on “the specific components ... that lead to success and how these components intersect with the needs of at-risk students ... to produce successful outcomes,”<sup>85</sup> there is much that is known about how to educate alternative education students successfully, as a review of the literature demonstrates. Small class size, a student-centered atmosphere, the use of certain types of proven instructional approaches, positive behavior supports, family partnerships and other elements have all been cited as contributing to the effectiveness of alternative education programs.<sup>86</sup> Obviously, it makes sense to ensure that public funds are spent, to the maximum extent possible, on such practices. As to whether this is actually occurring in Pennsylvania, however, the evidence is mixed – and there is also a great deal that is

simply not known about what is occurring within AEDY programs.

Ager noted that “a frequent theme identified by students was that of ‘easier work’ which was repeated throughout a number of interviews and across sites.” She observed that, “[r]ather than students reporting that work is ‘easier’ in alternative education, it should be our goal to have students report that the teaching is more effective and they feel they are learning more than ever before.”<sup>87</sup> Some of the JPOs who responded to the ELC survey similarly noted a “lack of individualized instruction” and a lack of “grade appropriate work.” Some programs were reported not to be “challenging the students academically” or preparing them for college, and to be giving students work that is “too easy for them” and not “grade appropriate.”

Other respondents said that students “are not given suitable work,” often sleep during school, “spend a lot of time watching movies that often have little educational value to them,” or just “sit with their heads down all day.” Numerous respondents indicated that students are frequently assigned “busy work.” (On the other hand, some respondents identified effective programs, including a “model school” that has an “excellent staff that provides each student with support that is specific to [his or her] needs.”)

In ELC’s testimony to a Senate Education Hearing on alternative education, we quoted from a letter by a student recently assigned to alternative education for possession of prescription drugs. This honor student, with no prior disciplinary history, wrote:

When I first started attending \_\_\_\_\_ Alternative School, I quickly noticed how poor of an environment it was for students who had a desire to learn. Not many of the teachers actually taught full

lessons at \_\_\_\_\_. My normal day consists of watching a movie in Science, doing online math work in Math, completing spelling words and a word search in English, taking notes in history, drawing patterns in art, and then going to the gym where we walk around and do whatever we want. We never have homework. Prior to being placed in this school, my normal day consisted of honors math and reading Greek literature. I have been attending \_\_\_\_\_ for about four months and so far I have learned pretty much nothing.<sup>88</sup>

Hosley also found that “more than one-third of alternative education teachers had fewer curriculum resources than did regular classroom teachers,” and that “nearly 55 percent [of teachers] indicated that students in alternative education are excluded from some parts of the curriculum that are available to regular education students.”<sup>89</sup> Six years later, Hosley found the percentage of students excluded from some parts of the curriculum still to be a sizeable 39%.<sup>90</sup> ELC’s survey of juvenile justice professionals underscored these concerns; of over 300 respondents, 52.7% said that students in AEDY programs do not have access to the same educational opportunities as students in the regular education programs. It is difficult to imagine a justification for excluding alternative education students from parts of the curriculum that are available to others. The practice also appears inconsistent with state laws, regulations and policies, which nowhere authorize such exclusion.

On the issue of the behavioral approaches used in AEDY programs, there is also reason for concern. According to Ager:

Of all the strategies noted by all the [AEDY] programs an overwhelming majority (over 80%) were consequence-based strategies (points, strikes,

contracts, monitoring behavior, think sheets, etc.) including crisis management approaches.... Notably missing were antecedent strategies as well as skill building approaches which the research literature supports as more effective in providing effective support for students with behavior problems.<sup>91</sup>

Ager also found an “over-reliance on student accountability and responsibility as a critical ‘approach to discipline.’<sup>92</sup> She added:

While we support the development of individual responsibility and accountability this belief and orientation continues a failed paradigm: that behavior is changed by will-power or responsibility. Many adults struggle with behaviors we find challenging (over-eating, anger control, being late) and behavioral research over the last 40 years has clearly and consistently documented that to successfully support behavior change we need to engage in two primary categories of intervention: 1) environmental changes (setting events, antecedent and consequence strategies) and 2) skill building. ... Simply telling or expecting students to be responsible will not change behavior.”<sup>93</sup>

The juvenile justice professionals who responded to ELC’s survey also expressed concern about the disciplinary and at times punitive character of some – though certainly not all – programs. One respondent stated that some programs use “a boot camp approach” where “physical and verbal abuse and corporal punishment” are common and where programs use secluded “padded rooms.” Another claimed that “restraint is used too often and at times when it could be avoided.” Other respondents described certain programs as “holding areas,” “warehouses,” or “dumping grounds.” Clearly, programs of this character would be

completely inconsistent with the statutory goal of “providing students with “a course of instruction which recognizes their special needs, [and] prepare[s] them for successful return to a regular school curriculum and/or completion of the requirements for graduation.”<sup>94</sup>

We do not suggest that these comments, or indeed any of the observations contained in the reports and studies that we have cited, necessarily provide an accurate overall picture of AEDY programs. But that also points to a problem: information about the actual content of AEDY services is in short supply. Hosley’s 2003 report, for example, was based in part on reports from teachers and administrators, who were asked to characterize their programs as “focused” on “behavior change,” “therapeutic change,” “academic change,” and so forth.<sup>95</sup> While useful, this sort of data has obvious limitations, in terms both of objectivity and specificity.

PDE’s annual report took a similar approach, asking program personnel to identify the “types of instruction” that they provided, *e.g.*, “core subjects only,” “service learning,” “work study,” and so forth.<sup>96</sup> Even Ager, whose study depended less heavily on self-reporting and included site visits and other activities, was able to conclude only that “at least a few” effective components (broadly defined as “counseling, academic instruction, environments that meet students’ needs, class-wide systems, and special education services”) were found in a “majority” of programs.<sup>97</sup> In summary, the extent to which AEDY programs are using effective, proven methods and approaches is, at best, very unclear.

Also unclear, finally, is the extent to which some AEDY programs may be using potentially dangerous techniques. That even a few probation officers report physical and verbal abuse, the use of restraints and

seclusion rooms, and corporal punishment is troubling. Besides being dangerous and demeaning, these approaches are either not authorized, or expressly forbidden, by law.<sup>98</sup> PDE should make clear to AEDY programs that these methods are not permissible; should require that any program in which an employee is discovered to have used such approaches report the incident; and should take immediate corrective action in response to any such reports.

*Student outcomes.* Information about the outcomes of AEDY programs for students is also limited. For example, Hosley concluded, in 2003, that “[i]n general, students seem to maintain current academic levels or make gains after alternative education participation” – but this conclusion was based on opinions of alternative education teachers and administrators, and was also very general in nature.<sup>99</sup> PDE reported that, e.g., “over 50%” of students increased their grade point average<sup>100</sup> – but that could mean a lot or a little, depending on whether the increase was large or small and on the level of difficulty of the AEDY curriculum. PDE’s information was also based on reports from program providers rather than on student data.

Similarly, in his 2009 study, Hosley asked AEDY teachers and administrators to rate their own programs’ success in producing various student outcomes. Thus, for example, administrators on average rated their programs’ success in producing “improved academic performance” as 3.91 on a scale from 1 to 5 – useful information, but again reflecting the subjective opinions of those running the programs. As for an overall conclusion on the effectiveness of AEDY programs, Professor Hosley’s statement was that AEDY programs “are viewed [by program staff themselves] as moderately effective” in achieving their goals. This is helpful, but it is also another

finding that is entirely based on the opinions of program administrators.<sup>101</sup>

To summarize, there is evidence that some AEDY programs are heavily disciplinary in character, employing approaches that actually impede student progress. Some programs reportedly lack appropriate educational content, consisting more of “busy work.” Other programs are reported to be using effective approaches and to be achieving success, but the data supporting these reports has limitations, including the fact that AEDY staff perceptions figure heavily into the analysis.

In our view, the proper response to these problems is essentially the same response that Pennsylvania has implemented with respect to other public school programs: the establishment of an accountability system. Such a system should include criteria that programs are expected to meet, a systematic data collection process, and the capacity to bring about appropriate corrections in situations when criteria are missed.

PDE has put in place some parts of such a system. For example, PDE has informed AEDY programs that they must adhere to state academic standards, administer assessments, develop individual behavior plans, and provide individual or group counseling.<sup>102</sup> This is a positive step. However, it seems to us that more must be done to require programs to implement academic and behavioral approaches that are of proven value for this population.<sup>103</sup>

For example, PDE could require that programs provide some combination of vocational, work study, or service learning opportunities, which have been shown to be especially important for this student population.<sup>104</sup> PDE could require that programs implement “positive behavior support” programs, or other proven

behavioral approaches.<sup>105</sup> And PDE could also require more clearly that each student must have an individualized academic plan, another research-based strategy.<sup>106</sup> New Jersey and Indiana are two states that have legally mandated this promising approach.

As to student outcomes, PDE has recently begun to require that AEDY programs provide data on the numbers of students who met academic and behavioral goals; were promoted or graduated; transitioned back to regular school; were suspended or expelled; passed core content subjects; participated in career preparation; and more.<sup>107</sup> However, as we have noted, PDE has established no actual targets for student outcomes in these areas. Until such targets are established, neither PDE nor AEDY programs themselves will have a way to determine whether their students are achieving at satisfactory levels.

### **Recommendations.**

- PDE should require that AEDY programs use approaches of proven effectiveness in both academic and behavioral areas, e.g., individualized academic plans and positive behavioral support programs.
- PDE should make clear to AEDY programs that the use of restraints, seclusion, physical or verbal abuse, and corporal punishment are forbidden in AEDY programs; should require that any program in which an employee is discovered to have used such approaches report the incident; and should take immediate corrective action in response to any such reports.
- PDE should establish clear performance targets relative to student outcomes, both academic and behavioral, in AEDY programs. Data collection should be aligned with these targets.

## **Services for students with disabilities**

**The current approach.** As we have pointed out, AEDY programs contain significant – indeed, disproportionately high – numbers of students with disabilities. PDE’s Basic Education Circular informs AEDY programs that they must serve these students in accordance with the requirements of applicable special education laws. PDE also requires AEDY programs to report on the number of students eligible for special education services. Further, PDE conducts some monitoring of AEDY programs; and when a complaint is made concerning the services available to a student with disabilities in AEDY, PDE will investigate.

**Issues and problems.** Under the federal Individuals With Disabilities Education Act, PDE is obligated to ensure that every student eligible for special education is, in fact, receiving an appropriate program.<sup>108</sup> Given the unusually high numbers of students with disabilities in AEDY, PDE should monitor AEDY programs closely and frequently to ensure that this requirement is met.

Second, special education law requires the provision not only of an appropriate educational program, but also of related services, such as therapies.<sup>109</sup> It is unclear from the available information whether these services are available in AEDY programs.

Third, it seems doubtful that the shortened school day provided by some AEDY programs can be consistent with the IDEA. While it may be conceivable, in a particular case, that a student with disabilities can be appropriately served in a program that provides him with less instruction than that provided to his peers, this is likely to be the

exception rather than the rule. Yet the rule, in some AEDY programs, is that 20 hours of service is the maximum that is provided.

