

## STUDENT RIGHTS IN PARTIAL HOSPITALIZATION OR DAY TREATMENT PROGRAMS

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Students in partial hospitalization programs (PHPs) or day treatment programs maintain their right to a free public education, like all other public school students. Students who need special education services or accommodations for qualifying disabilities also continue to have a right to a free appropriate public education. These rights are not lost because the student is receiving medical or psychological treatment and is temporarily not in school. Students may be in PHPs or day treatment programs for a variety of reasons, including medical needs, mental health challenges, behavior disorders, or substance abuse.

### WHAT ARE PARTIAL HOSPITALIZATION OR DAY TREATMENT PROGRAMS?

Partial Hospitalization Programs are **nonresidential** licensed psychiatric partial hospitalization programs that serve children in need of treatment for significant emotional or behavioral disorders.<sup>1</sup> Children who attend partial hospitalization programs typically receive psychological, psychiatric, social, and/or vocational treatment. PHPs are also referred to as “day treatment programs.” Day treatment programs may also offer a variety of treatment services, including psychiatric or mental health treatment, behavior management, counseling, and treatment for substance abuse, among others. Students may be referred to partial hospitalization programs by schools, courts, the medical system, or family/self-placement.

Pennsylvania’s 29 Intermediate Units (IUs) provide a wide variety of services to schools and communities, including day treatment and specialized schooling programs.<sup>2</sup> (More on IUs below.)

Other PHPs or day treatment programs may be school-based or may be privately run programs that may provide an educational component. If you have been referred to or choose to send your child to one of these programs, you must make sure that your child continues to comply with state attendance laws. You should contact your child’s school to provide documentation of their absence and ask about what options are provided for educational services.

### WHAT ROLE DOES RACE PLAY IN REFERRALS TO PARTIAL HOSPITALIZATION OR DAY TREATMENT PROGRAMS?

Due to the significant impact of systemic racism, discrimination, and well-documented racial bias in the mental health system, children and youth of color receive more mental health referrals from the criminal justice system or social services than their white peers, who are more likely to

be referred in less coercive ways, such as through a family doctor.<sup>3</sup> Lack of access to culturally competent mental health services in communities, racism, and discrimination have all been shown to contribute to poor health outcomes.<sup>4</sup> Racial disparities in the forced hospitalization of children and adolescents, as well as the quality of mental health services provided to Black and Brown children, represent an urgent need that must be addressed.

### IS MY CHILD AUTOMATICALLY EXCUSED FROM SCHOOL WHILE THEY ARE IN A PARTIAL HOSPITALIZATION OR DAY TREATMENT PROGRAM?

No. Pennsylvania law requires all school-age children to attend school.<sup>5</sup> Each school district has rules and policies about student attendance and absences.<sup>6</sup> Pennsylvania law broadly defines absences as excused when a student is prevented from attending school due to physical or mental conditions or “other urgent reasons.”<sup>7</sup> An absence is lawful when a student is dismissed during school hours by a nurse, school administrator, or other designee, or if the student is absent to obtain professional health care or therapy provided by a licensed practitioner.<sup>8</sup> Schools should consider illness, medical, mental health, or dental appointments as lawful absences.<sup>9</sup>

Schools may excuse your child from attending school for the purpose of obtaining professional health care or therapy service, but **only if** the following requirements are met:

- The health or therapeutic services are delivered by a doctor or therapist who is licensed by the Commonwealth of Pennsylvania;
- It is not practical or possible for the student to receive the health care or therapy services outside of school hours; **and**
- The absence has as little interference as possible with the child’s regular program of study.<sup>10</sup>

### CAN MY CHILD’S ABSENCE COUNT AS TRUANCY UNDER PENNSYLVANIA LAW?

Yes, if the absences are unexcused. *Truancy* is a legal term that refers to **unexcused** absences. Truancy means having three or more unexcused absences in the current school year.<sup>11</sup> Habitual truancy means having six or more unexcused absences in the current school year.<sup>12</sup> These absences do not need to be in a row.

Properly documented **excused** absences (such as for medical reasons) do not count towards a finding of truancy. Make sure you contact your student’s school and submit appropriate documentation so that your child’s absences are marked as excused. If your child was improperly marked as having an unexcused absence, you can request that your child’s attendance record be corrected. See ELC’s [Attendance Record Correction Self-Advocacy Tool](#).

For more information on attendance and truancy issues, see [ELC’s fact sheet on attendance barriers](#).

