



Education Screen

Section 4:

The Right School Setting

4. SCHOOL SETTINGS/SITUATIONS

A. Child is in a public/private/parochial/charter school.

B. Child receives full day of instruction in accordance with the law.

C. Child is in Advanced Placement (AP), vocational-technical (vo-tech), or extracurricular activities.

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PA Child Welfare Education Screen

Commonwealth of PA – OCYF Bulletin 3130-10-04
“Educational Stability and Continuity of Children Receiving
Services from the County Children and Youth Agency (CCYA)
Including the Use of an Education Screen”

- Education Records & FERPA Consent
- School Stability & Prompt Enrollment
- **Special School Settings/Situations****
- Progress Towards Graduation/Promotion
- Preparation for Post Secondary Ed
- Need for Special Ed Evaluation
- Adequacy of Special Ed Services
- Need for Special Ed Decision Maker
- Need for Accommodations for Disability

Why This Matters

- Children in the child welfare system may be disproportionately placed in **more restrictive** settings -- including disciplinary settings.
- Children may be in inappropriate school placements because a new school does not know the student or the child's prior school.
- Students entering school mid-year may not have access to voc tech, AP classes etc.

Why This Matters: School Discipline

- **Chicago Study (2004)** Children in child welfare system were more than twice as likely to experience at least one disciplinary code infraction compared with students with no history of child welfare involvement.
- **Illinois Study (2010):** Nearly half of 6 to 10 year olds demonstrated behaviors deemed problematic by schools and two-thirds of 11 to 17 year olds exhibited problem behaviors, received disciplinary action, or both.
- **Missouri, countywide (2003)** According to self-reports, nearly three quarters of 15- to 19-year olds in foster care had been suspended and 16% had been expelled since 7th grade.

Why This Matters: Permanency

- Children who are subject to suspensions and expulsions are more likely to have their living placement disrupt & less likely to achieve permanency.
 - **Minnesota Permanency Demonstration Project**
Five year study surveyed over 100 caregivers and compared experiences of children who achieved permanency with those who remained in care.

Why This Matters: Special Education

- Children in care are more likely to need special education services (30 to 50% v. 11 to 15% of peers)
- Children in care have the same right to be educated in the least restrictive environment as their peers.
- Youth in care may be in residential programs. While they have a clear right to enroll in local public schools, they often attend on-site schools and may lose track educationally.

What the Law Requires

- Children in foster care are “entitled to all free school privileges accorded to resident school children of the district” and thus must be treated as resident children. 24 P.S. § 13-1305.
- Children in residential placements are legally entitled to attend the local public school. 24 P.S. § 13-1306
- The same federal and state laws (including special education and school discipline rules) apply to children in care.

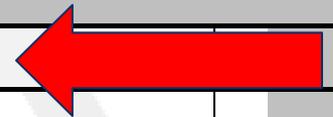
How to Ensure a Child is in the Right School Setting

4. SCHOOL SETTINGS/SITUATIONS

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What is the Child's Current School Placement?

- Regular Public School (most common)
- Private or Parochial School
- Charter School
 - Charter School **IS** a public school
 - Cyber Charter School (PDE)**
- ** NOTE: Many school districts also operate cyber school programs &/or offer on-line courses.
- On-site School (residential placement)
 - This may be a private academic school, approved private school (APS) or AEDY program

What is the Child's Current School Placement?

- Alternative Education (AEDY Placement)
 - Important laws re placement and program
- Placements for students with disabilities
 - Approved private school; instruction in the home
- Homebound Instruction
 - Only when medically necessary
- Homeschooling
 - Important laws re placement, program, assessments etc.

The Right School: Factors to Consider

- Will the child learn & be challenged in this setting?
- Is the child in the least restrictive setting?
- Will the child attend school full time?
- Will the child make progress/earn credits toward graduation?
- Will his education/special ed. needs be met?
- Will the child have access to the full range of educational opportunities and services (including vocational, AP, and extracurricular activities)?
- Will the child engage?

What Makes the School Placement Appropriate?

- Appropriate grade
- Appropriate classroom placement
- Credits earned
- Equal access to opportunities
- Access to needed remedial services
- Extra-curricular activities
- Supports Graduation plan
- Supports Transition plan

Special School Setting Issues

- Homebound
- Cyber Schools & Programs
- Residential Placements
- Alternative Education (AEDY)
- Out of School:
 - Suspensions
 - Expulsions

Homebound Instruction

- Only when “medically necessary”
- Students “excused from school” due to illness or other urgent reason with homebound instruction
- VERY limited hours – often **FIVE** per week
- Approval for temporary homebound instruction must be renewed every three months.
 - See 22 Pa. Code §11.25
- CANNOT be used to illegally exclude students
- Or discriminate on basis of disability
 - e.g., sickle cell case

Homeschooling

- A child/youth can only be taught at home by a properly qualified private tutor or through a “home education program” in which the parent, guardian, or person having legal custody of the student provides the resident school district with all necessary paperwork and complies with state requirements regarding subjects taught and hours of instruction.