Fourth, some students with disabilities who are transferred to AEDY programs are entitled, under IDEA, to be returned to their regular placement after 45 days.<sup>110</sup> Yet state law on progress reviews (discussed in more detail below) provides simply that a student's progress will be reviewed every semester, and that he may or may not be returned at that point. Of course, federal law supersedes state law in this situation, but it is completely unclear whether, in practice, AEDY programs are complying with the federal requirements.

Fifth, some students with disabilities who do not need special education are, nevertheless, entitled to adjustments and accommodations in their educational programs under Section 504 of the Rehabilitation Act of 1973.<sup>111</sup> PDE's BEC does not deal with these students, nor does PDE request that AEDY programs provide information gathered concerning them.

### **Recommendations.**

- PDE should closely and frequently monitor the extent to which each AEDY program is complying with special education laws. This monitoring should include collecting data not only on the numbers of students served but also on the types of disabilities represented, the nature of the programming provided, the availability of related services, and the like. The monitoring should also include frequent site visits. To the extent that deficiencies are found, PDE should require prompt correction. Alternatively, if PDE is unable to conduct such monitoring, it should

prohibit the placement of students with disabilities in AEDY programs.

- PDE should inform school districts of all legal requirements applicable to students with disabilities, including not only those requirements currently addressed in the BEC but also the requirement that no student be placed in a 20-hour-per-week program for whom an appropriate education cannot be provided in that setting; requirements applicable to "protected handicapped students;" the 45-day limit on stays in AEDY programs for certain students with disabilities; and other applicable rules.

## **Services for English language learners**

**The current approach.** PDE's Basic Education Circular on AEDY does not mention English language learners, although a separate BEC does address English language learners in public education programs generally. PDE Guidelines do not require AEDY programs to provide information on the number of ELLs served or the nature of the services provided.

**Issues and problems.** The lack of reporting means that we have no data on the numbers of ELLs served in AEDY programs. However, the fact that 10.5% of AEDY students are Latino<sup>112</sup> suggests that the number may be substantial; and of course, students of many language backgrounds in addition to Spanish are also present in Pennsylvania public schools.

ELLs are entitled to a number of special services under federal and state law, including instruction in English as a Second

Language, adaptations in content-area classes, and equal access (with linguistic supports as necessary) to school programs, such as counseling. Parents who do not speak English are also entitled to certain services, including translation and interpretation as necessary.<sup>113</sup>

PDE has issued a separate Basic Education Circular on the rights of ELLs in public school programs.<sup>114</sup> But the fact that the AEDY BEC and Guidelines do not even reference ELLs, or require the reporting of any data concerning numbers or services, means that there can be no assurance that the needs of this population are being met in AEDY settings.

ELC's own experience also suggests that this may be a problem area. For example, ELC became aware of a large AEDY program that had significant numbers of ELLs, and provided no English as a Second Language instruction or other services relevant to the needs of ELLs and their families. This situation was resolved only after ELC filed a complaint with a federal civil rights enforcement agency;<sup>115</sup> the state had no mechanism for detecting the problem, much less addressing it.

### **Recommendations.**

- PDE should include, in its BEC and Guidelines, information on services that must be provided to ELLs in AEDY programs, and should require reporting concerning the numbers of ELLs served by each program and the services offered.

## **Qualifications of personnel**

**The current approach.** Under Article XIX-C, *publicly* operated AEDY programs must hire certified teachers.<sup>116</sup> However, under Article XIX-E, *private* providers are exempt

from this requirement – as well as from all other state requirements relative to teacher preparation and professional development.<sup>117</sup> Neither statute requires that teachers, administrators, or other staff in alternative programs have skills or experience relevant to the needs of disruptive students.

**Issues and problems.** AEDY programs can address students' special needs only if personnel have appropriate specialized training and experience. This is a problem area in Pennsylvania. In 2003, Hosley found that:

Nearly 25 percent of rural teachers entered alternative education settings with no special training related to issues of teaching at-risk and/or disruptive children and youth. An additional 21 percent described their pre-service training as inadequate. Just 18 percent had at least enough training to feel well prepared. Urban teachers fared better: 29 percent felt well prepared. However, 41 percent felt they had no or inadequate training.<sup>118</sup>

Six years later, in 2009, Hosley reported that “nearly one-third of teachers [surveyed] indicated that teachers working in alternative settings are unprepared or somewhat underprepared for this type of work.” Moreover, “eighty-five percent of administrators indicated a need for professional development activities for administrators, teachers and others in alternative education.”<sup>119</sup>

Ager also found that challenges to effective programming included “1) lack of time for staff training, 2) lack of formal training for staff, 3) having to rely on part-time teachers (especially for Twilight programs) and 4) lack of funding for training programs.”<sup>120</sup>



PDE's BEC and Guidelines do not address these issues, stating only that teachers must be highly qualified (a requirement that, while important, does not imply any skill, preparation or training in dealing with students with behavioral issues) and certified (except in privately-operated programs, discussed below). Likewise, PDE's annual report provides no information on the actual skills or training of AEDY staff. Thus, it appears, the "specialized training" gaps identified by Hosley and Ager are not being addressed.

This problem could be remedied in various ways. AEDY programs could be required to employ a mix of certified teachers and persons with credentials in behavioral health, counseling, service learning, and other relevant fields. Professional development, mandatory or optional, could be provided – PDE has provided some in the past<sup>121</sup> – to enhance the skills of AEDY personnel. Some sort of "specialist" certificate, such as that required of teachers of English as a Second Language, could be established for alternative education. PDE should explore these and other options, and find some way of ensuring that the staff of AEDY programs have the qualifications they need in order to educate this student population.

Other states have adopted specific competency and/or preparation requirements for alternative education teachers. Examples include Oklahoma (programs must "demonstrate that teaching faculty has been selected on the basis of a record of successful work with at-risk students or personal and educational factors that qualify them for work with at-risk students");<sup>122</sup> and West Virginia ("ability to effect positive behavior in disruptive students, ... effective leadership and/or mentoring skills in working with youth, ... successful experience in providing education to troubled or disruptive youth...").<sup>123</sup>

Finally, the issue of staff qualifications in *privately*-operated programs requires attention. Whether or not Article XIX-E's exemption of these teachers from all preparation, certification, and professional development requirements was legal when enacted in 2000, it appears to be illegal now. The federal No Child Left Behind Act, which was passed after Article XIX-E and supersedes it in the event of an inconsistency, requires essentially that *all* teachers in programs supported with public education dollars – which these privately-operated programs surely are – be "highly qualified."<sup>124</sup> "Highly qualified" requires certification and a demonstration of competency in the teacher's academic area(s).<sup>125</sup> This legal problem should be addressed.

#### **Recommendations.**

- PDE should establish competencies and preparation requirements for all personnel in AEDY programs.
- The General Assembly should amend the AEDY statute to conform with federal law, by providing that personnel in private AEDY programs will no longer be exempt from certification and "highly qualified teacher" requirements.

## **Progress reviews and length of stay**

**The current approach.** Article XIX-C provides that AEDY programs must adopt a policy for "periodic review" of each student's progress, and states: "This review shall occur, at a minimum, at the end of every semester the student is in the program or more frequently at the district's or private

alternative education institution's discretion. The purpose of this review is to determine whether or not the student is ready to return to the regular school curriculum."<sup>126</sup>

The BEC adds further detail, stating that the review team should consist of program administrators, teachers, counselors, and a representative from the sending school's administration," and that the "parent, student, and any other advocate(s) with knowledge of the child's history" should also be involved. The review is to include an evaluation of the student's academic and behavioral progress and is to be documented.<sup>127</sup>

Finally, the BEC states that, "within each school year, programs are expected to return students to the regular school environment at a target rate of 20%."<sup>128</sup>

**Issues and problems.** No information is available concerning whether or not AEDY programs *actually* review each student's progress each semester for the purpose of determining whether the student can return to regular school. Anecdotal information, however, suggests that for some programs, the answer is no. For example, ELC is aware of districts that have required students to remain in alternative education for a minimum of a school year, regardless of the degree of progress that they display – an approach that conflicts with the requirement that each student be evaluated for possible return each semester.

Similar problems were noted by some of the juvenile probation officers who responded to ELC's survey. One stated that some programs in his area are "not really [doing] a good job at keeping [the kids] on track . . . [to] return to [their] home school and seem to [hang] on to kids for a very long time, even after the child starts to do well." Another JPO stated that students in his area have "no hope for transition," and a third said that

students are "just maintained until they [drop]out or receive some type of diploma."

Likewise, Ager concluded that: "Exit criteria seem unclear concerning when students are able to return to general education although some of the programs we visited had clear processes outlined for reviewing student placement."<sup>129</sup> Hosley, meanwhile, found that 23% of program administrators "indicated that [student] participation was for a full year or more."<sup>130</sup> While this figure obviously says nothing about whether such lengths of stay were appropriate, or about whether meaningful reviews were conducted, it does show that students are remaining in alternative education for substantial periods.

PDE should assist AEDY programs by providing them with model policies and procedures for student progress reviews. Examples of such policies presumably already exist at some AEDY programs.

PDE has recently begun to require that AEDY programs provide data concerning length of stay,<sup>131</sup> a positive development. However, PDE should also establish performance targets concerning length of stay, so that programs will know what is expected of them and so that PDE will have some way of measuring program quality.

As noted above, one point on which PDE *has* recently adopted a performance target is the rate at which AEDY students should return to regular schools. PDE states that "[w]ithin each school year, programs are expected to return students to the regular school environment at a minimum target rate of 20%."<sup>132</sup> This is a positive step, although 20% seems a strikingly low figure given the emphasis in Article XIX-C on returning students to regular school.

Finally, PDE should adopt targets with respect to academic achievement and

behavior of students who return from AEDY to the regular environment. Since the statutory goals of the program include *modifying* student behavior and *successfully* returning students to the regular curriculum, follow-up is necessary in order to determine whether these results are being accomplished – or whether, instead, AEDY placements simply remove students from school without producing any longer-term improvement.

### Recommendations.

- PDE should monitor AEDY programs to ensure that adequate procedures are in place for reviewing student progress; that the student, his or her parents, and representatives of the student's home school participate in the review process; and that reviews occur at least every semester.
- PDE should provide AEDY programs with model policies and procedures for conducting student progress reviews.
- PDE should adopt a performance target relative to students' lengths of stay in AEDY programs.
- PDE should raise the 20% annual-return target to a figure that would better promote the statute's goal of returning students to the regular environment.
- PDE should adopt targets, and collect data, on the academic and behavioral success of students once they return from AEDY programs to regular school.

