EDUCATION LAW CENTER | FACT SHEET

ALTERNATIVE EDUCATION FOR DISRUPTIVE YOUTH (AEDY)

August 2023

This fact sheet addresses your child's rights if:

- *A school wants to move your child to a different education program because of discipline;*
- *Your child currently attends an alternative school or program for disciplinary reasons; or*
- *You are seeking to have your child return to a regular classroom from an alternative program.*

ALTERNATIVE EDUCATION BASICS

What is Alternative Education for Disruptive Youth?

Pennsylvania's Alternative Education for Disruptive Youth (AEDY) refers to a separate educational program where students are placed by school districts or charter schools for disciplinary reasons.[1] Under Pennsylvania law, students can only be placed in state-approved AEDY programs for a short period of time for the purpose of achieving identified behavior goals. Once these goals are met, presumably within 45 days or less, a child must transition back into the traditional school setting. Unfortunately, students are sometimes kept in AEDY programs much longer and do not receive a high quality of education while there.

Despite not exhibiting higher rates of behaviors that would permit a removal to AEDY, Black and Brown students, including students with disabilities displaying these identities, are sent to AEDY by school districts at disproportionate rates compared with their white peers.[2] Across the commonwealth, although Black students represent 16 percent of the student population, they represent 35 percent of the students in AEDY.[3] In some school districts, this disproportionality is much higher.[4] In addition to the well-documented root causes of the disproportionate harm of exclusionary discipline experienced by Black and Brown students[5] – including inequitable school funding, lack of trauma-informed interventions, punitive codes of conduct, and high rates of school policing – racially disproportionate AEDY referrals are particularly fueled by individual racial bias from school administrators, in part, due to subjective, overly broad, and vague language in the AEDY statute.[6]

As a result of these concerns, the Pennsylvania Department of Education requires school districts to collect and review demographic information when they remove students to AEDY, so they can identify and address the overuse of AEDY stemming from racism, ableism, and other forms of bias. School districts must 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.[7]

Who can be sent to alternative education programs?

Only middle and high school students may be sent to AEDY programs. If your child is in elementary school and you are being told that they must attend school in a different classroom or building for discipline reasons, you may challenge this by filing a complaint as described below.

What are some reasons a student can be placed in an AEDY program?

Students can only be placed in an AEDY program if they pose a "clear threat" to the safety and welfare of other students or school staff, if they create an unsafe school environment, or if their behavior "materially interferes" with the learning of other students or disrupts the overall educational process. In addition, the student must engage in one of the following six behaviors "to a marked degree":[8]

1. Showing disregard for school authority, including "persistent violation of school policy and rules."
2. Possession of controlled substances on school property or during school activities.
3. Violent or threatening behavior on school property or during school activities.
4. Possession of a weapon on school property, as defined under 18 Pa.C.S. § 912.[9]
5. Commission of a criminal act on school property.
6. Misconduct that would merit suspension or expulsion.

In addition, a school may opt to place a student in an AEDY program if that student is convicted or adjudicated delinquent for sexual assault of another student in the same school.[10] See our fact sheet on Act 110 for additional information.

Importantly, a student with disabilities cannot be deemed a disruptive student and eligible for a transfer to AEDY except as permitted by federal and state disability laws. For more information, see ELC's fact sheet Alternative Education for Students With Disabilities.

NOTE: Students can no longer be placed in an alternative education program due to truancy/attendance issues.

Can a child be placed in an AEDY program that has not been approved by the Pennsylvania Department of Education (PDE)?

No. 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. Students with disabilities and multilingual learners ("English learners") cannot be placed in unapproved programs.[11] It is sometimes hard to tell if a program is approved or not.

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.

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 nonclassroom setting.
- It does not have a full-time teacher or special education teacher.
- It only operates for a few hours each day.
- The majority of classroom time is spent on computers, watching movies, and/or completing worksheets.

If your child has a disability and/or is a multilingual learner and attends or is being assigned to an AEDY program that you do not think is approved, file one of the complaint options described below.

Also, 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.

