

## ALTERNATIVE EDUCATION FOR ENGLISH LEARNERS

August 2021

This fact sheet describes the process for determining if your child, as an English learner (EL),<sup>1</sup> 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. The fact sheet outlines special rights applicable to your child as an EL, which are in addition to general rights applicable of all students. To learn more about these general rights, 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>2</sup>

### KEY RIGHTS OF ENGLISH LEARNERS IN ALTERNATIVE EDUCATION

**English learners 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 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 check whether your child's placement is an approved AEDY program.
- If a program is not approved and a child is placed for disciplinary reasons, you can challenge the proposed placement through an IEP meeting and by the filing of a complaint as described below.
- 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.
- 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 by the filing of a complaint as described below.

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

- The student either:
  - Is currently and persistently “disruptive,” defined by Pennsylvania law<sup>3</sup> as doing one or more of the following:
    - 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, including traveling to or from school.
    - 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 has been convicted or adjudicated delinquent of sexual assault 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 in the same school.<sup>4</sup>

***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 same rights as other ELs:<sup>5</sup>**

- The right to a language instruction program that enables ELs to overcome barriers to equal access to education.<sup>6</sup>
- The right to be taught by teachers with ESL teaching credentials.
- The right to the same number of hours of instruction as students in the sending school district.
- 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 parents, guardians, or other caregivers whose preferred language is not English.

In addition, their parents, guardians or other caregivers also have the following rights in this context:

- The right to understand the AEDY program's language instruction program.
- The right to know about your child's progress in learning English.
- The right to know the criteria for your child to exit the AEDY program and return to the regular education setting, presumably within 45 days.

### ENFORCING STUDENT RIGHTS

English learners have significant protections to challenge placement in AEDY, language instruction provided in such programs, and other concerns. You can enforce your child's rights by:

1. **Requesting a meeting prior to placement** to ask questions about the language instruction program to be provided to your child in the AEDY program and how teachers are trained to modify curriculum and instruction for ELs, and to challenge any attempt to place your child in a non-approved AEDY program or program that does not meet the conditions outlined above. *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 to help you prepare.*
  2. **Filing a complaint:** Parents of English learners can file a complaint about any concern about alternative education. This includes concerns about the original placement in AEDY, placement in an unapproved program, the length of time in the program, the quality of education, and/or failure to communicate in 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.
      - 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.
    - Students, parents, guardians, or organizations with any concerns about alternative education can 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 program, inadequate language instruction, failure to modify curriculum and instruction for ELs, 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 Students with Disabilities](#).

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

<sup>2</sup> Settlement Agreement Between the United States and the Department of Education, March 2019. Available here: <https://www.justice.gov/crt/case-document/pennsylvania-department-education-alternative-education-disruptive-youth-aedy>

<sup>3</sup> 24 P.S. § 19-1901-C

<sup>4</sup> 24 P.S. § 13-1318.1.

<sup>5</sup> AEDY Basic Education Circular (BEC):

<https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/Alternative-Education-for-Disruptive-Youth.aspx>

<sup>6</sup> 20 U.S.C. 1703(f); *Castaneda v. Pickard*, 648 F.2d at 1009 (5<sup>th</sup> 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).

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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, 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](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

## SAMPLE LETTER REQUESTING MEETING TO CHALLENGE 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/guardian/caregiver of \_\_\_\_\_, whose birthdate is  
\_\_\_\_\_.

The U.S. Department of Justice (DOJ) 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 an 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, 333 Market Street Harrisburg, PA 17126*

## **ENGLISH LEARNER 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.

- 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.*
- How long does my child have to stay in AEDY?**  
*AEDY Programs are "temporary" placements for students who are deemed "currently" disruptive. There is a presumption that the exit criteria for all students can and will be met and that students will be transitioned/returned to their general education program within 45 days of a student's placement in the AEDY program, or sooner based on the student's individual needs.*
- Does my child have clear exit criteria so they can return to their previous appropriate program with supports and services?**  
*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.*
- Is my child's teacher qualified to teach EL students?**  
*Teachers who provide English language instruction services must have ESL teaching credentials.*
- 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.*