## WHAT IF MY CHILD HAS A DISABILITY?

Students with disabilities are entitled to receive special protections under the law (Individuals with Disabilities Education Act, or IDEA) that apply when a student’s educational situation or placement is changed. School districts (called “local educational agencies” or LEAs) are obligated under IDEA to provide a “free and appropriate public education” (FAPE) to children with disabilities, regardless of whether the child is in a private facility, hospital, or day treatment program.<sup>13</sup> They must also provide a “continuum of alternative placements” to meet children’s needs, including instruction in hospitals and institutions.<sup>14</sup> This means that if your child has a disability and must miss school for hospitalization or a day treatment program because of their disability, your LEA is still responsible for providing them with special education services.<sup>15</sup>

If your child already has an IEP, you can request a meeting to discuss your child’s IEP or ask for additional accommodations if they miss school due to hospitalization or a day treatment program related to their disability. If your student has disabilities and was not provided appropriate services and supports for some time, your child is entitled to compensatory education services.<sup>16</sup> See our fact sheet on [compensatory education](#) for more information.

A change in physical location of education only – from school to a day treatment program, for example – may not qualify as a change in educational placement.<sup>17</sup> However, if your child has an IEP and is placed in a PHP or day treatment program by the school, it could qualify as a change in placement under IDEA.<sup>18</sup> Your child’s school will issue a NOREP (Notice of Recommended Educational Placement), which you may or may not agree with. Any change in placement can be challenged. For information on contesting a placement decision, see the ELC fact sheet [Resolving Special Education Disagreements](#).

## WHAT KIND OF EDUCATION SERVICES SHOULD MY CHILD RECEIVE IN A PARTIAL HOSPITALIZATION OR DAY TREATMENT PROGRAM?

The education services offered in a PHP or day treatment program will depend on whether the program is school-based, offered by an IU, or through a privately run program. School-based programs, especially those offered through the IU linked to your school district, are most likely to offer comprehensive education services similar to your child’s current school. These programs and your child’s school district will still be responsible for their education while they are enrolled in that program.

If your student is referred to or enrolled in a privately run PHP or day treatment program without an educational component by their school, their school district remains responsible for providing educational services.<sup>19</sup> The district must provide written notice to the child’s parents notifying them of the referral.<sup>20</sup> The state Department of Human Services has set out guidance for how a child’s parents, school, medical providers, and service providers should work together to determine the best course of action when a student is referred.<sup>21</sup> This may include an education program provided by a district in a private placement, homebound instruction, virtual learning, or other educational services.

Under state law, basic education and special education are recognized as “essential and required part of service” for children and youth in partial hospitalization programs, and ensuring the provision of that education is the ultimate responsibility of “the Department of Education or its agent.”<sup>22</sup> The education program may be provided at the same site as the partial hospitalization program but is considered a separate, though complementary, program.<sup>23</sup>

If you elect to place your child in a PHP or day treatment program for reasons unrelated to your child’s education needs, your school district is not responsible for paying for your child’s residential facility.<sup>24</sup> Before making the decision to place your child in a PHP or day treatment program, you should consult with your child’s school to determine what services may and may not be offered and how they will be provided.

### WHAT IS HOMEBOUND INSTRUCTION?

Schools are allowed to excuse students from attendance for evidence of mental, physical, or “other urgent reasons” for up to three months.<sup>25</sup> School districts may provide homebound instruction to excused students for up to three months. The school is required to adopt policies that describe the homebound instruction or other instructional services that are provided to these students<sup>26</sup> After three months, the district must reevaluate the reasons for excusing the student and get approval for continued homebound instruction from the Pennsylvania Department of Education.<sup>27</sup> These policies may require parents to submit documentation from medical professionals to justify the absences, including ongoing updates on the student’s progress.<sup>28</sup>

Homebound instruction may be an appropriate option for some students in a PHP or day treatment program that does not include an education component or for children with chronic health problems who cannot attend school regularly. Parents and the school district should determine how the student will receive their assignments and how much in-home or in-program teaching the student needs.<sup>29</sup> Homebound instruction can include a plan with part-time attendance at school when appropriate and approved by the school district.<sup>30</sup>

### IS VIRTUAL LEARNING AN OPTION FOR MY CHILD IN A PARTIAL HOSPITALIZATION PROGRAM?

Perhaps. Your child’s school may allow them to attend class virtually while they are in a PHP or day treatment program, but this will likely depend on each school’s individual capacity and schedule for virtual learning. Your school district may also have a separate cyber or virtual learning program that your child may be able to participate in as part of their PHP or day treatment program. Advocating for your child’s right to continuing education through their local school district is the best way to find these options.