HELP BEFORE YOUR CHILD IS PLACED IN ALTERNATIVE EDUCATION

What are your and your child's rights before a school can place your child in an AEDY program?

Before your child can be transferred, **you have the right to a hearing.**[12] This is your opportunity to argue that your child should not be moved to an AEDY program. You should also ask questions about whether the program meets all of the requirements under the law and meets your child's needs.

Schools are required to use other supports and services to help your child succeed in school before they recommend an AEDY program.[13] At the hearing, you can ask the school to explain whether and how they have exhausted all other options before seeking to transfer your child.

School staff may ask you to sign a "waiver." By signing the waiver, you are agreeing to the alternative program. **If you do not want the school to move your child, do not sign the waiver!**

What is supposed to happen before and during the hearing? [14]

Before the hearing:

- The school must tell you the time and place of the hearing in advance with sufficient time for you to prepare.
- The school must tell you in writing why it wants to move your child to an AEDY placement.
- You may ask for a copy of your child's education records.
- If you believe your child may have disabilities, you may request that your child be evaluated to determine eligibility for special education services or a Section 504 accommodations plan before the hearing.
- You should ask for all records and any witness statements relating to any recent incident which triggered the proposed transfer to AEDY.
- If your child is suspended from school for more than three days, the hearing must be offered within the first five days of out-of-school suspension, but you can ask for more time if you need it to prepare, review your child's records, or find a lawyer.
- If the school moves your child immediately, you still have the right to a hearing (see ***NOTE*** below). Ask for the hearing even if your child has already changed schools.

Tip: If any of these things did not happen before the hearing, say so at the hearing. Keep written notes of what did not happen to use if you file a complaint as explained below. You can also request a postponement of a hearing due to your inability to review requested records or on the ground that the child should be evaluated to determine eligibility for special education services and whether the child's disability is related to the conduct at issue.

During the hearing:

- You may question any witnesses the school brings and review any written statements.
- You may review your child's education records.
- You may bring people to the hearing who can talk about why your child should not be transferred.
- You may bring letters of support from teachers, counselors, and people who know your child.
- You may bring an attorney; one will **not** be provided for you.

NOTE: *The school district must hold the informal hearing **before** placing the student in the AEDY program. However, in rare cases, if the student's presence creates a serious, ongoing danger or disruption, the school may send the student immediately to the AEDY program and hold the informal hearing afterward.*[15]

Does my child with disabilities have additional protections that may stop the school from moving them to an AEDY program?

Yes. Before a child with disabilities can be placed in an AEDY program, there must be a manifestation determination meeting conducted with your child's individualized education program (IEP) team, and you have a right to participate in that meeting.[16] During this meeting, you and the school will review information from your child's education records, your child's IEP, input from teachers, and any information from you to help 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," your child **cannot** be transferred to the AEDY program unless the behavior involved drugs, weapons, or serious injury to another person.

If the team determines that the behavior was NOT a manifestation of your child's disability and your child is transferred to an AEDY program after an informal hearing, the program must still be appropriate for your child, comply with your child's IEP, and meet all their educational needs.

If you do not agree with your child's manifestation determination, you can challenge the proposed change in placement through an expedited review process. Information on the expedited review process can be found here. Children with disabilities also have other important rights and protections in an AEDY setting. For more information, see ELC's fact sheet on Alternative Education for Students With Disabilities.

Does my child who is a multilingual learner have additional protections that may stop the school from moving them to an AEDY program?

Yes. A multilingual or English learner cannot be placed in an AEDY program that cannot meet the student's language instruction needs, including providing English as a Second Language (ESL) from teachers holding appropriate ESL teaching credentials. For more information, see ELC's fact sheet on Alternative Education for Multilingual Learners.

Are school districts required to do anything to address the possibility of discrimination and disproportional use of AEDY placements by race, ethnicity, gender, or other demographics?

Yes. 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 race, ethnicity, gender, or eligibility for EL or special education services. 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.[17]

Can youth be placed in an AEDY program if they are returning from mental health services or a residential facility or a juvenile justice placement?

