Educational Programs for Students in "Non-Educational" Placements

22 Pa. Code Section 14.102 (a)(2)(xiii)

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PURPOSE

The purpose of this Basic Education Circular is to set forth the Department of Education's opinion of federal and state law with respect to school districts' duty to educate students especially students with disabilities who reside in residential facilities within the school districts' boundaries. This BEC does not apply to children who are placed in an educational program directly by their resident school district, charter school, or cyber charter school. The following BECs provide specific guidance on students placed in Non-Educational Placements;

(1) Private Residential Rehabilitation Institutions (PRRIs) (BEC 24 P.S. §9-964.1),

(2) Determination of Residence of Children Living in Pennsylvania Institutions BEC (24 P.S. §13-1308), and

(3) Nonresident Students in Institutions BEC (24 P.S. §13-1306)

This BEC also describes the joint policy of the Department of Public Welfare (DPW) and the Department of Education (PDE) prohibiting the "bundling" of education and other services in Non-Educational Placements licensed by DPW.

NON-EDUCATIONAL PLACEMENT

School age children are sometimes placed in residential programs for reasons not related to the child's educational needs. This may occur, for example, under the auspices of a county mental retardation program, mental health program, children and youth agency, or through a local court. The PA Public School Code considers these residential programs for the "care or training" of the children and youth who reside in "children's institutions." The educational rights of students who are residing in a "children's institution" whose parents are not residents of the school district in which the institution is located are set out in School Code (24 P.S. §13-1306), and the students are referred to in BEC 24 P.S. §13-1306) as "§1306" students. Children's institutions include, among other residential settings, residential treatment facilities, licensed shelters, group homes, drug and alcohol treatment centers, and detention homes. (22 PA Code §11.18)

This means that, when a "non-educational" placement is made, such placement is presumed to determine where the child lives, and where the child may receive non-educational services, but this residential placement is not presumed to determine where the child will be educated. Rather, the presumption is that the student will receive his or her education in a regular public school unless the parents/guardians

and appropriate public officials determine that such an educational placement is unwise for the child or improper. In the case of children with a disability, this determination is made through the special education system's Individualized Education Program (IEP) process, or through a Service Agreement, unless a court order explicitly prescribes how educational services are to be provided.

There are, of course, legitimate reasons that would overcome the presumption of education in a regular school. Many placements made through the juvenile justice system, for example, require separate schooling for security reasons that are part of a court order. Security and safety of the child are also important parts of some placements made by other systems. Also, the treatment needs of some children placed by children and youth, mental health, or mental retardation agencies may be incompatible with educating the child at any site other than at the therapeutic treatment site.

HOST SCHOOL DISTRICT RESPONSIBILITIES

Under Section 1306 of the Pennsylvania School Code, the host school district (the school district where the children's institution is physically located) is required to allow a nonresident student in a children's institution to attend the public schools of the host school district until the student receives a diploma or completes the school term in which they turn 21. The host district is responsible for providing the educational program for students, including students with disabilities who are placed in that facility, and for ensuring the provision of a "free appropriate public education" for eligible children with Individualized Education Programs (IEPs) in accordance with the Individuals with Disabilities Education Act (IDEA) and for "qualified handicapped students" with Service Agreements in accordance with § 504 of the Rehabilitation Act of 1973 and 22 PA Code Chapter 15.

The host school district cannot refuse to educate a student in a regular or special education program in a regular public school unless 1) a court order requires that the child be educated at the residential facility; 2) a current IEP and NOREP, or a service agreement under 22 PA Code Chapter 15, requires a different placement; 3) the child is currently expelled from his or her last educational placement due to a weapons offense (see, 24 P.S. § 13-1317.2(e.1)) or 4) the student is in an "interim alternative educational setting" and placed in accordance with the IDEA (see, 34 C.F.R. § 300.530 (c), (d)(5),and (g). Students may not be presumptively assigned to alternative education programs for disruptive youth; such placements must be made in accordance with federal and state disciplinary protections referenced in the BECs;
(1) Alternative Education for Disruptive Youth

(2) Enrollment of Students

For a child with a disability with an IEP or Service Agreement, when not prohibited by court order, the host district must consider the educational placement options to educate the student in the host district's public schools. If the host district and parent through the IEP or Service Agreement process determine that an alternative educational setting will appropriately address the student's educational needs, the host school district is responsible for providing the student with a Free Appropriate

Public Education (FAPE) and any needed special education or services consistent with 22 PA Code Chapter 14 and the IDEA or with 22 PA Code Chapter 15 and §504 of the Rehabilitation Act. For students eligible for services under Chapter 14, this means the host school district is responsible for making decisions regarding the goals, specially designed instruction, and educational placement for each student through the IEP Team process. Similarly, the host school district is responsible for conferring or meeting with the family and for developing a Service Agreement for a "qualified handicapped student" pursuant to Chapter 15.

