

## ALTERNATIVE EDUCATION FOR STUDENTS WITH DISABILITIES

August 2023

This fact sheet describes the process for determining if your child with disabilities is appropriately and legally placed in an Alternative Education for Disruptive Youth (AEDY) program and, if not, how to return your child to an appropriate placement in your local school district in the least restrictive environment. The fact sheet outlines special rights applicable to your child as a child with a disability – that is, a child who has or is eligible for an IEP or Section 504 Plan. To learn more about general rights applicable to all students who may be placed in AEDY, see our [Alternative Education for Disruptive Youth fact sheet](#).

Many of the rights outlined here are the result of a complaint filed by the Education Law Center with the U.S. Department of Justice, which resulted in a settlement agreement with the Pennsylvania Department of Education (PDE) that significantly changes the policies and practices related to the placement of students with disabilities in AEDY programs across Pennsylvania.<sup>1</sup>

### KEY RIGHTS OF STUDENTS WITH DISABILITIES IN AEDY PROGRAMS

**Students with disabilities can never be placed in alternative education programs unless the program has been formally approved by PDE as meeting certain requirements.**

- PDE has a list of approved private programs available at [http://www.leaderservices.com/aedy/approved\\_providers\\_list.aspx](http://www.leaderservices.com/aedy/approved_providers_list.aspx). This list is not always up to date, so the best way to tell if your program is approved is by contacting the State AEDY Team Office at 717-736-7708 or by email at [ra-edaedy@pa.gov](mailto:ra-edaedy@pa.gov). You may also contact PDE's Bureau of Special Education at 717-783-6134.
- Many district and charter schools also operate alternative education programs that have not been formally approved by PDE. It is important that you determine whether your child's placement is an approved AEDY program.
- A program may not have formal PDE approval if it has one or more of the following features:
  - It is located in a school basement or other nonclassroom setting.
  - The program does not have a full-time teacher or special education teacher.
  - The program only operates for a few hours each day.
  - The majority of classroom time is spent on computers, watching movies, and/or completing worksheets.

If a program is not approved, and a child is placed for disciplinary reasons, you can challenge the proposed placement through an IEP meeting or filing of a complaint as described below.

Importantly, a child cannot be forced into a virtual-only program as a school discipline placement. This would be an illegal exclusion from school. See ELC's fact sheets, [Suspensions in Pennsylvania](#) and [Expulsions in Pennsylvania](#), for more information.

**NOTE: Students cannot be sent to AEDY programs solely because of truancy/unexcused absences.**

**Students with disabilities can only be placed in an approved AEDY program when the following conditions are met:**

- The student poses a “clear threat” to the safety and welfare of other students or school staff, creates an unsafe school environment, or their behavior “materially interferes” with the learning of other students or disrupts the overall educational process; **and** the student engages in one of the following six behaviors “to a marked degree”:<sup>2</sup>
  - Showing disregard for school authority, including “persistent” violation of school policy and rules.
  - Having or using drugs on school property or during school-affiliated activities.
  - Engaging in violent or threatening behavior on school property or during school-affiliated activities.
  - Possessing a weapon on school property as defined under [18 Pa.C.S. § 912](#).<sup>3</sup>
  - Committing a criminal act on school property or during school-affiliated activities.
  - Engaging in misconduct that would merit suspension or expulsion under school policy.

**Or**

- The student has been convicted or adjudicated delinquent of sexual assault of another student in the same school, *and* the school has opted to place the student in an AEDY program. See our [fact sheet on Act 110](#), a 2020 law that concerns the placement of students who have been convicted or adjudicated delinquent of sexual assault of another student currently attending the same school.<sup>4</sup>

**For students with disabilities, the following additional conditions must also be met:**

- A manifestation determination meeting was held, and the team determined that the behavior was not a manifestation of the student’s disability, or an exception applied.<sup>5</sup>
- An informal hearing is held prior to transfer of the student. At the hearing, the student and parent/guardian must have a chance to argue why the child should not be moved.
- The AEDY program is appropriate for the child and can meet all of their educational needs as a student with a disability, including accessibility and special education.
- The AEDY program provides a full day of instruction, consistent with the hours of the student’s local school district.