For more information on requirements, see http://www.portal.state.pa.us/portal/server.pt/community/purdon%27s_statutes/7503/home_education_program/507313.

Cyber School

- Free and available to any student in the Commonwealth
- Often a poor option for educationally at risk students who need more instruction
- Number of instruction hours and truancy rules apply to children in cyber school
- Must have an adult assisting child at home
- Growing number of cyber options in districts

Private Schools

- Private schools – e.g. parochial schools– are “permissible” education placements.
- Special rules re special education
 - Children must still be identified – “child find”
 - Right to a FAPE if placed by school district
- Schools must accommodate children with disabilities under 504 if recipient of fed funds

Partial Hospitalization Programs

- The **school district where the student is currently living** is responsible for educating student in a partial day hospitalization program (PHP).
- May educate these students through homebound instruction. However, child/youth placed in a PHP should not receive homebound instruction in excess of thirty calendar days.
- The school district and PHP, if providing education services, must work to ensure the child's instruction prepares him or her for a successful transition back the school of residence.
- Consideration should be given as to whether the child can attend a regular public school for at least part of the day in order to ensure that the child is educated in the least restrictive environment. See 34 C.F.R. §§300.114-116.

Students with Disabilities: LRE

- Student with a disability has a right to be educated in the least restrictive environment (“LRE”).
- School district cannot require a student with a disability to go to a program or school just for students with disabilities unless it is determined to be necessary for that child as a result of the IEP process.
- Student with a disability has special rights in school disciplinary process.

Schools in Residential Programs

- A student can only be required to attend school on-site in a residential program if
 - the court has ordered the child to attend school at the facility
 - a parent or other person legally authorized to make education decisions for the child has agreed to the placement or
 - there is a student-specific reason relating to the safety and well-being of the child
- In some cases child may be offered:
 - Educational program at the residential placement operated by the host school district
 - Program operated by Intermediate Unit (“IU”)
 - On-site school operated by the institution, licensed by PDE

Schools in Residential Programs: No Bundling

- When a placement is made, there can be NO ASSUMPTION that the child will be included in the private provider's educational program.
- The decision regarding the educational portion of the child's day must be made on an individual basis by parents, guardians and public education officials with input from all knowledgeable sources.
- Presumption IN FAVOR of public school

Rights of Students in Residential Placements

- **Students have right to attend the local public school under 24 P.S. §13-1306**
 - Students reside in a "children's institution"
 - They are entitled to be educated in the public schools of the district where the institution is located – known as the “host” district
 - until they receive a diploma or complete the school term in which they turn 21
- The fact that the youth has not been in “regular school” or was expelled or dropped out or has disabilities or is in an RTF does not change this.

Rights of Students in Residential Placements

- Right to Attend Public School
- Right to Due Process
- Right to Parent Consent to Placement
- Right to a FAPE if child has disability
- Right to be educated in LRE
- Right to equal treatment
- Right to obtain credits

PDE Guidance states that the host school district remains responsible for ensuring that children receive education and special education services.

Alternative Education Placements

- Youth **MUST** meet the definition of a disruptive student:
 - a student who poses a clear threat to the safety and welfare of other students or the school staff, who creates an unsafe school environment or whose behavior materially interferes with the learning of other students or disrupts the overall education process. 24 P.S. §19-1901-C(5)
- Youth **MUST** receive due process in the form of an informal hearing unless student poses a “danger”
 - 22 Pa. Code §12.8 (c).
- Child **CANNOT** be placed in alt ed “automatically”
 - See *In Re Hoke v. Elizabethtown School District*

Alternative Education Placements

- Right to an **informal hearing not formal hearing**
- Precedes transfer unless “student’s presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process.”
 - Chance to show why student does not meet definition of disruptive student.
 - In most school districts, an informal hearing is truly informal, but in Philly, students have more rights at informal hearing, e.g., hearing must be held in front of impartial hearing officer.

Alternative Education Placements

- No “appeal” from transfer to alt. ed.
- However – May bring original action challenging decision in some cases (e.g., illegal search, first amendment, “abuse of discretion” must be egregious)
- Alt ed placement cannot “follow” the child to a new school district

Alternative Education (AEDY)

- It is a school discipline placement
 - Fewer hours AND more limited curriculum
- It is intended to be “temporary”
 - By law, all students **MUST** be reviewed every semester to determine whether child can return to regular setting (Need letters of support from child welfare, employer etc.)
- Must be offered counseling
- Are **STILL** entitled to a FAPE ...