## Safety

**The current approach.** In most of Pennsylvania's public education system, school safety is a priority. In response to a mandate from the General Assembly,<sup>133</sup> PDE operates an elaborate system for the reporting of school violence; the agency also operates a wide array of other "safe schools initiatives."<sup>134</sup> In addition, PDE oversees the implementation of the "persistently dangerous school" and "unsafe school choice" provisions of the No Child Left Behind, under which students who attend a school that is "persistently dangerous" (*i.e.*, a school that has more than a specified number of "dangerous incidents" per year)<sup>135</sup> or who are the victims of a violent criminal offense must be permitted to transfer to a safe school.<sup>136</sup>

However, AEDY programs are not included in these efforts. Indeed, PDE does not even require AEDY programs to report violent incidents, evidently on the rationale that AEDY programs are not "school entities" within the meaning of the statute mandating reporting.

While PDE may not be *required* to report safety information, PDE certainly has the *right* to do so as a condition of its approval of AEDY programs (including privately-operated programs). If the reporting of school violence is so important that we require it of all other public education settings, it makes little sense to exempt AEDY programs that are comprised of "disruptive" students – who certainly have as much a right to a safe environment as any others.

### Recommendations.

- PDE should require that AEDY programs report incidents involving school violence, weapons

possession, and controlled substances on the same basis as all other schools.

- PDE should establish performance targets for AEDY programs in the area of school safety.

## Family engagement

**The current approach.** Article XIX-C requires that AEDY programs be developed “in consultation with the faculty and administrative staff of the school and parents and members of the community.”<sup>137</sup> This is the only provision of the statute that mentions parents; students are not mentioned at all.

The No Child Left Behind Act, by contrast, requires that schools and districts provide multiple, ongoing opportunities for parent and family involvement.<sup>138</sup> These opportunities are designed to engage parents as partners in the education of their child, and to involve parents in the process of school improvement.

**Issues and problems.** Available information suggests that family involvement in AEDY programs is limited. Hosley’s 2003 report found that “more than 40% of programs reported that they work with families on an “as needed” basis – which, for about half of those programs, evidently translated to a “minimum of one meeting per year.”<sup>139</sup> Six years later, Hosley found that 62% of administrators and 82% of teachers said that their programs work with families “on an as-needed basis” – a change, but given the uncertainty of what an “as-needed basis” means, hardly an assurance of strong parent engagement.<sup>140</sup>

PDE’s annual report found that 226 of 350 programs “used” “family support services” – though it is unclear what that means.<sup>141</sup>

Among programs operated by private providers, only 142 of 266 programs (just over half) reported “strong parent involvement.”<sup>142</sup> Ager noted that, of the programs she reviewed, “[f]amily and parent involvement were reported as the least stable components offered, except in the areas of state mandated IEP development participation (83%).”<sup>143</sup>

As Ager’s review of the literature showed, however, family engagement – especially “family involvement that focuses on creating a school environment that is family friendly, and creates opportunities for programs and families to partner and collaborate to meet the needs of AEDY program students and their families” – is important to the success of alternative education.<sup>144</sup>

PDE does not require programs to conduct any plans or activities relevant to family engagement, apart from documenting the program has been developed “in consultation with ... parents and members of the community.” PDE also does not require programs to gather or report data on family engagement.

In fact, PDE does not appear to require that programs even provide families with basic information about the services their child will receive. While some programs may do this of their own accord, there is no reason to believe that this occurs uniformly. Certainly, moreover, little help is available to parents on PDE’s website. Although each of the AEDY programs listed on the site contains a hyperlink, these links do not, by and large, lead to any information about the program in question (beyond a contact name and phone number).<sup>145</sup>

These problems might be somewhat (though not fully) addressed if AEDY programs were required to comply with the parent-involvement requirements of the No Child Left Behind Act. To be sure, *districts* do

conduct certain NCLB-required parent involvement activities, and at least in theory, these activities extend to the parents of alternative education students. But most of the real work of engaging parents is assigned, by NCLB, to the local *school* – and PDE does not consider AEDY to be schools. Thus, again, PDE places no direct responsibility on AEDY programs to do anything about engaging parents, with respect either to the education of their own child or to broader matters of school policy and improvement.

No one would maintain that engaging families is always easy, perhaps especially in the alternative education context. But when laws and policies do not even require programs to make the attempt, much less supply them with support and models of good practice, the results are likely to be especially unimpressive.

Finally, there is another respect in which existing law and policy is not parent- or student-friendly. It can safely be assumed that most parents and students are unaware – since PDE has taken no steps to tell them – that PDE has an oversight function with respect to AEDY programs. PDE should inform families that although concerns about a program should first be presented to the program itself and then to the responsible school district, PDE itself is also available to deal with problems that cannot be resolved at the local level. Indeed, it is in PDE's interest to welcome contacts from concerned families, especially so long as its own monitoring is so limited.

#### **Recommendations.**

- PDE should develop requirements and performance measures for family engagement for AEDY programs.

- PDE should make clear to AEDY programs that they are obligated, no less than regular schools, to carry out the parent-involvement activities required by the No Child Left Behind Act.
- PDE should develop information on students' and families' rights within AEDY programs, on how to resolve problems, and on how to obtain help from PDE when problems are not resolved at the local level. PDE should ensure that this information is provided to all families whose children are assigned to AEDY programs.

## **Public reporting**

**The current approach.** In theory, some information on AEDY programs is available to the public. First, Article XIX-C requires that PDE establish “a review process to annually evaluate the effectiveness of alternative education programs, to include an annual report to the Education Committee of the Senate and the Education Committee of the House of Representatives.”<sup>146</sup> Second, PSSA scores of AEDY students are publicly reported – in a sense, which we discuss further below. Third, some information, including a list of AEDY programs, is available on PDE's website.

**Issues and problems.** The reality, however, is that the information that is publicly available concerning AEDY programs is extremely limited. First, PDE's “annual” reports are considerably delayed; the most recent is based on information from school year 2005-06. Also, the information contained in the report has a number of serious limitations. For example, the fact that 113 privately-operated AEDY programs reported to PDE that they use (undefined and unspecified) “unique learning

techniques” tells us very little – and certainly does not amount to reliable, objective evidence of effective instructional approaches. Similarly, we cannot conclude much from PDE’s statement that, according to program staff, 4,577 students showed an “improved attitude” – a concept not defined or measured in any way.

Certainly, the General Assembly and the public have a clear right to timely annual reports. (We understand that annual reports for 2006-07 and 2007-08 are expected to be available later this year.) Beyond that, however, the reports should be based on actual data of the sort that education professionals would use in order to determine – as the statute puts it – the “effectiveness of alternative education programs.” In other areas of public education, the fact that staff say that a program is doing good things would not be considered adequate evidence of effectiveness; we would expect to see more reliable and, where possible, objective measures. The same should be true in the AEDY context.

Pennsylvania does maintain a website that provides detailed and extensive information on PSSA scores in every school and district in the Commonwealth. However, the site contains no information at all on the performance of AEDY students. This is because PDE “attributes” these students’ test scores to their home schools,<sup>147</sup> where the scores are aggregated with the scores of all other students (and thus disappear from view). We do not mean to suggest that PSSA scores should be “attributed” differently, or even that AEDY programs should be evaluated on the basis of PSSA scores. The point, instead, is that there should be some form of objective, public reporting on the achievement of the 30,000 students in alternative education programs, and that currently, no such reports exist.

There should also be public reporting on the extent to which AEDY programs meet other important criteria, such as those that we have (in earlier sections) urged PDE to adopt with respect to behavioral outcomes, teacher qualifications, length of stay, and other matters. Without such reporting, real accountability is impossible.

Finally, PDE should make publicly available the results of studies of AEDY programs – especially those that it has commissioned. This did not occur, for example, with the Ager study, a major report containing many pages of useful findings and recommendations. It is difficult to understand the justification for spending public dollars on a comprehensive study that is then kept away from public view.

#### **Recommendations.**

- PDE should make publicly available the data that it collects concerning AEDY programs, including information on the extent to which each program meets criteria and performance targets established by PDE.
- PDE should publicize the results of any studies or reports that it commissions concerning AEDY programs.
- PDE should provide timely annual reports to the General Assembly on AEDY programs, as required by the current law. These reports should include the data and analyses described above, and should be readily available to the public.
- The General Assembly should amend the AEDY statute to make clear that PDE’s annual reports on the effectiveness of AEDY programs must be based, to the

maximum extent possible, on reliable and objective data.

## PDE support, monitoring and enforcement

**The current approach.** PDE has one State Coordinator who provides support and oversight to AEDY programs.

**Issues and problems.** The task of providing support, monitoring and enforcement for a program serving some 30,000 students in over 600 locations is large and complex. It includes such activities as developing program guidelines; reviewing applications from every program, every year; consulting on a wide range of issues, including program design, staffing, instructional methods, materials, facilities, procedures, transportation, funding, and more; monitoring for compliance with state requirements (a process that requires site visits around the state); responding to contacts from families; collecting data and writing reports; coordinating with other relevant PDE bureaus and initiatives; providing technical assistance and training, through conferences, materials, and other means; taking action against programs that fail to correct documented deficiencies; and much more.

These activities would be enough to occupy an entire PDE division, with multiple program staff. The current staffing level – one Coordinator – is completely insufficient. Unless this problem is addressed, PDE will continue to be unable to provide adequate support and assistance to AEDY programs. PDE will also be unable to assure that programs comply with state requirements. This situation would not be permitted in other areas of public education, especially areas in which millions of dollars are being spent, and should not be permitted here.

We have found no explanation for why the AEDY program is currently so thinly staffed – even in comparison to other PDE programs, many of which also need additional support. The fact that these programs serve an unpopular group of students may, or may not, be the explanation. Regardless, these 30,000 students, and the adults who work with them and depend on PDE for support and assistance, deserve better.

Effective monitoring and enforcement also require that there exist clear criteria and performance targets for AEDY programs. While more staff capacity is essential, those staff – as well as those who administer AEDY programs – need to know more clearly what goals they are expected to meet.

Finally, PDE must have clear authority to require corrective action when deficiencies are found in AEDY programs, and to terminate those programs if, after a reasonable time, deficiencies are not corrected.

In making these recommendations, we are aware that one of PDE's goals is to ensure that local school districts assume "ownership" of AEDY programs. We agree that districts must understand that students in AEDY programs are "their" students, no less than any others. We also agree with what we understand to be PDE's view that PDE lacks the capacity to manage AEDY programs from Harrisburg – even if that were a desirable arrangement, which it is not.

Our recommendation, however, is not for PDE micro-management – or even management – of AEDY programs. Instead, we believe that PDE must have the capacity to exercise sufficient oversight to ensure *that school districts comply with applicable laws and good practice*. Our recommendations are aimed at this goal.

Perhaps, in an ideal world, districts could be uniformly counted on to operate high-quality, legally compliant AEDY programs. Certainly, many districts do just that. But as this report has indicated, others do not. And while any program will have its deficiencies, the fact that AEDY students are an unpopular group makes it more likely that, in some districts, violations of law and good practice will occur. For these reasons, state oversight is, in our view, essential.

