

AEDY SETTLEMENT: NEW RULES FOR ALTERNATIVE EDUCATION IN PENNSYLVANIA

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WHAT IS THE ALTERNATIVE EDUCATION FOR DISRUPTIVE YOUTH (AEDY) AGREEMENT?

In response to a [complaint](#) filed by the Education Law Center, the Pennsylvania Department of Education (PDE) recently reached an [agreement](#) with the U.S. Department of Justice to significantly overhaul alternative education programs for students who have been transferred for disciplinary reasons. The agreement requires significant changes to the way students with disabilities (those eligible for special education services or accommodations under Section 504) and English learners (ELs) are treated, with some additional changes impacting all students. The agreement was reached in response to a complaint challenging the state's use of alternative programs, known as "Alternative Education for Disruptive Youth" (AEDY).¹ The local and statewide changes required by this agreement go into effect at the beginning of 2019-2020 school year.

WHAT DOES THE AEDY AGREEMENT REQUIRE?

The AEDY agreement requires PDE, school districts, and alternative education programs to make a number of changes to meet the needs of students, especially students with disabilities and ELs. Below are some of the key requirements:

Pennsylvania Department of Education (PDE)

- PDE must appoint staff (including an AEDY Supervisor, AEDY Coordinator, and Regional Coordinators) to oversee and conduct site-visits of AEDY programs across the state.
- PDE will develop a complaint process for parents to raise concerns and file complaints about any aspect of their child's placement in an AEDY program.
- PDE will develop new guidance and application procedures for both referring school districts and alternative education programs.
- PDE will develop robust data collection, analysis, site visits, professional development, and corrective action plans to ensure non-discriminatory placement and exiting.

School Districts

- School districts can place students with disabilities or ELs into alternative disciplinary programs only if the programs are approved by the state.
- School districts must conduct manifestation determination reviews before placing a student with disabilities in an approved AEDY program.²
- School districts cannot place students in AEDY for behavior caused by or related to their

¹ 24 P.S. § 19-1901-C

² 34 CFR §§ 300.530-300.536; 22 Pa. Code § 14.133

disability, except in certain limited circumstances.

- School districts cannot segregate students with disabilities into AEDY programs.
- School districts must establish an EL service plan to ensure that ELs placed in AEDY Programs receive language instruction services from teachers holding ESL Teaching Credentials. The plan must be submitted to PDE prior to referring ELs to approved alternative education programs.
- School districts must convene and participate in the “transition team” for each student with a disability to ensure that the student is timely returned to school with supports and services.

Alternative Education Programs

- Alternative education programs must be approved by the state if they are going to educate any students with disabilities or English learners.
- Approved AEDY programs must ensure that students with disabilities receive the supports and services they need to make progress towards their IEP goals. Students with disabilities can only be placed in approved AEDY programs that can meet their educational needs and provide necessary special education services.
- Approved AEDY programs must provide students with disabilities the same number of hours and days of instruction as they would receive in their previous school.
- If an approved AEDY program accepts students with disabilities, the program must employ faculty who have the credentials required to teach students with disabilities.
- AEDY programs must have a “presumptive exit date” for each student with a disability. This is the date the child is expected to exit AEDY. This date should not place the student in AEDY for more than 45 days in most circumstances and should be based on the child’s individual needs.
- Approved AEDY programs must participate in the “transition team” and develop a transition plan to ensure that each student with a disability gets the services and supports they need to successfully return to their previous school.
- To the extent an approved AEDY program uses restraints, programs must make reasonable modifications to restraint policies and procedures to accommodate the rights of students with disabilities, ensure that they are administered only by appropriately trained staff, and that restraints are not used in a manner that discriminates against students with disabilities. AEDY programs must also report the use of restraints involving students with disabilities to PDE as required by law.³
- Approved 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. Specifically, AEDY programs must implement Schoolwide Positive Behavioral Intervention and Supports (SWPBIS) or another data-driven evidence-based non-exclusionary behavior framework.
- Approved AEDY programs that accept ELs must teach English using materials that are appropriate for the student’s age and level of English proficiency by faculty who have the credentials to teach English as a Second Language (ESL).
- AEDY programs must provide information to LEP parents in a language they understand.

³ 22 Pa. Code § 14.133

United States Department of Justice (DOJ)

- DOJ will monitor and enforce the agreement through May 2022, including requiring PDE to provide semi-annual reports demonstrating its compliance with the agreement.
- DOJ may conduct site visits, observe trainings, interview PDE staff, communicate with students, and request additional data to ensure compliance with the agreement.
- If DOJ determines that PDE is out of compliance with the agreement, DOJ can issue notices of non-compliance requiring PDE to take corrective action to resolve the issue and/or initiating judicial proceedings.

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, trainings, 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, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh) – or contact another attorney of your choice.