No. If your child returns to school from a mental health facility, juvenile justice placement, or other residential setting, the school cannot automatically place your child in an AEDY program.[18] Instead, your child is presumed to return to the traditional school setting. If the school still wants to send your child to an AEDY program, you have the same right to a hearing as any other child prior to any proposed transfer into an AEDY program.

What if we lost the hearing, and I still do not want my child to go to AEDY?

You can file a complaint with your school, the AEDY program, or the Pennsylvania Department of Education if you disagree with the decision to put your child in an AEDY program and if you think these rules have not been followed. Please see below for more details about how to file the complaint and use PDE's complaint form.

HELP WHEN YOUR CHILD IS ALREADY IN ALTERNATIVE EDUCATION

My child has already been placed in an AEDY program. What type of education and support must they receive while in the AEDY program?

Planning for Returning to School: Within five days of placement, you, your child, and your child's transition team must create **clear and measurable** behavior goals that your child can reasonably achieve within the 45 days of placement.[19] This information is to be shared with all staff who work with your child to ensure the achievement of these goals. Your child must be provided with appropriate academic instruction and behavior support to make certain that your child does not fall behind in their academic progress and can successfully transition back into the traditional school setting.

Academic Instruction:

- During placement in an AEDY program, your child must receive at least 20 hours of academic instruction a week in math, science, social studies, health skills, and life skills.
- Your child must be able to participate in at least one elective.
- All curriculum and teaching materials should be grade-level and age-appropriate and keep your child on track to graduation in their original school district or charter school.

Behavioral Supports:

- Your child is required to receive a behavioral assessment using state-approved behavior assessment tools within the first five school days when placed in an AEDY program.[20]
- The behavior goals should be developed by you and your child's school district based on the results of the behavior assessment and the reason(s) for AEDY placement.
- Once your child meets their behavior goals, they should be allowed to return to their original school. A student cannot be kept in an AEDY due to low attendance or grades.
- Your child must receive at least 2.5 hours of counseling a week.
- Your child must receive data-driven and evidence-based positive behavior interventions and supports to address behaviors that keep students in school and do not rely on exclusionary practices and out-of-school discipline.
- Your child must receive a progress review at least once a semester, and such reviews should be even more frequent. This review must include you, your child, the AEDY staff, school district staff, and any other agency staff involved.

What is an AEDY program required to provide for students with disabilities?

When a child with disabilities is placed in an AEDY program, they must receive all of the above. In addition, the AEDY program must comply with these additional requirements:[21]

- The AEDY program must be approved by the state.
- Your child's instructors must be certified to work with students with disabilities.
- Your child must have access to nondisabled peers and cannot be segregated.
- Your child must receive the same number of hours of instruction as students in the sending school district.
- Your child must receive all supports and services listed in their IEP or 504 plan.
- The AEDY program must be an appropriate placement for your child.
- Your child has the right to be free from the use of restraints except as a "last resort" in accordance with Pennsylvania law.

NOTE: Please see Alternative Education for Students With Disabilities for more information.

What is an AEDY program required to provide for multilingual learners (referred to as English learners or ELs)?

Multilingual learners (referred to as English learners or ELs) are entitled to additional supports and rights when placed in an AEDY program. Below are the additional supports and rights you and your child are required to receive:[22]

- The right to a language instruction program that enables multilingual learners to overcome barriers to equal access to education.[23]
- 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 student's age **and** level of English proficiency.
- The right to interpretation and translation services for ELs and multilingual parents, guardians, or other caregivers (referred to as limited English proficient).
- 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.

NOTE: Please see Alternative Education for Multilingual Learners for more information.

HOW TO FILE A COMPLAINT

Can I challenge and/or file a complaint about my child's placement in an AEDY program?

Yes. All schools and AEDY programs must have a complaint process available for all students.[24] You can use this process to complain about all aspects of the AEDY program, including whether your child should be in the program, the quality of the program, trouble transitioning out of the program, and/or failure to communicate in the preferred language.

How do I file a complaint?

