EDUCATION LAW CENTER | FACT SHEET

ALTERNATIVE EDUCATION FOR MULTILINGUAL LEARNERS

August 2023

This fact sheet describes the process for determining if your child, as a multilingual learner, 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 a multilingual learner – referenced in law as an "English learner" (EL)[1] – which are in addition to general rights applicable to all students. This fact sheet is also available in Spanish. 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 changed the policies and practices related to the placement of multilingual learners in AEDY programs across Pennsylvania.[2]

KEY RIGHTS OF MULTILINGUAL LEARNERS IN ALTERNATIVE EDUCATION

English learners (ELs) 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. 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 via email at ra-edaedy@pa.gov.

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.

A program may not have formal PDE approval if it has one or more of the following features:

- It is in a school basement or other nonclassroom setting.
- It does not have a full-time teacher or special education teacher.
- It only operates for a few hours each day.
- Most classroom time is spent on computers, watching movies, or completing worksheets.

If a program is not approved and a child is placed for disciplinary reasons, you can challenge the proposed placement by filing a complaint as described below. If your child is also a student with a disability, you can also challenge the placement through an IEP meeting.

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

English learners can only be placed in an approved AEDY program when the following conditions are met:[3]

The student either:

- Poses a "clear threat" to the safety and welfare of students or school staff, creates an unsafe school environment, or their behavior "materially interferes" with learning, or disrupts the overall educational process; ***and*** the student engages in one of the following six behaviors "to a marked degree":[4]
  - 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.[5]
  - 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 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.[6]

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

In addition, the following conditions must be met:

- The sending 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 student's age *and* level of English proficiency.

- The sending school district has made an individualized determination that the proposed AEDY can provide all services and supports to meet the student's needs.
- An informal hearing is held prior to the 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.

Once placed in an approved AEDY program, multilingual learners have the same rights as English learners in any other school placement, including the following:[7]

- The right to a language instruction program that enables ELs to overcome barriers to equal access to education.[8]
- The right to be taught by teachers with ESL teaching credentials.[9]
- The right to the same number of hours of instruction as students in the sending school district.[10]
- The right to an English language instruction program that uses materials that are appropriate for the student's age **and** level of English proficiency.[11]
- The right to interpretation and translation services for ELs and parents, guardians, or other caregivers whose preferred language is not English.[12]

In addition, their parents, guardians, or other caregivers also have the following rights in this context:[13]

- 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.

Finally, school districts must take steps to avoid disproportionately referring multilingual learners, 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 eligibility for EL or special education services, race, ethnicity, or gender. School districts are required 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 programs.[14]

ENFORCING STUDENT RIGHTS

English learners have significant protections to challenge AEDY placement, language instruction provided in AEDY 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 nonapproved 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 their 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 the program, inadequate language instruction, failure to modify curriculum and instruction for ELs, or failure to communicate in the parent or guardian's preferred language.

If your child is also a student with a disability, see ELC's fact sheet, Alternative Education for Students with Disabilities.

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 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 (Eastern and Central PA) or 412-258-2120 (Western PA) — or contact another attorney of your choice.

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[1] *See e.g.*, 20 USC § 7801(20) (defining English learners in part as one "whose native language is other than English"). In general, English learners are students who require language assistance services to overcome barriers to accessing an equal education.
[2] Settlement Agreement Between the United States and the Dep't of Educ. (Mar. 2019), https://www.justice.gov/crt/case-document/pennsylvania-department-education-alternative-education-disruptive-youth-aedy.
[3] Pa. Dep't of Educ., AEDY Basic Educ. Circular (BEC) (Nov. 18, 2019), https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/Alternative-Education-for-Disruptive-Youth.aspx (AEDY BEC).
[4] 24 P.S. § 19-1901-C; AEDY BEC.
[5] 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.").
[6] 24 P.S. § 13-1318.1.
[7] AEDY BEC.
[8] 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).
[9] AEDY BEC, *Eng. Learner (EL) Services in AEDY Programs.*
[10] AEDY BEC, *PDE Approval Requirements.*
[11] AEDY BEC; *Newcomer Toolkit*, U.S.Dep't of Educ. (Sept. 2017), https://www2.ed.gov/about/offices/list/oela/newcomers-toolkit/ncomertoolkit.pdf.
[12] Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d – 2000d-7 and implementing regulations at 34 C.F.R. § 100.3(a) and (b)(i)-(ii) (prohibiting discrimination on the basis of national origin). *See also Confronting Discrimination Based on Nat'l and Immigr. Status: A Res. for Families and Educators*, Civ. Rights Div. of the U.S. Dep't of Just. and Off. of Civ. Rights of the U.S. Dep't of Educ. (Aug. 2021), https://eric.ed.gov/?q=source%3A%22US+Department+of+Justice%22&ff1=audParents&id=ED628908
[13] AEDY BEC.
[14] AEDY Guidelines, Section Four, AEDY Program Requirements, *Performance Measures and Accountability*, Pa. Dep't of Educ https://www.pa.gov/agencies/education/programs-and-services/instruction/elementary-and-secondary-education/alternative-education-for-disruptive-youth-aedy/aedy-guidelines.

SAMPLE LETTER REQUESTING MEETING TO CHALLENGE APPROPRIATENESS OF ALTERNATIVE EDUCATION PROGRAM

_____ (your name) Date: _____
_____ (address)
_____ (address)

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.