Alternative Education & Special Education Students

- No student eligible for special education services pursuant to the Individuals with Disabilities Education Act (20 U.S.C. §1400 et seq.) shall be deemed a disruptive student **except as provided in 22 Pa. Code §14.143.**
- Any special education student placed in a disruptive youth program **must be allowed to “make normal academic progress in accord with his or her IEP.”**
- School districts **CANNOT** discriminate against students based on mental health disability or perceived disability by placing students in alt ed. (This includes disabilities related to behavior) See Section 504 of Rehab Act.

School Discipline Laws

Children OUT of School



School Discipline Laws

- “Rules and Regulations,” 24 P.S. § 5-510
- “Possession of Weapons Prohibited” (Act 26), 24 P.S. § 13-1317.2
- “Disruptive Students Program,” 24 P.S. § 19-1901-C; 24 P.S. § 19-1901-E
- “Students,” State Board of Education Regulations, Chapter 12
 - School Rules, 22 Pa. Code § 12.3
 - Exclusions from School, 22 Pa. Code § 12.6 (*and see* 24 P.S. § 13-1318)
 - Hearings, 22 Pa. Code § 12.8

ELC Fairness in School Discipline Manual:

http://www.elc-pa.org/pubs/pubs_discipline.html

Schools have BROAD Authority to Discipline Students...

- School boards & schools can “make reasonable and necessary rules governing the conduct of students in school.” 22 Pa. Code §12.3
- Schools can regulate student conduct during school hours, including time spent coming/leaving school.
- Schools have the authority to regulate out-of-school conduct only if it substantially disrupts school
- Cannot punish student for conduct that occurred before the student enrolled in the district (limited exception: weapon)

BEHAVIOR THAT CAN RESULT IN SCHOOL DISCIPLINE

ACT 26 (24 P.S. § 13-1317.2):

Possession of Weapons Prohibited:



School districts “shall expel, for a period of not less than one year, any student who is determined to have brought onto or is in possession of a weapon on any school property, any school-sponsored activity or any public conveyance providing transportation to a school or a school-sponsored activity.”



ACT 26 –WEAPONS DEFINED

“As used in this section, the term ‘weapon’ shall include, but not be limited to, any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle and any other tool, instrument or implement capable of causing serious bodily injury.” 24 P.S. § 13-1317.2 (g)

Safety Valve in Act 26



“The superintendent of a school district ... [or school board or hearing officer] may recommend **modifications** of such expulsion requirements for a student on a **case-by-case basis.**” 24 P.S. § 13-1317.2 (c)

COMMON FORMS OF DISCIPLINE AND PROCEDURAL REQUIREMENTS:

- Suspensions
- Expulsions
- Transfers to Alternative Education

SUSPENSIONS



- Exclusion from school for 1 - 10 consecutive school days.
- Can be imposed by principal, VP or other in charge of a school.
- Student must be informed of reasons for suspension and given opportunity to respond.
 - Exception: when health, safety or welfare of the school community is threatened. Notice and opportunity to be heard ASAP.
- Student's parents and superintendent must be informed of suspension in writing.
- In-school suspension is exclusion from classes but not from school. The regulation contains no time limit.

22 Pa. Code § 12.6(b)

22 Pa. Code § 12.7

SUSPENSIONS



Additional Requirements for Suspensions of 4-10 days

- Parents & student have the right to an **informal hearing** and:
 - Written notification of reasons for suspension
 - Sufficient advance notice of time and place of hearing
 - Student can question any witnesses present at the hearing
 - Student can speak and produce witnesses
 - Informal hearing must be held w/in first 5 days of suspension

22 Pa. Code §§ 12.6(b)(iv), 12.8 (c).

*Suspensions are not appealable



EXPULSIONS

- “Exclusion from school by the board of education for a period exceeding 10 school days and may be permanent expulsion from the school rolls.” 22 Pa. Code § 12.6(b)(2)
- All expulsions require a **formal hearing**. *Id.*
- Student *remains* in “regular class” unless at informal hearing school finds student is a “threat.” 22 Pa. Code § 12.6 (c)- (d).
- Formal hearing can be in front of board panel but must be approved by majority vote of **full board**. 22 Pa. Code § 12.8 (b).

EXPULSIONS – Due Process

Rights at the formal hearing include:

- Prior written notice
- Right to hire counsel
- Right to present witnesses, cross examine and testify
- Hearing must be recorded
- Written adjudication containing findings and reasons
- 30 days to appeal to the local court of common pleas (no automatic stay)

22 Pa. Code § 12.8 (b) (1)

EXPULSIONS

- Evidentiary issues at expulsion hearing:
 - School has burden of proving by a **preponderance of the evidence** that the student violated a school rule.
 - Circumstantial evidence may be used. *A.B. v. Slippery Rock Area School District*, Civ. No. 695, 2006 WL 2506068, *3 (Pa. Commw. Ct. 2006).
 - Under PA administrative law hearsay is admissible at expulsion hearings but it's “not competent, in and of itself, to support a finding. (Must be corroborating evidence).
 - Must object for the record.