### WHAT ABOUT TRANSPORTATION TO AND FROM PARTIAL HOSPITALIZATION OR DAY TREATMENT PROGRAMS?

Pennsylvania law does not require school districts to provide transportation for public school students.<sup>31</sup> If they do provide transportation, the district may set its own policies for eligibility and

how transportation is to be provided.<sup>32</sup> School districts are, however, required to provide transportation for children with disabilities if their IEP requires it.<sup>33</sup> This transportation may be provided by the local IU.

If your child is referred to a PHP or day treatment program within your school district or IU **and** your school district provides transportation for students generally, they should provide transportation to that program in accordance with the policies adopted by your school board. If your district does not generally provide transportation to school, then it is unlikely your student will receive transportation services. If your student has a disability and their IEP requires transportation, those services should continue with their placement in the PHP or day treatment program. Check your school district's transportation policies and talk with your school for more specific information and rules.

If your child is referred to (or you choose to place them in) a private PHP or day treatment, then they may not be able to get transportation there and back. If your school district provides general transportation for students, it is also required to provide transportation for "resident students attending nonpublic schools."<sup>34</sup> Whether a private PHP or day treatment program qualifies as a nonpublic school depends on the extent of its education program. However, if your student is receiving ongoing educational services through their school district, you should ask the school to provide transportation as part of that plan.

### WHAT ABOUT MY CHILD'S TRANSITION BACK TO SCHOOL?

As your child nears the end of their PHP or day treatment program, you should discuss with their school how they will transition back to full-time or part-time attendance. As noted above, it is important to track their absences and provide documentation from their providers to avoid attendance issues. If your child was receiving homebound or virtual instruction during their treatment, make sure they are caught up on assignments before they return. You should request a meeting with the school upon the student's return to coordinate on schoolwork issues and make a plan to ensure they do not fall behind.

If your child has experienced school disruptions due to homelessness or involvement in foster care or the juvenile justice system, your child may also be eligible for credit or coursework assessment under Act 1 to ensure they stay on track to graduate. Some schools offer these supports if your child has been absent from school for a long time and changed schools more than once in the past year. For more information on Act 1 eligibility, see our [Act 1 fact sheet](#).

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.

<sup>1</sup> See 55 Pa Code § 5210.3; Access to Education in Pennsylvania Partial Hospitalization Programs (December 2007), available at <https://openminds.com/market-intelligence/resources/120107whitepaper/>.

<sup>2</sup> See Pa. Ass'n of Intermediate Units, *Intermediate Units* (last visited June 6, 2023), <https://paiu.org/About-PAIU2>.

<sup>3</sup> Susan Walker, MRC Psych, Phoebe Barnett, MSc, *Clinical and social factors associated with involuntary psychiatric hospitalization in children and adolescents: a systematic review, meta-analysis, and narrative synthesis* *The Lancet, Child and Adolescent Health* (April 27, 2021), available at [https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642\(21\)00089-4/fulltext](https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(21)00089-4/fulltext); Amalia Londono Tobon; Jose M. Flores, *Racial Implicit Associations in Psychiatric Diagnosis, Treatment, and Compliance Expectations*, *Acad Psychiatry*. Vol. 45(4):533-534 (Aug. 2021), available at <https://pubmed.ncbi.nlm.nih.gov/33438155/>.

<sup>4</sup> Aprile D. Benner, Yijie Wang, *Racial/ethnic discrimination and well-being during adolescence: A meta-analytic review* *American Psychology* (Oct. 2018) Vol. 73(7): 855-883, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6172152/>.

<sup>5</sup> 22 Pa. Code § 12.1(a) (“All persons residing in this Commonwealth between the ages of 6 and 21 years are entitled to a free and full education in the Commonwealth’s public schools.”); 24 P.S. § 13-1327(a).

<sup>6</sup> 24 P.S. § 13-1329(a); 22 PA. CODE § 11.25(a).

<sup>7</sup> 24 P.S. § 13-1329(a).

<sup>8</sup> 24 P.S. § 13-1329(c)-(d).

<sup>9</sup> Pa. Dep’t of Educ., *Compulsory School Attendance, Unlawful Absences, and School Attendance Improvement Conferences* (Feb. 2020), <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CompulsorySchoolAttendance.aspx>.