**Students with disabilities cannot be placed in AEDY for behavior caused by or related to their disability. A manifestation determination review meeting must be held before the transfer.**

- A manifestation determination meeting is when the parent and the school come together to review the information from the child’s file, the child’s individualized education program (IEP), input from the school, and information from the parent to answer two questions:
  1. Was the child’s behavior caused by or directly related to the child’s disability?
  2. Was the child’s behavior a direct result of the school’s failure to follow the IEP?
- If either answer is “yes,” the team must conclude that the behavior WAS a manifestation of the student’s disability, and the student cannot be transferred, unless the behavior involved drugs, weapons, or serious injury to another person.
- If the team determines the behavior WAS NOT a manifestation of the child’s disability and transfers the student to an AEDY program, the program must still be appropriate for the child and able to meet all of their educational needs as a student with a disability.
- Importantly, a child who has not yet been identified as eligible for special education services but is suspected to have a disability should also receive a manifestation determination before a change in placement if (1) the parent has previously expressed concern in writing to school officials that the child needs special education; (2) the parent has requested a special education evaluation; or (3) the teacher or other school staff has expressed concern about the behavior of the child to special education officials.<sup>6</sup>

**Once placed in an approved AEDY program, students with disabilities have the following rights:<sup>7</sup>**

- To be educated in a nonsegregated setting and included with peers without disabilities.
- To be taught by teachers who are certified to work with students with disabilities.
- To receive the same number of hours of instruction as students in the sending school district.
- To receive all supports and services listed in the student’s IEP.
- To be free from the use of restraints except as a “last resort,” in accordance with Pennsylvania law.<sup>8</sup>
- To receive notification within five days of placement of what the student needs to do to return to their previous school and the date they are expected to return. The return date, also known as the “presumptive exit date,” generally cannot be more than 45 days. Exit goals must be related only to the behavior that resulted in AEDY placement and must be achievable by the exit date. Students should receive periodic progress reviews to support their transition back to their previous school.
- To receive data-driven, evidence-based positive supports and interventions to address behaviors that keep students in school and do not rely on out-of-school discipline.

**Finally, school districts must take steps to avoid disproportionately referring students with disabilities, or any other demographic group, to AEDY placements.**

School districts are required to collect and review demographic information when they place students in AEDY programs, so they can identify and address disproportionality, such as overuse of AEDY placements based on race, eligibility for special education or English learner (EL) services, ethnicity, or gender. Research shows that children of color and those with disabilities are disproportionately subject to school discipline, including referrals to AEDY programs.<sup>9</sup>

Despite not exhibiting higher rates of behaviors that would permit a removal to AEDY, Black and Brown students, including students with disabilities displaying these identities, are sent to AEDY by school districts at disproportionate rates compared to their white peers.<sup>10</sup> Across the commonwealth, although Black students represent 16 percent of the student population, they represent 35 percent of the students in AEDY.<sup>11</sup> In some school districts, this disproportionality is much higher.<sup>12</sup> In addition to the well-documented root causes of the disproportionate harm of exclusionary discipline experienced by Black and Brown students<sup>13</sup> – including inequitable school funding, lack of trauma-informed interventions, punitive codes of conduct, and high rates of school policing – racially disproportionate AEDY referrals are particularly fueled by individual racial bias from school administrators, in part due to subjective, overly broad, and vague language in the AEDY statute.<sup>14</sup>

To begin to address these concerns, the Pennsylvania Department of Education requires school districts to incorporate culturally responsive discipline practices, positive behavior interventions, and other strategies to keep students in the regular education classroom as much as possible and avoid disproportional overuse of AEDY.<sup>15</sup>

## **ENFORCING STUDENT RIGHTS**

Students with disabilities have significant education rights and protections. You can enforce these rights in multiple ways, including:

- 1. Request an IEP team meeting** to determine if the alternative education program is appropriate for your child. *Attached is a sample letter you can use to request the meeting in writing and a sample checklist of questions to ask at the meeting and help you prepare.*
- 2. File a complaint.** Parents of students with disabilities have multiple avenues for enforcing student rights, including the following:
  - Parents can file a due process complaint requesting a hearing to challenge a proposed placement, request mediation, or file a complaint with the Division of Compliance of PDE's Bureau of Special Education. These options existed before the 2019 settlement agreement and are still available to parents.
  - **Students, parents, guardians, or organizations with any concerns about alternative education can also file a complaint about any aspect of alternative education.** This includes concerns about the original transfer decision, placement in an unapproved alternative education program, length of stay, quality of education in the program,

and/or failure to communicate in the preferred language.