### Recommendations.

- PDE staffing should be increased so that the agency can provide adequate monitoring, support and oversight to AEDY programs.
- PDE should develop clear performance targets for AEDY programs, as noted throughout this report.
- The General Assembly should amend the AEDY statute to require that PDE monitor all AEDY programs on an ongoing basis, respond to allegations or findings of deficiencies in such programs, mandate that corrective action is taken if deficiencies are found, and terminate programs if deficiencies are not corrected.

## Funding

**The current approach.** Pennsylvania's approach to school funding is in transition, as a result of the new formula adopted by the General Assembly, the (temporary) availability of federal stimulus funds, and other factors. These developments have affected – in some ways for the better – the amounts of funding available to districts for

all public education programs, including AEDY programs.

As we have also noted, the special grant program created by Article XIX-C, which supplemented districts' other funding sources, was not funded this budget year. Thus, for 2009-10, districts are relying entirely on their "regular" funding streams – local tax dollars, the state basic education subsidy, state special education funding, federal Title I and special education dollars, and so on – to cover the costs of alternative education.

**Issues and problems.** Issues of adequacy and equity in public school funding in Pennsylvania are beyond the scope of this report. However, one researcher has suggested that current funding arrangements may be inadequate to support the provision of adequate or equitable services to alternative education students.<sup>148</sup>

Whether funding for alternative education should be provided entirely through "regular" funding streams, or should be supplemented by special grant funds such as those made available until recently under Article XIX-C, is debatable. Either approach, it seems to us, could be made to work, so long as the end result is adequate and equitable – and so long as the state maintains close oversight over how the funds are spent (an issue discussed at more length in the next section).

If the grant program is restored, one aspect deserves special attention. To date, PDE has operated the grant program in a way that is non-competitive, *i.e.*, any district that submits a properly-completed application is eligible for funding according to a per-student formula.<sup>149</sup> This approach creates no incentive for quality services, may dilute the impact of grant funds by spreading them thinly, and may be especially hard on (high-



quality) programs serving small numbers of students, such as rural programs.<sup>150</sup>

### Recommendations.

- PDE should design and implement a process for determining whether AEDY programs are adequately and equitably funded.
- If the grant program is restored, PDE should distribute the funds on a competitive basis in order to promote the development of high-quality programs.
- If the General Assembly determines that statutory change is necessary in order to allow for the distribution of grant funds on a competitive basis, it should make the necessary changes.

## Reshaping the legal structure supporting alternative education

**Issues and problems.** Thus far, while we have addressed some recommendations to the General Assembly, we have directed most of our proposals to PDE. This is because, in our view, PDE has the authority to take most of the steps that we have recommended, without the need for additional legislation or regulation.

However, the legal structure would be stronger if the General Assembly and/or (depending on the issue) the State Board of Education incorporated these recommendations in legislation or regulation. Not only would this ensure that the recommendations are carried out, but it

would also eliminate any possible arguments over the exact contours of PDE's authority.

Legislative action could also resolve an especially problematic aspect of the current legal structure – the fact that the requirements of Articles XIX-C and E are, or at least were, tied to the availability of grant funds. When grant funds are not appropriated, as occurred for the first time this year, questions inevitably arise concerning the extent to which the requirements of Articles XIX-C and E apply.

PDE has resolved this issue for this year by pointing out – correctly – that, regardless of whether grant funding is appropriated, Article XIX-E requires PDE to approve private providers of AEDY services. PDE also correctly points out that those publicly-operated programs that operate with “reduced instructional hours” require PDE approval.<sup>151</sup>

But, as we have noted, PDE's policy of permitting programs to offer fewer hours of instruction to AEDY students than to all others is not required by, and is probably inconsistent with, Article XIX-C. So it is especially unfortunate that this policy, which is educationally unsound and unfair, has now become the “hook” by which PDE can continue to regulate programs in a year in which no grant funds were made available.

This problem could be completely resolved if the General Assembly were to make clear that, *whether or not* grant funding is appropriated, all alternative programs for disruptive students must be approved by PDE. If this were done, PDE's authority to oversee alternative education programs would be clear – would not depend on a program's decision to offer a shortened school day.

To be sure, this report has pointed out a number of areas in which PDE's oversight

and information-gathering, to date, has been insufficient. These observations should not be viewed, however, as indicating any doubt on our part that PDE could do an excellent job in supporting and overseeing AEDY programs. On the contrary, we are convinced that, *given sufficient staffing, resources, and authority*, PDE could do just that.

Finally, as explained in an earlier section, we urge the General Assembly, with help from the State Board of Education and PDE, to consider adopting a new approach to alternative education – one that would *include* AEDY services, but would also benefit a wider range of Pennsylvania youth.

**Recommendations.**

- The General Assembly should amend the AEDY statute to the

extent necessary to ensure that these recommendations are implemented. If regulations are needed, the General Assembly should grant regulatory authority to the State Board of Education.

- The General Assembly should amend the law to make clear that all AEDY programs require PDE approval, regardless of whether the program receives grant funds.
- The General Assembly, the State Board of Education, and PDE should consider developing a broader definition of alternative education that would involve a continuum of options for students who need different types of educational experiences.

# Section Five:

## Conclusion

Pennsylvania has made a large investment in alternative education programs. These programs have the potential to help create successful futures for students who are having difficulty and exhibiting behavior problems in school. The programs also have the potential to be punitive, educationally inferior, and ineffectual in achieving their stated goals.

The Pennsylvania Department of Education has made progress in moving alternative education programs in a positive direction. But a number of legal and policy issues require attention if real success is to be achieved – for students as well as for taxpayers. We urge the Department, the State Board of Education and the General Assembly to consider our recommendations as they look ahead to the FY 2011 budget and school year.

# Appendix I:

## Pennsylvania Statutes on Alternative Education for Disruptive Youth

### 24 P.S. Article XIX-C: Disruptive Student Programs

#### § 19-1901-C. Definitions

For purposes of this article, the following terms shall have the following meanings:

(1) "Alternative education program" or "program." Any applicant's program applying for funds under this article, which program is implemented by a school district, an area vocational-technical school, a group of school districts or an intermediate unit, which removes disruptive students from regular school programs in order to provide those students with a sound educational course of study and counseling designed to modify disruptive behavior and return the students to a regular school curriculum. Notwithstanding section 1502, alternative education programs may operate outside the normal school day of the applicant district, including Saturdays. School districts and private alternative education institutions operating pursuant to the provisions of Article XIX-E shall adopt a policy for periodic review of those students placed in their respective alternative education program for disruptive students. This review shall occur, at a minimum, at the end of every semester the student is in the program or more frequently at the district's or private alternative education institution's discretion. The purpose of this

review is to determine whether or not the student is ready to return to the regular school curriculum. Programs may include services for students returning from placements or who are on probation resulting from being adjudicated delinquent in a proceeding under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) or who have been judged to have committed a crime under an adult criminal proceeding.

(2) "Applicant." A school district, a combination of school districts or a charter school that provides an alternative education program within or to a chartering school district or school districts as the central mission of its charter and that applies for funds under this article.

(3) "Community resources." Those agencies and services for children and youth provided by the juvenile court and the Department of Health and the Department of Public Welfare and other public or private institutions.

(4) "Department." The Department of Education of the Commonwealth.

(5) "Disruptive student." A student who poses a clear threat to the safety and welfare of other students or the school staff, who creates an unsafe school environment or whose behavior materially interferes with the learning of other students or disrupts the overall

educational process. The disruptive student exhibits to a marked degree any or all of the following conditions:

- (i) Disregard for school authority, including persistent violation of school policy and rules.
- (ii) Display or use of controlled substances on school property or during school-affiliated activities.
- (iii) Violent or threatening behavior on school property or during school-affiliated activities.
- (iv) Possession of a weapon on school property, as defined under 18 Pa.C.S. § 912 (relating to possession of weapon on school property).
- (v) Commission of a criminal act on school property or during school-affiliated activities.
- (vi) Misconduct that would merit suspension or expulsion under school policy.
- (vii) Habitual truancy.

No student who is eligible for special education services pursuant to the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400 et seq.) shall be deemed a disruptive student for the purposes of this act, except as provided for in 22 Pa. Code § 14.35 (relating to discipline).

(6) "School." Any school classified by the Department of Education as a middle school, junior high school, senior high school or area vocational-technical school.

(7) "Secretary." The Secretary of Education of the Commonwealth.

## § 19-1902-C. Applications

Applicants shall submit applications at the time, in the manner and containing or accompanied by such information as the department may prescribe but, in any case, shall document the following:

- (1) The program is developed in consultation with the faculty and administrative staff of the school and parents and members of the community.
- (2) That the applicants have established policies to identify those students who are eligible for placement in the program and that the placement of such students will comply with the informal hearing procedures set forth in 22 Pa. Code § 12.8(c) (relating to hearings). Notice of the hearing should precede placement in the program. Where the student's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, the student may be immediately removed from the regular education curriculum with notice and a hearing to follow as soon as practicable.
- (3) That school personnel assigned to the alternative education program for which funding is sought under this article possess a Level I or Level II Pennsylvania certificate as provided for in 22 Pa. Code Ch. 49 (relating to certification of professional personnel).
- (4) The program provides participating students with a course of instruction which recognizes their special needs, prepares them for successful return to a regular school curriculum and/or completion of the requirements for graduation.
- (5) The program is used only when other established methods of discipline have been utilized and have failed unless the seriousness of the student's behavior

warrants immediate placement.

(6) A determination of the scope, type and severity of student disruption and a survey of community and school resources available to the applicant for the remediation of student disruption.

(7) A description of the educational program to be provided. The program may modify the requirements established in sections 1327, 1501 and 1504 insofar as they are related to the number of days or hours of instruction. The application shall describe how the student will make normal academic progress and meet requirements for graduation.

(8) An applicant applying for funds under this section that contracts with a private alternative education institution under Article XIX-E shall be exempt from the application requirements in clauses (1), (3) and (6).

(9) Where the applicant is a charter school that provides an alternative education program within or to a chartering school district or school districts as the central mission of its charter, written support for the application from the chartering school district.

#### **§ 19-1903-C. Alternative education grants**

The department shall establish grants for alternative education programs which meet the requirements of this article, to include the following:

(1) An application procedure for grant eligibility.

(2) A review process to annually evaluate the effectiveness of alternative education programs, to include an annual report to the Education Committee of the Senate and the Education Committee of the

House of Representatives.

(3) The department shall determine an annual grant amount calculated by dividing the amount appropriated by the estimated average number of students enrolled in eligible programs, further divided by thirty-six. Each applicant shall be eligible to receive this grant amount, per average number of pupils enrolled, per week of participation in an eligible program. Commonwealth grants shall be limited to funds appropriated for this program but in no event shall a school district receive funding for more than two per cent (2%) of a school district's average daily membership as defined in section 2501 for students enrolled in grades seven through twelve.

(4) The department is authorized to utilize for administrative purposes up to one per cent (1%) of the funds appropriated for safe and alternative schools that are not expended, encumbered or committed.

#### **§ 19-1904-C. Construction of article**

Nothing contained in this article shall be construed to supersede or preempt any provisions of a collective bargaining agreement negotiated by a school entity and an exclusive representative of the employees in accordance with the act of July 23, 1970 (P.L. 563, No. 195), known as the "Public Employe Relations Act."

