

Placement Options for Special Education

22 Pa. Code § 14.101 *et seq.*

22 Pa. Code § 711.1 *et seq.*

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PURPOSE

The purpose of this Basic Education Circular (BEC) is to review a variety of special education service and placement options available to local educational agencies (LEAs) through arrangement with other public agencies or private organizations. This BEC will outline the responsibilities of LEAs when they choose to utilize other public or private agencies for the provision of special education and related services. This BEC does not apply to children who are placed by a county Mental Health/Intellectual Disabilities (MH/ID) program agency, children and youth agency, or through a local court in a residential facility for non-educational reasons.

BACKGROUND

The Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1400 *et seq.*) requires each LEA, including charter schools, to make available a free appropriate public education (FAPE) in the least restrictive environment (LRE) and provide a continuum of placement alternatives for children with disabilities. As part of the Individualized Education Program (IEP) meeting, the IEP team must consider where the special education programs and services will be delivered. Like FAPE, LRE is a determination that must be made on an individual basis. To accomplish the delivery of special education programs and services in the LRE, LEAs are required to ensure (1) that the placement be determined by the child's IEP team; (2) that a continuum of placement alternatives be discussed; and (3) that a child with a disability be provided with instruction in a setting different from that of non-disabled peers ONLY when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. In addition to regular and special education classrooms, the continuum of placement alternatives the IEP team can consider include public or private institutions or other care facilities.

The Pennsylvania special education regulations contained in Chapter 14 and Chapter 711 of Title 22 of the Pennsylvania School Code describe a wide variety of special education service and placement options which may, as determined by the IEP

team, be pursued by LEAs. The special education programs and services that are specified in Chapters 14 and 711 may be provided directly by LEAs or through an arrangement with another public agency or private organization. Under 22 Pa. Code § 14.102 and § 711.2, LEAs may enter agreements regarding the provision of services for children with disabilities. If other public agencies or private organizations are to be utilized, this must be incorporated into the school district's special education plan described in 22 Pa. Code § 14.104(b), or a charter school's annual report described in 22 Pa. Code § 711.6(a)(3). When LEAs choose to utilize public agencies or private organizations for the provision of special education programs or services, there are several limiting factors that must be reviewed and addressed prior to this arrangement.

CONTRACTING WITH PRIVATE SCHOOLS, AGENCIES, AND PRIVATE ORGANIZATIONS

If LEAs elect to utilize another public or private agency, organization, or school to provide all or part of the special education program on their behalf, under Title 22 of the Pennsylvania School Code §§ 14.102 and 711.2, they remain responsible for the provision of FAPE consistent with IDEA and Pennsylvania special education regulations contained in Chapter 14 and Chapter 711. The special education programs or services provided through arrangement with a public or private agency or organization must be implemented in accordance with the child's IEP and consistent with the requirements of IDEA and Chapter 14 or Chapter 711. LEAs remain responsible for ensuring the implementation of the special education programs or services that are provided by the private or public agency, organization, or school meets the requirements of IDEA and Chapter 14 or Chapter 711.

1. Private Academic Schools

The State Board of Private Academic Schools licenses schools that meet the requirements of its regulations. These regulations can be found at Title 22 of the Pennsylvania School Code sections 51.1, 53.1, 55.1, 57.1, 59.1, 61.1, and 63.1 *et seq.*

Children with disabilities who are *publicly placed* in private academic schools by LEAs are entitled to FAPE as set forth in IDEA and applicable Pennsylvania special education regulations contained in Chapter 14 and Chapter 711 of Title 22 of the Pennsylvania School Code. It is the responsibility of LEAs that choose to place a child with a disability in a private academic school as a means of providing FAPE to determine, prior to placement, whether those special education programs or services will meet the requirements of IDEA and Chapter 14 or Chapter 711. LEAs have an obligation to ensure the child receives FAPE to the same extent the child would if placed in a public school. FAPE includes not just the special education and related services that a child with a disability receives but also includes an appropriate preschool, elementary, and secondary school education. Since private academic school licensure does not ensure that the school's program, service, or personnel meet IDEA, Chapter 14, or Chapter 711 requirements, LEAs cannot rely on licensure alone. The minimum individual personnel qualifications required for private academic school licensure are different from, and not

equivalent to, those required for public schools. Therefore, before placement, LEAs that choose to place children with disabilities in private academic schools for the implementation of IEPs are responsible for determining whether the private academic school will provide the special education and related services in accordance with the IEP, including the maintenance of pendency, at no cost to the parent, and to determine if the special education programs and services will meet the state standards that apply to private academic schools.