**Filing an AEDY complaint** is a two-step process:

Step 1: File a complaint directly with the AEDY program or the school that sent your child to the AEDY program. Complaint forms should be available on their websites.

Step 2: File a complaint with the state if you are not satisfied with the results of the local complaint or if a local complaint process does not exist.

Information about how and where to file a complaint is [available here](#) on PDE's website.

- ❖ *Note:* An expedited review process is available in the due process context if you do not agree with the results of a manifestation determination and want to challenge a proposed disciplinary change in placement. Information on this expedited process is available from the [Office of Dispute Resolution here](#).
- ❖ You may also be eligible to receive compensatory education services to make up for the education your child missed if your child did not receive the services in an IEP, did not receive an appropriate program, or you or your child's legal rights were violated. Be sure to include a request for "compensatory education" in your complaint for services your child missed or time when your child did not receive a free, appropriate, public education.
- ❖ See ELC's handbook, [The Right to Special Education in Pennsylvania](#), *Chapter 12: How to Resolve Special Education Disputes*, for more detailed information. You may also want to talk with a lawyer about which complaint process is the right one for you and your child.

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The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general idea of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact us for a referral or contact an attorney of your choice. Visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA).

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<sup>1</sup> Settlement Agreement Between the United States and the Department of Education, March 2019. Available at: <https://www.justice.gov/crt/case-document/pennsylvania-department-education-alternative-education-disruptive-youth-aedy>

<sup>2</sup> 24 P.S. § 19-1901-C; AEDY BEC

<sup>3</sup> [18 Pa.C.S. § 912](#) (defining "weapon" as including but not being limited to any knife, cutting instrument, cutting tool, nun-chuck stick, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury.)

<sup>3</sup> 24 P.S. § 13-1318.1

<sup>5</sup> 34 CFR §§ 300.530-300.536; 22 Pa. Code § 14.133

<sup>6</sup> 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.534(b)

<sup>7</sup> AEDY Basic Education Circular (BEC): <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/Alternative-Education-for-Disruptive-Youth.aspx>

<sup>8</sup> 22 Pa. Code § 14.133

<sup>9</sup> See e.g., *Disparate and Punitive Impact of Exclusionary Practices on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools* A Report of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights (April 2021), <https://www.usccr.gov/files/2021/04-09-Pennsylvania-Public-Schools.pdf>

<sup>10</sup> *Formal Complaint*, Education Law Center 13-16 (Aug. 7, 2013), at [https://www.elc-pa.org/wp-content/uploads/2019/03/ELC\\_DOJ\\_AEDYComplaint\\_8\\_7\\_13-1.pdf](https://www.elc-pa.org/wp-content/uploads/2019/03/ELC_DOJ_AEDYComplaint_8_7_13-1.pdf); see also Advisory Comm'n to the U.S. Comm'n on Civil Rights, *The Civil Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools* (2021).

<sup>11</sup> *Formal Complaint*, Education Law Center 13-16 (Aug. 7, 2013), at [https://www.elc-pa.org/wp-content/uploads/2019/03/ELC\\_DOJ\\_AEDYComplaint\\_8\\_7\\_13-1.pdf](https://www.elc-pa.org/wp-content/uploads/2019/03/ELC_DOJ_AEDYComplaint_8_7_13-1.pdf).

<sup>12</sup> *Id.*

<sup>13</sup> Pa. Advisory Comm'n to the U.S. Comm'n on Civil Rights, *The Civil Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools* 2-3 (2021)

<sup>14</sup> See 24 P.S. §19-1901-C (allowing removal for any student who “materially disrupts” learning).