#### **§ 19-1905-C. Retroactivity**

This article shall be retroactive to July 1, 1996.

#### **§ 19-1906-C. Alternative education demonstration grants**

Grants to school districts from funds appropriated for alternative education demonstration grants shall be used only

for behavioral programs and programs for disruptive students.

## **24 P.S. Article XIX-E: Private Alternative Education Institutions for Disruptive Students**

### **§ 19-1901-E. Definitions**

For purposes of this article, the following terms shall have the following meanings:

“Private alternative education institution.” An institution operated by an individual or a for-profit or not-for-profit entity to provide alternative education programs as defined in section 1901-C(1).

“School entity.” A school district, joint school, charter school, area vocational-technical school, combination of school districts or intermediate unit.

### **§ 19-1902-E. Contracts with private alternative education institutions**

(1) A school entity may contract with a private alternative education institution.

(2) A contract under this section shall specify the policies established by the school entity to identify those students who are eligible for assignment to the institution and assure that the placement of a student will comply with the informal hearing procedures set forth in 22 Pa. Code § 12.8(c) (relating to hearings). Notice of the hearing should precede placement in the institution. Where the student's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, the student may be immediately removed from the regular education curriculum with notice and a hearing to follow as soon as practicable.

(3) A private alternative education institution shall:

(i) Be exempt from statutory requirements established in this act and from regulations of the State Board of Education and standards of the Secretary of Education, except the following: sections 111, 325, 326, 327, 431, 436, 437, 443, 518, 527, 736, 737, 738, 739, 740, 741, 753, 755, 771, 809, 810, 1112(a), 1303(a), 1317, 1317.1, 1317.2, 1327, 1332, 1361, 1366, 1501, 1513, 1517, 1518, 1546 and 1547 of this act; Articles XIII-A and XIV of this act; 22 Pa. Code Chs. 4 (relating to academic standards and assessment); 11 (relating to pupil attendance) and 14 (relating to special education services and programs); act of July 17, 1961 (P.L. 776, No. 341), known as the “Pennsylvania Fair Educational Opportunities Act”; and regulations promulgated pursuant to this article.

(ii) Comply with all Federal and State laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion or ancestry and shall provide for enrollment and hiring in a nondiscriminatory manner.

(iii) Be nonsectarian in all operations and shall not provide any religious instruction, nor shall it display religious objects and symbols on the premises of the institution.

(iv) Be subject to any additional requirements established through regulation.

(v) Submit an application to the Department of Education as prescribed by the Department of Education.

(4) A private alternative education

institution shall submit an annual report to the Department of Education containing information required by the Department of Education.

**§ 19-1903-E. Approval by Department of Education**

(a) A private alternative education institution may not operate in this Commonwealth unless it is approved by the Department of Education.

(b) The Department of Education shall be responsible for evaluating a private alternative education institution's initial application to operate in this Commonwealth, and each private alternative education institution operating in this Commonwealth shall be reevaluated for approval every three years.

(c) The Department of Education may issue guidelines for the operation of a private alternative education institution.



# Appendix 2:

## Pennsylvania

### Department of Education Basic Education Circular on Alternative Education for Disruptive Youth

**Alternative Education for Disruptive Youth**  
**24 P.S. § 1901-1906 C**

**DATE OF ISSUE:** July 9, 2009 (Replaces Alternative Education for Disruptive Youth, BEC 24 P.S. Article 19-C issued July 1, 2002.)

#### **PURPOSE**

This Basic Education Circular (BEC) provides guidance regarding placement of students in Alternative Education for Disruptive Youth (AEDY) Programs. It also provides guidance on AEDY program requirements to ensure that students in these programs are provided appropriate academic and behavioral support services.

#### **INTRODUCTION**

24 P.S. §19-1901C, also known as Act 30 of 1997, gives authority to the Pennsylvania Department of Education to approve Alternative Education for Disruptive Youth (AEDY) programs and to provide grants for these programs. AEDY programs may be

implemented by a school district, an area vocational-technical school, a combination of school districts, an intermediate unit, or, according to a 2008 amendment to 24 P.S. §19-1901-C, a qualifying charter school. Charter schools must meet the following criteria to qualify for funding to operate an AEDY program:

1. Their central mission is to provide an alternative education program within or to a chartering school district or school districts.
2. The charter school has a written letter of support from its chartering school district.<sup>1</sup>

School districts where these facilities are located are responsible for providing regular and special education services as described in 24 P.S. §13-1306. AEDY programs serve the purpose of temporarily removing persistently disruptive students from regular school programs. AEDY programs must provide students with a sound educational course of study that meets or exceeds state standards as mandated by 22 Pa Code Chapter 4 and allows students to make normal academic progress toward graduation in their home district. AEDY

programs must also provide behavioral supports and counseling aimed at modifying the disruptive behavior that led to the transfer. AEDY programs may operate outside the hours of the normal school day and on Saturdays. School districts that do not apply for and receive approval from PDE to operate an AEDY program must provide basic and special education programs for all students in conformity with all requirements of the School Code and the Pennsylvania Board of Education Regulations, including days, hours, curricula and teacher certification requirements. Any alternative program not approved by PDE must adhere to the same requirements as a regular education setting, including at least 900 instructional hours per year for 6th grade and at least 990 instructional hours per year for 7-12th grade (22 Pa. Code §11.3); and “highly qualified” teacher requirements (22 Pa. Code §403.4).

Eligible applicants must apply for AEDY program approval as prescribed by the Pennsylvania Department of Education. PDE may revise guidelines for program approval and grant funding on an annual basis. Before applying, eligible applicants should review the most current AEDY Program Guidelines at: [http://www.portal.state.pa.us/portal/serve.r.pt/community/laws%2C\\_guidelines\\_a pplications/7322](http://www.portal.state.pa.us/portal/serve.r.pt/community/laws%2C_guidelines_a pplications/7322)

Private Alternative Education Institutions (private providers) must seek approval on a renewal basis every 3 years as required by 24 P.S. §19-1903-E. PDE approval allows private providers to enter into contractual agreements with eligible public school entities to provide AEDY services. **PDE approval does not provide or imply any licensure or accreditation for any** private provider entity. Private provider applications are found at: [http://www.portal.state.pa.us/portal/serve.r.pt/community/grants\\_funding/7321/private\\_providers/509420](http://www.portal.state.pa.us/portal/serve.r.pt/community/grants_funding/7321/private_providers/509420)

[r.pt/community/grants\\_funding/7321/private\\_providers/509420](http://www.portal.state.pa.us/portal/serve.r.pt/community/grants_funding/7321/private_providers/509420)

Eligible public school entities that wish to contract with an approved private provider must submit an AEDY Program Application PRIOR to placing students in the private provider program.

### **Eligible Students and Allowable Transfers**

AEDY programs are designed for seriously and persistently disruptive students. By law, districts may refer students to AEDY programs only if, **at the time of the recommended transfer**, they demonstrate, to a marked degree, any of the following conditions:

- (1) disregard for school authority, including persistent violation of school policy and rules;
- (2) display or use of controlled substances on school property or during school activities;
- (3) violent or threatening behavior on school property or during school-affiliated activities;
- (4) possession of a weapon on school property, as defined under 18 Pa. C.S. §912;
- (5) commission of a criminal act on school property or during school-affiliated activities;
- (6) misconduct that would merit suspension or expulsion under school policy; and,
- (7) habitual truancy.

Students in grades 6-12 are eligible for placement in an AEDY Program. The program must enable all students to make normal academic progress and to meet the requirements for graduation in their home school district. Placement in an AEDY program should be considered only after all other options for improving behavior have been exhausted. This includes the use of the school’s Student Assistance Program.

All students recommended for assignment to an AEDY program must be provided with due process **prior to placement** including an informal hearing in accordance with 22 Pa. Code §12.8 (c). The informal hearing is held to bring forth all relevant information regarding the event for which the student may be transferred to AEDY and for students, their parents or guardians and school officials to discuss concrete strategies for avoiding future offenses. The following due process requirements shall be observed in regard to the informal hearing:

1. Notification of the specific reasons for the recommendation of transfer shall be given in writing to the parents or guardians and to the student.
2. Sufficient notice of the time and place of the informal hearing shall be given.
3. A student has the right to question any witnesses present at the hearing.
4. A student has the right to speak and produce witnesses on his or her own behalf.
5. The school entity shall offer to hold the informal hearing prior to placement in the program. However, if the student's presence in the regular classroom poses a danger to persons or property or provides a disruption of the academic process, immediate placement in the alternative program for disruptive youth may occur with the informal hearing to follow as soon as practicable.

#### **Students Formerly Adjudicated Delinquent or Convicted of a Crime**

AEDY programs may include services for students returning from placements or who are on probation resulting from being adjudicated delinquent or who have been convicted of committing a crime in an adult criminal proceeding. When a student returns to a school district from a delinquency placement, the school district cannot automatically place a child in an AEDY program merely because the child had been

adjudicated delinquent. ***Each specific case must be examined on an individual basis.*** As with any other student being transferred to an AEDY program, students returning from delinquency placement are entitled to an informal hearing prior to being placed in an alternative education program. The purpose of the hearing is to determine whether the student is currently fit to return to the regular classroom or meets the definition of a disruptive student. Factors a school should consider include: whether the incident causing the adjudication occurred at school or at a school-sponsored event, the child's behavior in placement, and the recommendations of teachers and other adults (such as juvenile probation officers and residential treatment staff) who have worked with the youth.

Students often make significant progress while in placement and some may be best served by returning to a regular classroom. Many want the chance to prove they are able to thrive in a regular school setting. Thus each case should be considered individually, based on the circumstances of a student at the time of return to the district.

#### **SPECIAL EDUCATION STUDENTS**

AEDY programs must comply with the Individuals with Disabilities Education Act (IDEA) and all related federal and state regulations (20 U.S.C.A. §§1400-1485, 34 C.F.R. §300 & 30, and 22 Pa. Code Chapters 14, 15 & 16). The sending school district maintains the ultimate responsibility for ensuring that special education students in AEDY programs receive a free and appropriate public education (FAPE) that conforms to federal and state law and regulations.

No student eligible for special education services pursuant to the IDEA shall be transferred to an AEDY program except in accordance with 34 C.F.R. §§ 300.530-

300.536, 22 Pa. Code §14.143, and 22 Pa. Code § 711.61 (pertaining to charter schools). See PDE B.E.C. "Disciplinary Exclusions of Students Who Are Eligible for Special Education." A special education student placed in an AEDY program must be appropriately supported in making progress toward the goals in his or her Individualized Education Program (IEP).

Special education services must be provided to a child with a disability who has been removed from the child's current placement and whose IEP Team has determined the educational setting, such as AEDY, is appropriate.

**Where a child is removed from the current placement for more than 10 consecutive school days or 15 cumulative days and placed in an AEDY Program he/she must:**

a. Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

b. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again.