Rights of Expelled Student

- If student is under 17, student must attend school. Can be another public school, charter school, private school, home schooling
- If none of these can be arranged, parent must state so in writing within 30 days of date of decision.
- Then District must “make provision for the student’s education.” 22 Pa. Code § 12.6(e)(2)
- What does “make provision” mean?

What to *expect* at **EXPLUSION** hearing

- Expulsion hearings are similar to other administrative law hearings.
- Expulsion hearings should occur within 15 days of the notification of the charges.
- Hearing will be recorded and a stenographer may be present
- The attorney for the district will present
- Who is the “hearing officer” at a expulsion hearing?
 - Often board member or a few board members.

What to *expect* after Expulsion Hearing

- In some districts, you will receive the findings of fact / conclusions of law and recommendation of the hearing officer within a few days. In larger districts, it may take months.
- You will be informed of when the full board will vote on the recommendation.
- Take this opportunity to address the full Board and tell the child's story

Steps to Prepare for a Hearing

- Request ALL the student's records, which you may need to do several times before you get a complete file. ELC can provide a standard release form.
- Talk to Student about the facts and identify witnesses who will support their story and school witnesses who will probably testify
- Meet with the parent AND the student and make sure they know WHEN and WHERE the hearing is.
- Obtain letters on student's behalf/statements regarding the incident or about the student, generally.

School Discipline Issues

- Charter Schools
 - Subject to same school discipline laws (even if some charters act as if they are not)
- English Language Learners
 - Parents and students have the right to notices and procedures in a language they understand
 - Issue at hearing can be whether student's English ability was a factor in the incident

Questions to Ask

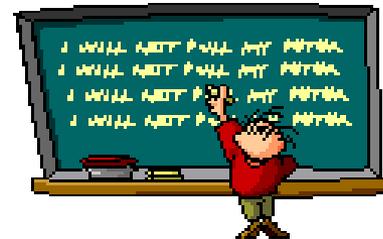


- Does the school have the *legal authority* to discipline the student?
 - Is the school disciplining the *correct* student?
- Has the school followed the proper procedures?
- Has the parent (or the school) ever requested that the child be tested for special education services?
- What education will the child receive if the child is transferred or expelled?
 - See **Appendix A - “Roadmap” for the attorney representing a student in a disciplinary case** in *Fairness in School Discipline in Pennsylvania: A Guide for Attorneys and Advocates who Represent Students*

School Discipline for Children with Disabilities

Schools have to take extra measures if the disciplinary sanction counts as a “**change in placement**” and if the misbehavior **is a manifestation of the child’s disability**.

- Child **must** have a **manifestation determination** within 10 days of incident **AND**
- If related to disability **child CANNOT** change placements unless **IDEA** parent consents.



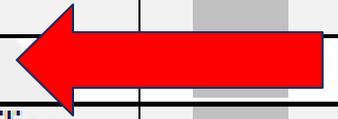
How to Ensure a Student is Receiving the Number of Instructional Hours Required by Law

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What are the minimum amount of instructional hours for a student?

- Pre-K to K: 2.5 hours each day
- 1st-2nd Grade: 5 hours each day
- 7th-12th Grade: 5.5 hours each day
- Alternative Education Programs must offer at least 20 hours of academic instruction plus 2.5 hours of counseling per week.
- A student receiving homebound instruction may receive fewer hours, but a school cannot require a child to receive homebound instruction unless the student's medical condition necessitates it.

What are the minimum amount of instructional hours for a student?

- In one case, a drug rehabilitation facility with 65 students in residence contacted ELC because the resident school district said the students only needed five instructional hours per week.
- After an administrative complaint was filed, PDE decided that the students were entitled to the full hours of instructional time.

What are the obligations for instructional time for expelled students?

- The expelling school district maintains the responsibility to provide some form of education to the expelled student, under the age of 17, unless the student relocates to another school district.
- If a student with a disability is expelled, the student is still entitled to (1) an education that will enable the student to progress towards meeting IEP goals, and (2) a functional behavior assessment and behavior interventions.

How to Ensure a That a School Addresses a Student's Talents or Interests

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How to Address a Student's Needs

- Work with the student to identify his or her skills and interests, and contact the school to help meet the student's needs.
- Work with the school, school counselor, regular or special education teacher or director to see whether the child/youth qualifies for a gifted program, Advanced Placement (AP) courses, vocational education, or relevant extra-curricular activities.
- The school may be able to provide aptitude or vocational testing.



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