During the routine special education cyclical monitoring, LEAs will be monitored for the provision of FAPE for children placed in other settings, including other educational settings operated by public or private organizations and agencies. LEAs will be responsible for corrective action, if required, in the same manner as if this were a public school placement.

2. Other Private and Public Agencies and Organizations

Individuals in a nontraditional site who provide special education programs and services as required by the child's IEP must have an active Pennsylvania Department of Education (PDE) professional teaching certification, including credentials and personnel qualifications that would be required if they were providing the service as a public school employee. Since personnel requirements for private agencies or other public agencies and organizations that include private academic schools do not necessarily ensure this, it is important to recognize that this requirement relating to individual personnel qualifications is the responsibility of LEAs in ensuring FAPE for each child receiving special education in other settings prior to placement.

3. Teacher Caseload and Supervision of Teachers

The appropriate education and supervision must be provided to support FAPE for each child. Caseload requirements under Chapter 14 of Title 22 apply to educational placements for which LEAs make arrangements with a public or private agency, organization, or school, except Approved Private Schools (APS). Caseload requirements for APSs are specified in Chapter 171.11 *et seq.* Regulations for Approved Private Schools. Caseload requirements do not apply to charter school children placed in other public or private agencies or organizations.

4. Relationship to Special Education Rules Governing the Placement of Individual Children

The above discussion relates to the issue of what placement options are available for use by LEAs when making an individual special education placement decision. This discussion does not replace or alter the applicability of the rules relating to individual placement decisions. For example, there is an obligation to place a child in the LRE in which the child's IEP can be implemented; and there is a corresponding prohibition against placing children based solely on factors of administrative convenience. These rules apply regardless of the type of placement being considered. Moreover, children

placed by the IEP team in a nontraditional placement are entitled to all of the same procedural requirements that would apply if they attended a public school, including but not limited to, the timelines for reevaluation and revising the IEP, mandatory IEP team membership, and limitations on disciplinary exclusion from school.

Title 22 of the Pennsylvania School Code provides for an intermediate unit operated or "nontraditional" placement only when "such additional classes or schools...are necessary or to otherwise provide for the proper education and training for all exceptional children who are not enrolled in classes or schools maintained and operated by school districts..." 24 P.S. §13-1372. LEAs bear the responsibility to ensure the provision of FAPE in the LRE. Thus the use of nontraditional sites, particularly if they are segregated and are not based on an individual placement decision, will result in the disapproval of a school district's special education plan by the Bureau of Special Education, or PDE's disapproval of a charter school's annual report. PDE disapproval of a charter school's annual report could result in the non-renewal of the charter by the chartering entity.

5. Pendency

Administrative proceedings as referenced in IDEA, and Chapters 14 and 711 require, in cases where stay-put is an issue, that pendency be maintained until the conclusion of the due process hearing or mediation process. The child who is the subject of the mediation or due process shall remain in the current educational placement until the mediation process or due process hearing is concluded. If a LEA has placed a child in another setting, such as public or private agency or organization for the provision of FAPE, and this child becomes involved in mediation or due process hearing, the child shall remain in the current educational placement until the mediation process or due process hearing has concluded, unless the parent and LEA agree otherwise. The public or private agency or organization must continue to implement the current educational placement for the child who is the subject of an administrative proceeding.

REFERENCES

Purdon's Statutes

24 P.S. § 13-1372
24 P.S. §§ 17-1715 *et seq.*

State Board of Education Regulations

22 Pa. Code Sections 14.101 *et seq.*
22 Pa. Code Sections 711.1 *et seq.*
22 Pa. Code Sections 51.1, 53.1, 55.1, 57.1, 59.1, 61.1, and 63.1 *et seq.*
22 Pa. Code Sections 171.11 *et seq.*

Code of Federal Statutes

20 U.S.C. Section 1400 *et seq.*
34 C.F.R. §§ 300. 114-115

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