<sup>15</sup> AEDY Guidelines, Section Four, AEDY Program Requirements, *Performance Measures and Accountability*, <https://www.pa.gov/agencies/education/programs-and-services/instruction/elementary-and-secondary-education/alternative-education-for-disruptive-youth-aedy/aedy-guidelines>.

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## SAMPLE LETTER REQUESTING IEP MEETING TO DETERMINE APPROPRIATENESS OF ALTERNATIVE EDUCATION PROGRAM

\_\_\_\_\_ (your name)

\_\_\_\_\_ (address)

\_\_\_\_\_ (address)

Date: \_\_\_\_\_

*Re: Request for IEP Team Meeting to Determine Appropriateness of Alternative Education Program*

Dear \_\_\_\_\_ (Director of Special Education),

I am the parent/guardian of \_\_\_\_\_, whose birthdate is \_\_\_\_\_.

The U.S. Department of Justice (DOJ) recently entered into an agreement with the Pennsylvania Department of Education (PDE) that creates additional rights and protections for students with disabilities in Alternative Education for Disruptive Youth (AEDY) programs.

My child has been identified as a student with a disability under federal and state law. My child is currently placed (or at risk of being placed) in \_\_\_\_\_ (name of program).

I believe this placement decision does not meet the requirements laid out in the settlement agreement and may not be appropriate for my child.

I request an IEP Team meeting to determine the appropriateness of the alternative education program for my child. Please let me know as soon as possible when we can convene the IEP Team and ensure that my child gets the services and supports they need to successfully receive an appropriate program in the least restrictive environment.

If you do not agree to meet, please provide me with a NOREP indicating that I, the parent, disagreed with the school's placement and my request for a change of placement was denied.

Please contact me with proposed dates for the IEP meeting at the following number(s) \_\_\_\_\_ or by e-mail at \_\_\_\_\_. Thank you.

Sincerely,

\_\_\_\_\_ (your name)

Check and fill out the following box if the parent is not a fluent English speaker:

- I have limited English proficiency. I am requesting that I be provided with translation and interpretation services for **all** information and meetings related to this request. Please provide these services in [insert language] \_\_\_\_\_.

*\*Keep a copy of this letter for your records. We recommend hand-delivering or sending by certified mail.*



## ALTERNATIVE EDUCATION ADVOCACY CHECKLIST FOR IEP TEAM MEETINGS

The IEP Team meeting is a time to raise concerns and request that your child not be placed in an alternative education setting. There are many reasons why an alternative education placement may not be appropriate for your child.

The questions below are examples to help guide the conversation.

- Was my child appropriately placed in the AEDY program?**  
*Students with disabilities can only be placed in an approved AEDY program if they receive all of the due process protections that a student in regular education receives before the transfer, and the IEP team agrees that the behavior was NOT a manifestation of the child's disability.*
- Is this an "approved AEDY program?"**  
*Students with disabilities may only be placed in AEDY programs that have been approved by PDE.*
- Is my child receiving the same hours of instruction as students in the sending school? AEDY programs cannot provide fewer hours of instruction to students with disabilities.**
- Is my child receiving all the supports and services listed in their IEP?**  
*AEDY programs must provide supports and services needed for the student to make progress toward IEP goals in an appropriate school setting.*
- How long does my child have to stay in AEDY?**  
*Every student must be told when they are expected to exit AEDY. This should be less than 45 days in most cases.*
- Does my child have clear exit criteria so they can return to their previous appropriate program with supports and services?**  
*Students must have clear exit criteria with measurable behavioral goals that can be achieved by the exit date.*
- Is my child's teacher qualified to teach students with disabilities?**  
*Teachers who work with students with disabilities must be certified to teach students with disabilities.*
- Does this AEDY program use Schoolwide Positive Behavioral Interventions and Supports?**  
*AEDY programs that serve students with disabilities must address behaviors in a way that keeps students in school and does not rely on out-of-school discipline.*
- Is my child free from restraints?**  
*AEDY programs that use restraints must allow for reasonable modifications of their restraint policies and procedures to accommodate for students with disabilities and ensure that they are not discriminated against as prohibited by state law.*
- Does the program communicate in my preferred language?**  
*If you are a parent with limited English proficiency, the district and/or program must provide interpretation/translation services.*