Child Find Responsibility

In addition to ensuring that an appropriate educational program is provided, the host school district has Child Find responsibility for children "thought-to-be" eligible for special education services and/or accommodations within the host school district's jurisdiction. This responsibility includes locating, identifying, and evaluating all §1306 students with suspected disabilities, including but not limited to evaluating students for whom a request for an evaluation has been made. In fulfilling the Child Find obligation, the host school district cannot rely entirely on information from the facility, but must make independent efforts to ascertain whether eligible students are present. If a host school district suspects that a child may be eligible for special education or for a Service Agreement under 22 PA Code Chapter 15, the host district must seek informed consent to initiate evaluation procedures from an individual who meets the definition of parent in the IDEA, a surrogate parent appointed by the host district, or a person appointed by a court to provide such consent. If a child who is "handicapped" under Section 504 or is identified by a school district as thought-to-be disabled and in possible need of specially designed instruction under IDEA and Chapter 14, the host school district should procedurally move forward with a special education evaluation under IDEA and Chapter 14. One indication that a child is thought to-be-eligible may include a determination by the host district, parent, or a professional that the child's educational needs cannot be met in a regular public school setting.

For children suspected as IDEA eligible students, the host district is responsible for maintaining contact with the student's district of residence for the purpose of keeping the district of residence informed of its plans for educating the student and seeking the advice of that district with respect to the student.

Educational Decision-makers

If neither the parent of a child who is eligible or thought-to-be- eligible for special education nor an individual who meets the definition of parent in the IDEA can be located, the host district must appoint a surrogate parent

Transferring Students

During the §1306 student's tenure in the children's institution, the host school district must ensure that: all students have access to education; students with disabilities receive FAPE in accordance with their IEPs or Service Agreements; and all mandated procedural protections are provided. Host and district of residence may agree in writing to a different arrangement for the division of educational and procedural responsibilities for students identified as IDEA eligible, but they must receive approval by PDE after notice to and an opportunity for comment by the parents of the student

If the student has an IEP from the previous school district, the host school district must without delay convene an IEP meeting to determine whether the child's IEP should be revised, whether the student can be educated in the public schools of the host district, or whether some other placement option is appropriate for the child. If the child's parent cannot attend the IEP meeting in person, the host school district must take steps to ensure that the parents are included in the IEP meeting, including informing parents they can participate through a teleconference call or other appropriate means in the same way the host school district would facilitate the participation of the parents of its resident children.

Until a new IEP is developed for the child by the IEP team including the parent, the child must receive services comparable to those in the existing IEP. The host district is responsible for monitoring the educational progress and reviewing educational services for the student on a continuous basis and at least as often as report cards are issued. The host school district is also responsible for maintaining contact with the resident school district with respect to the student's placement and progress.

The parent and the host district should, if feasible, make a decision as to the appropriate educational placement of the child before the student arrives at the facility. However, in any case, the student must be attending a school program within five school days of the student's admission to the institution. If the information or an individual necessary to make an informed decision about the appropriate educational placement of the child is not available within the 5-day period, and if the parent agrees, the host school district can arrange for or authorize the child's education at a school program located at the facility until the host district and parent can make a formal decision regarding the student's educational placement. If no parent can be identified, the child can temporarily be educated at the facility if there is a clinical recommendation that the child should not attend public school. In either case, the final decision regarding the child's education placement must be made without delay.

In order to facilitate a smooth transition, if the residential facility provides notice that a student is to be released from the facility, the host district should attempt to work with the resident school district to prepare for the student's discharge from the institution at least 2 weeks prior to the student's planned discharge from the residential program, if possible. If, instead of returning home, the student is moving to a residential facility in another school district, these contacts should be made with the new host district.

In making a decision about where to educate a student, consideration should be given to the courses that would be available to the child in the proposed program, the qualifications of the staff, the program's ability to provide FAPE and comply with the other requirements of IDEA and Chapter 14 or §504 of the Rehabilitation Act and Chapters 15 or 16 of Title 22 of the Pennsylvania Code (as applicable to the individual child), and whether the program will prepare the student to meet any applicable promotion and/or graduation requirements.

RESIDENTIAL FACILITY RESPONSIBILITIES

The residential facility has reporting obligations as well as a responsibility to cooperate with the host district to assure that the student's educational rights are being protected. It is incumbent upon residential facilities to notify host districts of

the scope of their operations within the district including the capacity of their facilities.