- The disciplinary exclusion of a student with a disability for more than 10 consecutive or 15 cumulative days in a school year will be considered a pattern so as to be deemed a change in educational placement (22 PA Code 14.143(a)). A removal from school is a change in placement for a student who is identified with mental retardation, except if the student's actions are consistent with 34 CFR 300.530(g)(1)-(3) (relating to authority of school personnel).

- The parent can agree to the change in educational placement via the notice of recommended educational placement/prior written notice.

- The LEA must conduct a manifestation determination. Within 10 calendar days of any decision to change the placement of a child with a disability because of violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file.

- A functional behavioral assessment must be conducted if it is determined that the child's behavior impedes the child's learning or that of other and a positive behavioral support plan is required.

- A change in placement could occur if the student has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year, because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals, and because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another (34 CFR 300.536(2)(i)(ii)(iii)).

Before a school may effect a change in placement for disciplinary purposes, the student's IEP Team must meet and determine whether the behavior for which the transfer is considered is a "manifestation" of the child's disability (called a "manifestation determination"). Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that does not

constitute a change in educational placement i.e., is for 10 consecutive school days or less and not a change of placement), the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- b. If the conduct in question was the direct result of the LEA's failure to implement the child's IEP.

If the LEA, the parent, and relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

- If the LEA, the parent, and relevant members of the child's IEP Team determine that the conduct in question was the direct result of the LEA's failure to implement the IEP, the LEA must take immediate action to remedy those deficiencies. For a copy of a manifestation determination worksheet developed by the PA Department of Education, go to <http://www.pattan.k12.pa.us/files/Behavior/ManiDeterm102907.pdf>. The school may not transfer the student until the IEP Team has met and determined whether the behavior was a *manifestation of the student's behavior*.

3. In specific circumstances regarding drugs, weapons and serious bodily injury, whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the

child's IEP Team) for up to 45 school days, if the child:

- a. Carries a weapon (see the Definitions below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the LEA;
- b. Knowingly has or uses illegal drugs (see the Definitions below), or sells or solicits the sale of a controlled substance, (see the Definitions below), while at school, on school premises, or at a school function under the jurisdiction of the LEA; or
- c. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a LEA.

### **Definitions**

**Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

**Illegal drug** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

**Serious bodily injury** has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

**Weapon** has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

If one of the above exceptions applies, the student can be transferred to an AEDY program for up to 45 school days without a manifestation determination. See 34 C.F.R. §300.530(g).

If the child is transferred, the **IEP Team** must determine what services the student will require while in the AEDY program in order to:

- participate in the general education curriculum and to progress toward the goals set out in his or her IEP, and
- receive, as appropriate, a functional behavioral assessment and behavior intervention services and modifications that are designed to address the misbehavior that triggered the transfer so that it does not recur

## **PROGRAM REQUIREMENTS**

In order to receive approval and/or funding to operate or place students in an AEDY program, applicants must demonstrate how they will meet the requirements listed below. School districts – whether they implement their own internal program or contract with an intermediate unit or approved private provider - remain accountable for students' progress in AEDY programs. Districts must hold the programs that serve their students accountable for adherence to program guidelines, academic standards and for students' academic and behavioral progress. PDE may remove funding and/or approval if a district or program fails to meet program requirements. Specific program requirements are as follows:

1. Programs must offer **at least 20 hours of academic instruction per week** and provide a course of study that satisfies the requirements of the State Board of Education Academic Standards (22 Pa. Code Chapter 4) for each student according to his or her grade level.

2. Programs must be developed in consultation with the faculty and administrative staff of the school and parents and members of the community.

3. Programs must establish policies that identify students as eligible for placement in the AEDY program and clearly communicate that to parents, students, and school staff.

4. Programs must comply with the informal hearing procedures set forth in 22 Pa. Code §12.8(c) prior to placement of students. Placement in an AEDY program may occur only when other established methods of discipline and intervention (such as student assistance) have been utilized and have failed, unless the seriousness of the student's behavior warrants immediate placement. School districts are required to demonstrate that any student recommended for placement in an AEDY program have participated in the Student Assistance Program. School districts must document other methods utilized **prior** to assigning a child to an AEDY program. Schools must also consider whether a child might need an evaluation for special education prior to making a decision to recommend a transfer, in accordance with the school's Child Find responsibilities under the IDEA and 22 Pa Code Chapter 14.

5. Programs must operate five days per week, at least 180 days per year, **and a minimum of 810 hours per year (Programs operating below 990 hours annually must have PDE approval)**

6. Students being served in an AEDY program must be provided with:

- a. a course of instruction sufficient to make normal academic progress and work toward the requirements for graduation as defined by the placing district

b. clear and measurable academic performance goals, established after administering required academic assessments described in AEDY Guidelines. Plans for individual students' academic programs should be formulated in close collaboration with the sending school and school district.

c. a course of instruction that recognizes their special needs and prepares them for successful return to a regular school curriculum and/or completion of the graduation requirements established by their home district

d. individual evaluation to measure progress in the core academic subjects in relationship to the academic standards established by 22 Pa Code §4.

7. Programs must provide at least **2.5 hours per week** of individual or group counseling for every student. The goal of the counseling is to remediate the behavior that triggered the transfer and to help prepare the student for return to the regular classroom. ***The 2.5 hours of counseling per week must be provided in addition to the required hours of academic instruction.***

8. Programs must develop a behavior plan for each student that has clear and measurable goals. This plan must address the disruptive behavior that preceded placement in the AEDY Program. The goal of the behavior plan is to prepare students for return to the regular classroom. AEDY programs are required to use approved behavioral assessment tools, as explained in the AEDY Guidelines, to measure and document student success towards behavioral goals.

9. Programs must have in place a formal, documented process for periodic review and evaluation of each student's academic and behavioral goals to determine the

appropriateness for return to the regular classroom. This review must occur, at a minimum, **at the end of every semester** the student is in the program, but may occur more frequently at the program's discretion. The purpose of this review is to determine whether the student is ready to return to the regular classroom. **The review team should consist of AEDY Program administrators, teachers, counselors and a representative from the sending school's administration. In addition, the parent, student, and any other advocate(s) with knowledge of the child's history should be involved in this process.** The review will include an evaluation of the student's academic and behavioral progress. This review must be documented and kept on file in each individual student's record. ***Within each school year, programs are expected to return students to the regular school environment at a target rate of 20%.***

10. Teachers assigned to AEDY programs must be highly qualified and possess a Level I or Level II Pennsylvania Professional Teaching Certificate in the area of instructional assignment, as provided for in 22 Pa. Code Chapter 49, relating to certification of professional personnel. Approved private provider program staff are exempt from this requirement. However, any student eligible for special education services under IDEA in a public or private AEDY program must be taught by a teacher with a special education certification.

11. Applicants seeking **renewal** for AEDY Programs must demonstrate a track record of effectiveness in improving the academic and behavioral performance of students.

12. LEAs must collect data and submit program reports as required by PDE to document student academic and behavioral progress and the rate of return to the regular school setting. Details can be found in the program guidelines, issued annually by PDE.

Districts that contract with private providers must make sure that providers are collecting and recording all data that the district will need to satisfy the state reporting requirements.

### **PERFORMANCE MEASUREMENT AND ACCOUNTABILITY**

Funding and program approval decisions for AEDY programs are made annually based on program performance and outcomes data submitted to PDE by sending school districts on all students and programs. End of year reporting will require programs to provide data from individual student academic and behavioral assessments. The results will be reviewed by PDE to ensure compliance and quality implementation of programming. LEAs that contract with private providers are responsible to ensure that these programs operate in compliance with school code and PDE AEDY Guidelines. LEAs are required to analyze program data to ensure students are receiving appropriate academic and behavioral services. Specific data reporting requirements and protocols will be established and published by PDE.

### **BEST PRACTICES FOR AEDY PROGRAMS**

PDE strongly recommends that AEDY programs adhere to nationally recognized "best practices" for alternative education for disruptive youth. Adherence to best practices will be considered in the review of funding and approval of applications.

- Full-day programs totaling at least 27.5 hours per week
- Student teacher ratios at or below 10:1
- Individual Program Plans for each student and flexible instruction
- Positive emphasis in behavior management
- Integration of a career preparation component within the academic curriculum

- Experiential learning opportunities
- Integration of evidence-based programs that support pro-social behavior
- Adult mentors in the program
- Parent and community involvement
- A formal comprehensive periodic review of each student's progress toward achieving individual goals established upon placement in the AEDY Program

<sup>1</sup> Charter schools applying for program approval and/or funding must submit documentation as follows:

- a) Original signed copy (by Chief Executive Officer) of the charter school's mission statement on school letterhead
- b) Original signed copy (by Superintendent) of the chartering school district's letter of support

### **REFERENCES:**

#### **Purdon's Statutes**

24 P.S. Article 19-1901C

#### **State Board of Education Regulations**

22 Pa. Code § § 4.1-4.83  
22 Pa. Code Chapters 14 & 15  
22 Pa. Code §12.8(c)  
22 Pa. Code §711.61

#### **Federal Statutes**

Individuals with Disabilities Act, 20 U.S.C. §  
§ 1400 et seq  
34 C.F.R. §§ 300.530-300.536

#### **CONTACT BUREAU/OFFICE:**

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# Notes

<sup>1</sup> See [http://aep.ed.state.pa.us/program\\_contacts.asp?alt\\_disruptiveNav=](http://aep.ed.state.pa.us/program_contacts.asp?alt_disruptiveNav=) for a list of programs (leave search box blank). Evidently, only Cameron, Pike and Potter counties do not have at least one alternative education program.

<sup>2</sup> The most recent publicly-available statistics appear to be those contained in PDE's report, *Alternative Education for Disruptive Youth, 2005/2006 Annual Report for Public Schools*, issued in April 2008 but based on 2005-06 data (hereafter "*PDE Annual Report*"), available at [http://www.portal.state.pa.us/portal/server.pt/community/aedy\\_annual\\_reports/7320/annual\\_report\\_2005-2006/562824](http://www.portal.state.pa.us/portal/server.pt/community/aedy_annual_reports/7320/annual_report_2005-2006/562824). See p. 7 (showing total number of students served as 29,601).

<sup>3</sup> *PDE Annual Report*, p. 7.

<sup>4</sup> See [http://aep.ed.state.pa.us/program\\_contacts.asp?alt\\_disruptiveNav=](http://aep.ed.state.pa.us/program_contacts.asp?alt_disruptiveNav=) for a list of programs (leave search box blank).

<sup>5</sup> The number has grown from 306 in 1999-2000 to 614 this year. For the 1999-2000 figures, see *PDE Annual Report*, 6 (our understanding is that the number of "applications" equals the number of programs funded); for the current number, see [http://aep.ed.state.pa.us/program\\_contacts.asp?alt\\_disruptiveNav=](http://aep.ed.state.pa.us/program_contacts.asp?alt_disruptiveNav=) (leave search box blank).