Filing a complaint is a two-step process:

- **Step 1**: File a complaint directly with the AEDY program or the school district or charter school that sent your child to alternative education.
- **Step 2**: File a complaint with the state if you are not satisfied with the results of Step 1 or if the AEDY program and sending school do not have a complaint process.

All school districts, charter schools, and AEDY programs are required to provide you with information about the complaint process, including policies, response time frames, complaint status, and possible outcomes. See PDE's Alternative for Disruptive Youth (AEDY) webpage for more information about filing a complaint and for a copy of the complaint form.

NOTE: The filing of an AEDY complaint described above does not limit any other rights or remedies available under federal or state law.

Additional Complaint Options for Students With Disabilities

As a parent of a student with disabilities, you have additional options to enforce your child's rights in an AEDY program. In addition to filing an AEDY complaint, you can also file a due process complaint or file a complaint with the Division of Compliance of PDE's Bureau of Special Education. See ELC's fact sheet on Resolving Special Education Disagreements for more information on filing a special education complaint.

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] 24 P.S. §19-1901-C.
[2] *Formal Complaint*, Educ. Law Ctr. 13-16 (Aug. 7, 2013), https://www.elc-pa.org/wp-content/uploads/2019/03/ELC_DOJ_AEDYComplaint_8_7_13-1.pdf; *see also* Advisory Comm'n to the U.S. Comm'n on Civ. Rights, *The Civ. Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools* (2021).
[3] *Formal Complaint*, Educ. Law Ctr. 13-16 (Aug. 7, 2013), https://www.elc-pa.org/wp-content/uploads/2019/03/ELC_DOJ_AEDYComplaint_8_7_13-1.pdf.
[4] *Id.*
[5] Pa. Advisory Comm'n to the U.S. Comm'n on Civ. Rights, *The Civ. Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools* 2-3 (2021).
[6] *See* 24 P.S. §19-1901-C (allowing removal for any student who "materially disrupts" learning).
[7] 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
[8] 24 P.S. §19-1901-C; 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).
[9] 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."
[10] 24 P.S. §13-1318.1.
[11] 24 P.S. §19-1901-C; AEDY BEC.
[12] 22 Pa. Code §12.8(c); AEDY BEC.
[13] 24 P.S. §19-1902-C(5); AEDY BEC.
[14] 22 Pa. Code §12.8; AEDY BEC.
[15] *AEDY Guidelines, Section Three: Informal Hearings*, 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.
[16] 34 CFR §§ 300.530-300.536; 22 Pa. Code §14.133; Settlement Agreement on Alternative Education for Disruptive Youth Programs Between the United States and the Pennsylvania Department of Education, (Mar. 22, 2019), https://www.justice.gov/crt/case-document/pennsylvania-department-education-alternative-education-disruptive-youth-aedy (Settlement Agreement); AEDY BEC.
[17] AEDY Guidelines, Section Four, AEDY Program Requirements, *Performance Measures and Accountability*, https://www.pa.gov/agencies/education/programs-and-services/instruction/elementary-and-secondary-education/alternative-education-for-disruptive-youth-aedy/aedy-guidelines.
[18] 24 P.S. §19-1901-C; Settlement Agreement, *Section VI(A)(iii)*; AEDY BEC, *Students Charged or Convicted of a Crime, Returning from Mental Health Services, or Residential Placement.*
[19] AEDY BEC: *Exiting of Students from AEDY.*
[20] AEDY Guidelines, Section Four, AEDY Program Requirements, *Behavioral Assessment*, https://www.pa.gov/agencies/education/programs-and-services/instruction/elementary-and-secondary-education/alternative-education-for-disruptive-youth-aedy/aedy-guidelines.
[21] AEDY BEC.

[22] Settlement Agreement; PDE AEDY Complaint Resolution, https://www.pa.gov/agencies/education/programs-and-services/instruction/elementary-and-secondary-education/alternative-education-for-disruptive-youth-aedy/aedy-complaint-resolution; AEDY BEC
[23] 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).
[24] Settlement Agreement, *Section IV(A-E)*; PDE AEDY Complaint Resolution, *Referring LEAs and Approved AEDY Programs.*