

ALTERNATIVE EDUCATION FOR DISRUPTIVE YOUTH: NEW RULES AND GUIDANCE FOR ENGLISH LEARNERS

August 2019

In response to a complaint filed by the Education Law Center with the U.S. Department of Justice, the Pennsylvania Department of Education (PDE) entered into a settlement agreement that significantly changes the policies and practices related to the placement of English learners in Alternative Education for Disruptive Youth (AEDY) programs across Pennsylvania.

Changes required by the agreement go into effect at the start of the 2019-2020 school year, with more guidance and policy changes to be put in place by PDE and local school districts thereafter.

This fact sheet describes the process for determining if your child, as an English learner (EL)¹, is appropriately and legally placed in an AEDY program and, if not, how to return your child to an appropriate placement in your local school district.

KEY RIGHTS OF ENGLISH LEARNERS UNDER THE SETTLEMENT AGREEMENT

English learners can never be placed in alternative education programs unless the program has been formally approved by PDE as meeting certain requirements.

- Many district and charter schools operate alternative education programs that have not been formally approved by PDE. It is important that you check whether your child's placement is an approved AEDY program.
- PDE has a list of approved programs available at: 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 PDE's Bureau of Special Education at 717-783-6134.
- 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 non-classroom 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.

English learners can only be placed in an approved AEDY program when each of the following conditions are met:

- The student is currently and persistently “disruptive,” defined by PA law² as doing one or

¹ English learners are students who require language assistance services to overcome barriers to accessing an equal education.

² 24 P.S. § 19-1901-C

more of the following:

- i. Showing disregard for school authority, including persistent violation of school policy and rules.
- ii. Having or using drugs on school property or during school-affiliated activities.
- iii. Engaging in violent or threatening behavior on school property or during school-affiliated activities.
- iv. Possessing a weapon on school property, including traveling to or from school.
- v. Committing a criminal act on school property or during school-affiliated activities.
- vi. Engaging in misconduct that would merit suspension or expulsion under school policy.

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

- A referring school district has developed an EL service plan and submitted that plan to PDE for approval prior to referring ELs to AEDY programs.
- Language instruction services provided at the AEDY program are provided by teachers holding ESL teaching credentials.
- The AEDY program's English language instruction program uses materials that are appropriate for the EL's age and level of English proficiency.

Once placed in an approved AEDY program, ELs have the following rights:

- The right to a language instruction program that enables ELs to overcome barriers to equal access to education³.
- The right to be taught by teachers with ESL teaching credentials.
- The right to an English language instruction program that uses materials that are appropriate for the EL's age and level of English proficiency.
- The right to interpretation and translation services for ELs and limited English proficient parents, guardians, or other caregivers.
- The right to understand the AEDY program's language instruction program.
- The right to know the criteria for your child to exit the AEDY program and return to the general education setting.
- The right to know about your child's progress in learning English.

ENFORCING STUDENT RIGHTS

You can enforce your child's rights by:

1. Asking questions about the language instruction program to be provided to your child at the

³ 20 U.S.C. 1703(f); *Castaneda v. Pickard*, 648 F.2d at 1009 (5th Cir. 1981); *Issa v. Sch. Dist. of Lancaster*, No. CV 16-3881, 2016 WL 4493202, at *6 (E.D. Pa. Aug. 26, 2016), *aff'd and remanded*, 847 F.3d 121 (3d Cir. 2017).

AEDY program prior to placement and challenging any attempt to place your child in a non-approved AEDY program or program which does not meet the conditions outlined above.

2. Filing a complaint with the Division of Compliance of PDE's Bureau of Special Education.
 - **Currently, as of August 2019, you can raise concerns about alternative education by filing a complaint directly with PDE Bureau of Special Education about any aspect of alternative education – not just compliance.** Information about how and where to file a complaint is available here on PDE's website: <https://www.education.pa.gov/K-12/Special%20Education/Complaints/Pages/default.aspx>. A sample complaint letter to the AEDY program or sending school district is attached to this fact sheet.
 - School districts and AEDY programs are also supposed to have their own local complaint process to be used before filing a complaint with the state. As of August 2019, these new options are not yet available. ELC will provide updated information at www.elc-pa.org as new information is available.
 - ❖ For now, concerns about any aspect of a student's alternative education should be filed using PDE's Bureau of Special Education complaint process. This includes concerns about the original transfer decision, length of stay, quality of education in program, and/or failure to communicate in preferred language.
 - ❖ If your EL is also a student with a disability, see ELC's fact sheet, [Alternative Education for Disruptive Youth: New Rules and Guidance for Students with Disabilities](#).
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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, 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.

SAMPLE LETTER REQUESTING TO CHALLENGE DETERMINE APPROPRIATENESS OF ALTERNATIVE EDUCATION PROGRAM

_____ (your name)
_____ (address)
_____ (address)

Date: _____

Re: Request for Meeting to Determine Appropriateness of Alternative Education Placement or Program

Dear _____ (Director of ESOL or multilingual program) and
_____ (Director of Special Education)

I am the parent 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 English Learners in Alternative Education for Disruptive Youth (AEDY) programs.

My child has been identified as a English Learner. My child is currently placed (or at risk of being placed) in _____ (name of alternative program).

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

I request a 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 meeting and ensure that my child is not or is no longer placed in this program and that my child receives the services and supports my child needs to receive equal access to an education.

If you do not agree to meet, please note in my child's education records that I, the parent, disagreed with the school's placement and my request for a change of placement was denied. I also intend to raise my concerns with the Pennsylvania Department of Education.

Please contact me with proposed dates for the 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] _____.

CC: PA Department of Education Bureau of Special Education, 333 Market Street Harrisburg, PA 17126

EL ADVOCACY CHECKLIST FOR MEETINGS CHALLENGING AEDY PLACEMENTS AND PROGRAMS

You should request a meeting at your child's school to raise your 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.

Q Was my child appropriately placed in the AEDY program?

ELs can only be placed in an approved AEDY program.

ELs can only be placed in a program that has ESL certified teachers and the AEDY's English language instruction program uses materials which are appropriate for the EL's age and level of English proficiency.

Q How long does my child have to stay in AEDY?

AEDY Programs are "temporary" placements for students who are deemed "currently" disruptive. All students must have clear exit criteria with measurable behavioral goals. In addition, all students must be reviewed at least every semester to determine if the student is eligible to return to the general education setting.

Q Does my child have clear exit criteria so they can return to their previous appropriate program with supports and services?

Q Is my child's teacher qualified to teach EL students?

Teachers who provide English language instruction services must have ESL teaching credentials.

Q Did 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.