The residential facility may not require enrollment in an on-site educational program as a condition of placement. Temporary placements, described above, are for a short period of time while a final decision on educational program and placement is determined.

The residential facility must send the attached form, "Notification of Admission to Facility or Institution and School Enrollment" contained within the attached DPW Bulletin (OMHSAS-10-02) to the host school district as soon as a §1306 student is admitted to the facility, and in no case longer than one business day after the student is admitted. The residential facility must also notify the host and the resident school district at least two (2) weeks prior to the anticipated discharge date for the child, if possible. The residential facility must also cooperate on an on-going basis with the host and resident school districts to facilitate the education of the students, the provision of FAPE, and discharge planning. Such cooperation also includes providing staff from a host or resident school district or another education entity access to the facility. In the event that the student does not have an individual acting as a parent on his or her behalf, the residential facility will notify the host district and DPW to assure appointment of a proper education decision-maker.

RESIDENT SCHOOL DISTRICT RESPONSIBILITIES

The resident school district (where the student's parent(s) resides) has a financial obligation, a duty to cooperate regarding transfer of records, and a role in student monitoring and educational planning.

Payments regarding non-resident students must be made in accordance with the BEC entitled Nonresident Students in Institutions.

The resident school district must cooperate with the host school district to ensure that education records are transferred within 10 business days of a request from the host school district, if the resident school district is the last school of record. (22 PA Code §11.11(b)). These records must include the name and contact information for the child's parent as defined by state law and the IDEA.

The host district is responsible for maintaining contact with the student's district of residence for the purpose of keeping the district of residence informed of its plans for educating the student and seeking the advice of that district with respect to the student.

JOINT DPW/PDE POLICY PROHIBITS BUNDLING OF SERVICES

DPW licensed facilities shall not require students to attend school at the residential facility unless it is a court imposed condition of their placement.

Some private residential program providers are licensed both as non-educational (for example, mental health) providers and as private schools (for example, approved private schools, schools within private residential rehabilitative institutions, and

licensed private academic schools). This creates the possibility of a single institution able to provide both the educational and non-educational services a child needs. Although, in some cases, this will be desirable, it will not always be appropriate. When a non-educational placement is made, there should not be an assumption on the part of the referring public agency, or the private provider, that the child will be included in the private provider's educational program. Rather, the decision regarding the educational portion of the child's day is to be made on an individual basis by parents, guardians and public education officials with input from all knowledgeable sources. This type of individualized decision-making is consistent with DPW's policy supporting individualized services for child and family support, and is further enhanced by County Mental Health/Mental Retardation Program services that can assist in supporting a child in a regular school setting.

The policy articulated in this BEC is the product of a concern of the PDE and DPW (as articulated in the DPW Bulletin (OMHSAS-10-02) entitled Educational Portions of "Non-Educational" Residential Placements that the educational portions of agencies' arrangements for these children are often in more restrictive, less integrated settings than is necessary to meet the student's educational needs. This policy is also the product of a joint concern that "bundling" services together in some cases delays the onset of services to the child, violating children's rights under education laws.

PDE and DPW will exclude a private provider from the approved provider pool of a specific program, including the Medical Assistance Program, if that private provider has a general policy or practice of insisting that each child placed under that program must also receive services of the private provider that fall outside of the program, unless a court order explicitly prescribes how educational services are to be provided. Similarly, the Pennsylvania Department of Education and the Pennsylvania Department of Public Welfare will not participate financially in placements that are contrary to this policy. Both Departments will implement this policy with regard to their programs.

This policy is an important part of our adherence to applicable law and - no less important - to serving children and families effectively in as natural a setting as is consistent with the individual child's needs.

REFERENCES:

Federal Statute:

20 U.S.C. §1400 et seq.

State Statute:

24 P.S. §13-1306
24 P.S. §13-1309

State Board of Education Regulations:

22 Pa. Code §14.102(a)(2)(xiii)
(http://www.pacode.com/secure/data/022/chapter14/s14.102.html)
22 PA Code §11.11
(http://www.pacode.com/secure/data/022/chapter11/s11.11.html)

22 Pa. Code §11.18
(http://www.pacode.com/secure/data/022/chapter11/s11.18.html)

Department of Public Welfare (DPW):

Educational Portions of "Non-Educational" Residential Placement Bulletin, OMHSAS-10-01 dated January 4, 2010
(http://www.pccyfs.org/dpw_ocyfs/Education/EducationalPortions_Non-Educational-Residential-Placements.pdf)

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