<sup>6</sup> See [http://aep.ed.state.pa.us/program\\_contacts.asp?alt\\_disruptiveNav=](http://aep.ed.state.pa.us/program_contacts.asp?alt_disruptiveNav=) for a list of programs (leave search box blank). Only Cameron, Pike and Potter counties do not have at least one alternative education program.

<sup>7</sup> We arrive at this very rough estimate by multiplying the approximate number of students served (30,000) by the average total per-student expenditure by Pennsylvania school districts (about \$12,700 for 2007-08 – see [http://www.portal.state.pa.us/portal/server.pt/community/summaries\\_of\\_annual\\_financial\\_report\\_data/7673/afr\\_excel\\_data\\_files/509047](http://www.portal.state.pa.us/portal/server.pt/community/summaries_of_annual_financial_report_data/7673/afr_excel_data_files/509047)).

<sup>8</sup> See [http://www.portal.state.pa.us/portal/server.pt/community/grants\\_funding/7321/grant\\_awards\\_2007-2008/509415/](http://www.portal.state.pa.us/portal/server.pt/community/grants_funding/7321/grant_awards_2007-2008/509415/).

<sup>9</sup> We derive this percentage from the figures in the preceding two rows. Obviously, it is an approximation.

<sup>10</sup> *PDE Annual Report*, 18 (chart).

<sup>11</sup> See [http://www.portal.state.pa.us/portal/server.pt/document/710203/enrollment\\_public\\_lea\\_2005-06\\_xls\\_%282%29](http://www.portal.state.pa.us/portal/server.pt/document/710203/enrollment_public_lea_2005-06_xls_%282%29); select "State Summary" tab.

<sup>12</sup> *PDE Annual Report*, 22.

<sup>13</sup> See [http://penndata.hbg.psu.edu/BSEReports/Data%20Preview/2007\\_2008/PDF\\_Documents/Speced\\_Quick\\_Report\\_State\\_Final.pdf](http://penndata.hbg.psu.edu/BSEReports/Data%20Preview/2007_2008/PDF_Documents/Speced_Quick_Report_State_Final.pdf) (2008 data).

<sup>14</sup> *PDE Annual Report*, 23 (6,232 returned out of 27,534 total).

<sup>15</sup> PDE does not report this data, nor can it be derived from the website, <http://paayp.emetric.net>, on which PDE reports test scores for every school and district in the state. This is because, as we discuss in a later section, PDE has chosen to "attribute" the scores of students in AEDY programs to their home schools, where they are aggregated with the scores of all other students.

<sup>16</sup> PDE reports that "over 50%" of students in AEDY programs in 2005-06 "increased [their] GPA." However, PDE has provided no information on the extent of the increases. *PDE Annual Report*, 23.

<sup>17</sup> *PDE Annual Report*, 23.

<sup>18</sup> PDE apparently does not collect any data along these lines.

<sup>19</sup> Ager, 9.

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<sup>20</sup> 24 P.S. § 19-1901-C *et seq.*

<sup>21</sup> 24 P.S. § 19-1901-C(2).

<sup>22</sup> 24 P.S. § 19-1901-E *et seq.*

<sup>23</sup> For 1999-2000, see *PDE Annual Report*, 6 (our understanding is that the number of “applications” equals the number of programs funded); for the current number, see [http://aep.ed.state.pa.us/program\\_contacts.asp?alt\\_disruptiveNav=](http://aep.ed.state.pa.us/program_contacts.asp?alt_disruptiveNav=) (leave search box blank).

<sup>24</sup> An up-to-date count of program operators is not readily available, but see *PDE Annual Report*, 8, and Ager, 11.

<sup>25</sup> Again, no up-to-date count of location types seems to be available, but a review of the list of programs at [http://aep.ed.state.pa.us/program\\_contacts.asp?alt\\_disruptiveNav=](http://aep.ed.state.pa.us/program_contacts.asp?alt_disruptiveNav=) suggests this range of settings.

<sup>26</sup> 24 P.S. § 13-1306.2(b).

<sup>27</sup> See 24 P.S. § 16-1615 (establishing the Pennsylvania Virtual High School Study Commission).

<sup>28</sup> *PDE Annual Report*, 6.

<sup>29</sup> See [http://www.portal.state.pa.us/portal/server.pt/community/grants\\_funding/7321/grant\\_awards\\_2007-2008/509415/](http://www.portal.state.pa.us/portal/server.pt/community/grants_funding/7321/grant_awards_2007-2008/509415/).

<sup>30</sup> One study reports that, in 2006-07, the grant program provided about \$1,100 per student per year. Hosley, *Survey and Analysis of Alternative Education Programs II*, 17-18. The total cost of serving a student in a Pennsylvania public school is many times that.

<sup>31</sup> See note 7.

<sup>32</sup> 24 P.S. §§ 19-1901-C *et seq.* and 19-1901-E *et seq.*, respectively.

<sup>33</sup> 22 Pa. Code Ch. 4.

<sup>34</sup> P.L. 107-110 (2002), *codified at* 20 U.S.C. § 6301 *et seq.*

<sup>35</sup> 20 U.S.C. § 1400 *et seq.*

<sup>36</sup> The BEC is also available at [http://www.education.state.pa.us/portal/server.pt/community/purdon%27s\\_statutes/7503/alternative\\_education\\_for\\_disruptive\\_youth/507342](http://www.education.state.pa.us/portal/server.pt/community/purdon%27s_statutes/7503/alternative_education_for_disruptive_youth/507342).

<sup>37</sup> The Guidelines are available at [http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_122943\\_648566\\_0\\_0\\_18/2009\\_2010\\_AEDY\\_Guidelines\\_FINAL.pdf](http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_122943_648566_0_0_18/2009_2010_AEDY_Guidelines_FINAL.pdf).

<sup>38</sup> This report is available at [http://www.rural.palegislature.us/alternative\\_education.pdf](http://www.rural.palegislature.us/alternative_education.pdf).

<sup>39</sup> This report is available from the Education Law Center.

<sup>40</sup> This report is available at [http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_122943\\_648566\\_0\\_0\\_18/2005\\_2006\\_Annual\\_Report.pdf](http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_122943_648566_0_0_18/2005_2006_Annual_Report.pdf).

<sup>41</sup> Information on the survey results is available from the Education Law Center.

<sup>42</sup> This report is available at [http://www.rural.palegislature.us/alternative\\_ed2009.pdf](http://www.rural.palegislature.us/alternative_ed2009.pdf).

<sup>43</sup> See, e.g., Hosley I, 4-5 (citing M. A. Raywid, “What to Do With Students Who Are Not Succeeding,” *Phi Delta Kappan* [electronic version] 82, 8, 588-92), noting that alternative education programs can be divided into three types. Type I or “academic” programs offer a “full instructional program, often including vocational and community service components” and are characterized by

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“deregulation, flexibility, autonomy, teacher and student empowerment.” Type II, “disciplinary” programs, “aim to segregate, contain and reform disruptive students who typically do not choose to attend;” these programs are “highly structured and punitive.” Type III, “therapeutic” programs, offer “short term therapeutic settings for students with social and emotional problems,” and “focus on attitude and behavior remediation and rehabilitation;” students attend these programs by choice.

<sup>44</sup> See <http://www.projectuturn.net/>.

<sup>45</sup> 24 P.S. § 19-1901-C(5).

<sup>46</sup> 24 P.S. § 19-1902-C(5).

<sup>47</sup> *PDE Annual Report*, 19.

<sup>48</sup> *Ibid.* Even this figure (the total of 14.3% [“violent behavior”] and 5.0% [“possession of a weapon”]) may overstate the seriousness of the offenses, since under Pennsylvania law, the definition of “weapon” is extremely broad (and includes, for example, scissors; see 24 P.S. § 13-1317.2).

<sup>49</sup> PDE, *Alternative Education for Disruptive Youth: 2009/2010 Guidelines* (hereafter *PDE Guidelines*), 3 (emphasis in original).

<sup>50</sup> *PDE Annual Report*, 19.

<sup>51</sup> *E.g.*, *PDE Annual Report*, 23 (“over 56%” of students improved their attendance to some unspecified degree); Hosley II, 12 (teachers rated AEDY programs 4.08 on a 1-to-5 scale for effectiveness in improving attendance).

<sup>52</sup> *D.C. v. Sch. Dist. of Philadelphia*, 879 A.2d 408, 420 (Pa. Commw. Ct. 2005) (court struck down the Philadelphia School District’s practice of assigning to AEDY programs all students returning from juvenile delinquency placements for certain categories of offenses, even if the offense had occurred months or years before; the issue, the court said, should have been whether the student *currently* qualified as a disruptive student, not whether he had misbehaved at some date in the past).

<sup>53</sup> *Ibid.* at 420.

<sup>54</sup> The matter is further complicated by a provision of Article XIX-C, 24 P.S. § 19-1901-C(1), which states that “[p]rograms may include services for students returning from placements or who are on probation ...,” which some districts have interpreted to mean that students in these categories may be assigned to AEDY programs regardless of whether they meet the definition of “disruptive” students, or whether their misbehavior had anything to do with school.

<sup>55</sup> PDE, *Basic Education Circular: Alternative Education for Disruptive Youth* (2009) (hereafter *BEC*), attached as Appendix 2 and also available at [http://www.education.state.pa.us/portal/server.pt/community/purdon%27s\\_statutes/7503/alternative\\_education\\_for\\_disruptive\\_youth/507342](http://www.education.state.pa.us/portal/server.pt/community/purdon%27s_statutes/7503/alternative_education_for_disruptive_youth/507342).

<sup>56</sup> PDE does say that whether the misbehavior occurred at school is a “factor[] a school should consider.” *PDE Guidelines*, 6. But under the applicable court decisions, such as *D.O.F v. Lewisburg Area Sch. Dist.*, 868 A.2d 28 (Pa. Commw. Ct. 2004), this issue is more than a “factor;” it is dispositive of whether the district has the authority to discipline the student at all.

<sup>57</sup> 34 C.F.R. §§ 300.530-536.

<sup>58</sup> 34 C.F.R. § 300.534.

<sup>59</sup> *PDE Annual Report*, 22.

<sup>60</sup> *PDE Annual Report*, 22.

<sup>61</sup> See [http://penndata.hbg.psu.edu/BSEReports/Data%20Preview/2007\\_2008/PDF\\_Documents/Speced\\_Quick\\_Report\\_State\\_Final.pdf](http://penndata.hbg.psu.edu/BSEReports/Data%20Preview/2007_2008/PDF_Documents/Speced_Quick_Report_State_Final.pdf) (2008 data).

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<sup>62</sup> *PDE Annual Report*, 22.

<sup>63</sup> 34 C.F.R. Part 104. See especially § 104.4.

<sup>64</sup> 34 C.F.R. §§ 300.170(a), 300.646.

<sup>65</sup> See the Pennsylvania Human Relations Act, 43 P.S. § 951 *et seq.*

<sup>66</sup> *PDE Annual Report*, 18 (chart).

