

ALTERNATIVE EDUCATION FOR DISRUPTIVE YOUTH (AEDY): NEW RULES AND GUIDANCE FOR STUDENTS WITH DISABILITIES

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 students with disabilities 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 with disabilities 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 in the least restrictive environment. A child with a disability is a child who has or is eligible for an IEP or Section 504 Plan.

KEY RIGHTS OF STUDENTS WITH DISABILITIES UNDER THE SETTLEMENT AGREEMENT

Students with disabilities 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.

Students with disabilities can only be placed in an approved AEDY program when each of the following conditions is met:

- The student is currently and persistently "disruptive," defined by PA law¹ as doing one or more of the following:
 - i. Showing disregard for school authority, including persistent violation of school policy and rules.

¹ 24 P.S. § 19-1901-C

- 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 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.²
- 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 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 the answer to either question 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.

Once placed in an approved AEDY program, students with disabilities have the following rights:

- The right to be educated in a non-segregated setting and inclusion with non-disabled peers.
- The right to be taught by teachers who are certified to work with students with disabilities.
- The same number of hours of instruction as students in the sending school district.
- All supports and services listed in the student’s IEP.
- The right to be free from the use of restraints except as a “last resort” in accordance with Pennsylvania law.³
- Notification within 5 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

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

³ 22 Pa. Code § 14.133

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.

- 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.

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 filing a due process complaint requesting a hearing and filing 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.
 - **Currently, as of August 2019, students with disabilities with concerns about alternative education can file 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. See also ELC's fact sheet, [Resolving Special Education Disagreements](#).
 - 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. **Note: An expedited review process is available if you don't 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 at https://odr-pa.org/wp-content/uploads/pdf/Expedited_Fact_Sheet.pdf.
 - ❖ You may 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 their 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.
 - ❖ 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.

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 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 or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh).

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 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 be not 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 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.

- Q 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 my child's disability.
- Q Is this an “approved AEDY program?”**
Students with disabilities may only be placed in AEDY programs that have been approved by PDE.
- Q 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.
- Q 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.
- Q 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.
- Q 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.
- Q 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.
- Q 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.
- Q 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.
- 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.