<sup>10</sup> 24 PA. CODE § 11.23.

<sup>11</sup> 24 P.S. § 13-1326.

<sup>12</sup> 24 P.S. § 13-1326.

<sup>13</sup> 34 C.F.R. § 300.2(c).

<sup>14</sup> 34 C.F.R. § 300.115; *see also* 34 C.F.R. § 300.39(a)(1)(i).

<sup>15</sup> *See, e.g., Tyler W. v. Upper Perkiomen Sch. Dist.*, 963 F. Supp.2d 427 (E.D. Pa. 2013) (finding that a school district was still required to provide special education services implementing their IEP when they were placed in a partial hospitalization program).

<sup>16</sup> *See Miener By & Through Miener v. State of Mo.*, 800 F.2d 749, 754 (8th Cir. 1986) (asserting that compensatory education is the appropriate remedy for a student denied FAPE).

<sup>17</sup> 71 Fed. Reg. 46588 (2006).

<sup>18</sup> 34 C.F.R. § 300.503(a).

<sup>19</sup> 22 Pa. Code § 11.34(a) (schools must have a recommendation from a school physician and psychiatrist/psychologist, plus the approval of the Pennsylvania Department of Education, before excusing a child from school); 24 P.S. § 13-1330(2).

<sup>20</sup> 22 Pa. Code § 11.34(b).

<sup>21</sup> *See* Pa. Dep’t of Hum. Serv. [formerly Pa. Dep’t of Pub. Welfare], *Guidelines for Interagency Planning for Children in Need of Behavioral Health Rehabilitation Services or Partial Hospitalization Services During the School Day* (Jan. 4, 2008), [https://www.pa.gov/content/dam/copapwp-pagov/en/dhs/documents/docs/publications/documents/forms-and-pubs-omhsas/d\\_005077.pdf](https://www.pa.gov/content/dam/copapwp-pagov/en/dhs/documents/docs/publications/documents/forms-and-pubs-omhsas/d_005077.pdf).

<sup>22</sup> 55 Pa. Code § 5210.37.

<sup>23</sup> *Id.*

<sup>24</sup> See *Mary T. v. Sch. Dist. of Phil.*, 575 F.3d 235 (3d Cir. 2009) (finding that a district did not have to pay for a teen’s placement at a psychiatric residential facility because the placement was not related to her special education needs); *Munir v. Pottsville Area Sch. Dist.*, 723 F.3d 423 (3d Cir. 2013) (noting that a high schooler’s parents were not entitled to recover the costs of the student’s residential facility because his parents placed him in the facility as a result of his suicidal ideations and not his educational needs).

<sup>25</sup> 22 Pa. Code § 11.25(a) (“[T]he terms ‘urgent reasons’ shall be strictly construed and does not permit irregular attendance.”).

<sup>26</sup> 22 Pa. Code § 11.25(b); 22 PA. CODE § 11.41; 22 PA. CODE § 11.25(c); see also *Price v. Commonwealth Charter Acad. - Cyber Sch.*, No. 18-1778, 2019 U.S. Dist. LEXIS 136817 (E.D. Pa. Aug. 13, 2019) (finding that Pennsylvania schools are not required to offer homebound instruction and that cyber schools already offer a satisfactory version of it).

<sup>27</sup> *Id.*; see also Pa. Dep’t of Educ., *Homebound Instruction* (last visited June 6, 2023), <https://www.education.pa.gov/K-12/Homebound%20Instruction/Pages/default.aspx>.

<sup>28</sup> See Pa. Dept’ of Educ., *Structuring Homebound Instruction* (last visited June 6, 2023), <https://www.education.pa.gov/K-12/Homebound%20Instruction/Pages/Structuring-Homebound-Instructions.aspx>.

<sup>29</sup> *Id.* (“[F]ive hours of weekly instruction are equivalent to five days of school attendance.”).

<sup>30</sup> *Id.*

<sup>31</sup> 24 P.S. § 13-1361.

<sup>32</sup> 22 Pa. Code § 23.4.

<sup>33</sup> 24 P.S. § 13-1374.

<sup>34</sup> 24 P.S. § 13-1361; see also Pa. Sch. Bd. Ass’n, *Overview of School District Obligations to Transport Students Enrolled in Non-Public and Charter Schools* (Aug. 14, 2020), <https://www.psba.org/wp-content/uploads/2020/08/PSBA-Transportation-Overview.pdf>.