<sup>67</sup> See [http://www.portal.state.pa.us/portal/server.pt/document/710203/enrollment\\_public\\_lea\\_2005-06\\_xls\\_%282%29](http://www.portal.state.pa.us/portal/server.pt/document/710203/enrollment_public_lea_2005-06_xls_%282%29); select “State Summary” tab.

<sup>68</sup> The report also contains contradictory figures; see *PDE Annual Report* at 18, first paragraph and first table. We used the percentages in the table, since they accurately reflect the numbers in the table.

<sup>69</sup> 34 C.F.R. Part 100.

<sup>70</sup> 43 P.S. § 951 *et seq.*

<sup>71</sup> See 24 P.S. §§ 19-1902-C(2) and 19-1902-E(2) (indicating that the hearing should comply with 22 Pa. Code § 12.8(c)); see also, *PDE Guidelines* at 6 and *BEC* at 2 for PDE’s explanation of how 22 Pa. Code § 12.8(c) applies in the AEDY context.

<sup>72</sup> *PDE Guidelines*, 6.

<sup>73</sup> *Tyson v. School Dist. of Philadelphia*, 900 A.2d 990 (Pa. Commw. Ct. 2006).

<sup>74</sup> 24 P.S. § 19-1901-C(1).

<sup>75</sup> 24 P.S. § 19-1901-C(7).

<sup>76</sup> *PDE Guidelines*, 11-12.

<sup>77</sup> PDE, *Alternative Education for Disruptive Youth, 2008/2009 Guidelines*, 8. In the past, PDE also allowed districts to operate programs for fewer than five days per week; PDE has changed its position on this point.

<sup>78</sup> See 24 P.S. § 15-1501 (requiring 180 days of instruction) and 22 Pa. Code § 11.3 (requiring that students in grades 7-12 receive 990 hours of instruction). This translates to 5½ hours per day, or 27½ hours per week.

<sup>79</sup> Hosley’s data indicated that between 8.4% and 28.2% of programs operated for one to 3½ hours per day (*i.e.*, even less than the current 22½-hour-per-week minimum, assuming that the programs operated five days per week), and that an additional 45.8% to 64.2% operated for 3½ to 6 hours per day (*i.e.*, between 17½ and 30 hours per week, making the same five-day-per-week assumption). Hosley I, 10.

<sup>80</sup> Under Nevada law, N.R.S. § 388.537(5), an alternative program may operate shortened school days, but must provide a total “number of minutes of instruction that is equal to or greater than that which would be provided under a program consisting of 180 school days.” Virginia’s grant program allows for “extended day,” but not shortened-day, services. Va. Code Ann. § 22.1-209.1:2(7).

<sup>81</sup> 24 P.S. §§ 19-1901-C(1), 19-1902(C)(4).

<sup>82</sup> *PDE Guidelines*, 11-12.

<sup>83</sup> *PDE Guidelines*, 13.

<sup>84</sup> *Ibid.*, 13-15.

<sup>85</sup> *Ager*, 25-26, 86.

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<sup>86</sup> See, for example, Ager, 16-26 and *passim*.

<sup>87</sup> Ager, 52, 94.

<sup>88</sup> Letter from J.H., submitted as part of ELC's testimony at the Senate Education Committee hearing on alternative education (May 13, 2009); copy available from ELC.

<sup>89</sup> Hosley I, 18.

<sup>90</sup> Hosley II, 16.

<sup>91</sup> Ager, 78. Ager also notes: "Some of the strongest data on behavioral interventions emerges out of the Positive Behavior Support (PBS) literature whose extensive data supports the use of a skills-based approach to social and school related skills, functional behavioral assessment, the identification of environmental contributors to behavior, a focus on self-determination and self-management skills, and a systematic approach to skill development and behavioral support." Ager, 23.

<sup>92</sup> Ager, 89.

<sup>93</sup> *Ibid*.

<sup>94</sup> 24 P.S. § 19-1902-C(4).

<sup>95</sup> Hosley I, 12-13. Hosley's 2009 report provides some additional data, *e.g.*, the fact that 42% of teachers described their programs as "balanc[ing] academic, behavior and therapeutic change equally," and 79% reported that they used "the same curriculum that is available in the regular classroom." Hosley II, 13.

<sup>96</sup> *PDE Annual Report*, 27.

<sup>97</sup> Ager, 60-61.

<sup>98</sup> See, *e.g.*, 22 Pa. Code §§ 12.5(a) (prohibiting corporal punishment), 14.133 (prohibiting restraint and seclusion of students with disabilities, except for certain restraints agreed upon in a child's Individualized Education Program). It is not only these specific prohibitions, but also the fact that Pennsylvania statutes and regulations do not affirmatively authorize physical or verbal abuse, restraint or seclusion, that leads us to the conclusion that these techniques are illegal. See, *e.g.*, *Hoke ex rel. Reidenbach v. Elizabethtown Area School District*, 833 A.2d 304, 310 (Pa. Commw. Ct. 2003) (schools have only that disciplinary authority that is granted "expressly or by necessary implication" by applicable statutes).

<sup>99</sup> Hosley I, 18.

<sup>100</sup> *PDE Annual Report*, 23.

<sup>101</sup> Hosley II, 18.

<sup>102</sup> *PDE Guidelines*, 12-13.

<sup>103</sup> The New Jersey Administrative Code, § 6A:16-9.2(a), requires that "[a]n Individualized Program Plan (IPP) shall be developed for each general education student enrolled in the [alternative education] program," and describes the process for development and review of the plan, in consultation with the student's parent. Section 20-30-8-11 of the Indiana Code contains a similar requirement.

<sup>104</sup> Ager, 81.

<sup>105</sup> Ager, 18-19, 23, 57, 88, 96.

<sup>106</sup> Ager, 87.

<sup>107</sup> *PDE Guidelines*, 13-15.

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<sup>108</sup> 20 U.S.C. § 1412(a)(1)(A).

<sup>109</sup> 20 U.S.C. §§ 1401(9), 1401(26).

<sup>110</sup> 20 U.S.C. § 1415(k)(1)(G).

<sup>111</sup> 29 U.S.C. § 794; 22 Pa. Code Ch. 15.

<sup>112</sup> *PDE Annual Report*, 18.

<sup>113</sup> 20 U.S.C. § 1703(f) (Equal Educational Opportunities Act); 42 U.S.C. § 2000d, 34 C.F.R. Part 100 (Title VI of Civil Rights Act of 1964 and regulations thereunder); 22 Pa. Code § 4.26; PDE Basic Education Circular “Educating Students With Limited English Proficiency (LEP) and English Language Learners (ELL),” available at [http://www.education.state.pa.us/portal/server.pt/community/pa\\_codes/7501/educating\\_students\\_with\\_limited\\_english\\_proficiency\\_%28lep%29\\_and\\_english\\_language\\_learners\\_%28ell%29/507356](http://www.education.state.pa.us/portal/server.pt/community/pa_codes/7501/educating_students_with_limited_english_proficiency_%28lep%29_and_english_language_learners_%28ell%29/507356).

<sup>114</sup> *Ibid.*

<sup>115</sup> For information about the complaint and resolution, see <http://www.elc-pa.org/cases.html> (scroll to “English Language Learners,” “Philadelphia School District”).

<sup>116</sup> 24 P.S. § 19-1902-C(3).

<sup>117</sup> 24 P.S. §§ 19-1902-C(8); 19-1903-E(3)(i) (specifically exempting private providers from 22 Pa. Code Ch. 49, the State’s teacher certification regulations).

<sup>118</sup> *Hosley I*, 11.

<sup>119</sup> *Hosley II*, 14-15.

<sup>120</sup> *Ager*, 79.

<sup>121</sup> See, e.g., <http://www.safeschools.info/aedyconf08/>.

<sup>122</sup> 70 Okl. St. Ann. § 1210.568.

<sup>123</sup> W. Va. Code St. R. § 126-20-6.

<sup>124</sup> 20 U.S.C. § 6319.

<sup>125</sup> *Ibid.*

<sup>126</sup> 24 P.S. § 19-1901-C(1).

<sup>127</sup> *BEC* at 7.

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ager*, 99.

<sup>130</sup> *Hosley II*, 10. It appears from the text that the reference is to students’ average length of stay.

<sup>131</sup> *PDE Guidelines*, 15 (items AE-AJ).

<sup>132</sup> *Ibid.*, 13.

<sup>133</sup> 24 P.S. § 13-1303-A (requiring reporting of incidents involving violence, possession of a weapon, or controlled substances).

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<sup>134</sup> Testimony of Secretary of Education Gerald L. Zahorchak before the

Senate Education Committee (Feb. 11, 2009), available at

[http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_123593\\_492003\\_0\\_0\\_18/02\\_11\\_09%20School%20Safety%20Testimony%20final.pdf](http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_123593_492003_0_0_18/02_11_09%20School%20Safety%20Testimony%20final.pdf); see also the website of the Center for Safe Schools, <http://www.safeschools.info>.

<sup>135</sup> 22 Pa. Code § 403.2 (see definition of “persistently dangerous school”).

<sup>136</sup> See [http://www.portal.state.pa.us/portal/server.pt/community/unsafe\\_school\\_choice\\_option/7417](http://www.portal.state.pa.us/portal/server.pt/community/unsafe_school_choice_option/7417).

<sup>137</sup> 24 P.S. § 19-1902-C(1).

<sup>138</sup> See, e.g., 20 U.S.C. §§ 6318 (parent involvement generally), 6316(b)(6), (b)(7)(E), (b)(8)(C), (c)(6), (c)(7) (parent involvement in school and district improvement).

<sup>139</sup> Hosley I, 13.

<sup>140</sup> Hosley II, 13-14.

<sup>141</sup> *PDE Annual Report*, 9.

<sup>142</sup> *Ibid.*, 28.

<sup>143</sup> Ager, 64.

<sup>144</sup> Ager, 18-19.

<sup>145</sup> See [http://aep.ed.state.pa.us/program\\_contacts.asp?alt\\_disruptiveNav=](http://aep.ed.state.pa.us/program_contacts.asp?alt_disruptiveNav=) (leave search box blank).

<sup>146</sup> 24 P.S. § 19-1903-C(2).

<sup>147</sup> See PDE’s AYP “attribution map” for 2009, available at

[http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS\\_0\\_123031\\_488854\\_0\\_0\\_18/2009%20Attribution%20Map.pdf](http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_123031_488854_0_0_18/2009%20Attribution%20Map.pdf) (p. 4).

<sup>148</sup> Hosley II, 17-18.

<sup>149</sup> See

[http://www.portal.state.pa.us/portal/server.pt/community/alternative\\_education\\_for\\_disruptive\\_youth\\_%28aedy%29/7318/frequently\\_asked\\_questions/509442](http://www.portal.state.pa.us/portal/server.pt/community/alternative_education_for_disruptive_youth_%28aedy%29/7318/frequently_asked_questions/509442).

<sup>150</sup> See Hosley II, 17-18.

<sup>151</sup> PDE “Penn\*Link” Memorandum, *Funding for Alternative Education for Disruptive Youth (AEDY) Programs* (undated). The memorandum concerns funding for 2009-10 school year.





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