

Educational Aftercare & Reintegration Toolkit for Juvenile Justice Professionals

A Toolkit for
Juvenile Justice Professionals
in Pennsylvania

by Education Law Center – PA

ModelsforChange
Systems Reform in Juvenile Justice

Prepared by Jennifer Lowman, Esq., Education Law Center – PA and
Shari A. Mamas, Esq. (formerly with Education Law Center, now with the Disability Rights Network of Pennsylvania)

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ModelsforChange
Systems Reform in Juvenile Justice

Models for Change

Models for Change is an effort to create successful and replicable models of juvenile justice reform through targeted investments in key states, with core support from the John D. and Catherine T. MacArthur Foundation. Models for Change seeks to accelerate progress toward a more effective, fair, and developmentally sound juvenile justice system that holds young people accountable for their actions, provides for their rehabilitation, protects them from harm, increases their life chances, and manages the risk they pose to themselves and to the public. The initiative is underway in Illinois, Pennsylvania, Louisiana, and Washington, and through action networks focusing on key issues, in California, Colorado, Connecticut, Florida, Kansas, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Texas, and Wisconsin.

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About This Toolkit

In 2005-2006, juvenile justice professionals in Pennsylvania's 67 counties were assessed to determine their current aftercare practices. As a result of this assessment, this Toolkit was written in 2006 to address one of their main areas of concern: helping youth returning from placement reintegrate back into school. The Education Law Center (ELC) worked with the Aftercare Specialists from the Juvenile Court Judges' Commission (JCJC) and the Pennsylvania Council of Chief Juvenile Probation Officers (Chief's Council) to develop the content of the Toolkit and publish it with financial support from the MacArthur Foundation.

ELC has conducted numerous trainings based on the Toolkit over the past three years. The Toolkit and the trainings have been extremely well-received by juvenile probation officers, who have told ELC that they use the information frequently when working with their clients to prepare for their return to school. Due to feedback we have received during these trainings and changes in the law since 2006, we have updated and revised the Toolkit significantly. We hope you find it to be useful!

How to Use This Toolkit

Youth who are adjudicated delinquent frequently encounter problems in obtaining appropriate education services in placement, as well as when they are released and reintegrated into their communities. This Toolkit provides the basic information and resources needed to help juvenile probation officers (JPOs) and other juvenile justice professionals overcome (or at least minimize) these problems. While this Toolkit is specifically directed to JPOs, this Toolkit may also be useful for the youth's attorney or for other juvenile justice professionals to help them plan for and participate in the educational aftercare of their clients. In particular, by reviewing this Toolkit, a youth's attorney can be better informed about how a particular delinquency placement may impact upon a youth's return to school, and should be better able to advocate for a placement that will provide the youth with the educational supports he or she needs in order to facilitate a smoother reintegration back into school.

The Toolkit should serve as a roadmap for identifying issues related to the education of delinquent youth during placement and when they are released and reintegrated into their communities. It also can be used to sort out education problems that involve the legal rights or "entitlements" of delinquent youth as compared to problems that raise policy and/or practice issues (and which, as a result, may not have an easy solution). The Toolkit should also act as a guide to resources that are available to help juvenile justice professionals answer educational questions and as a link to individuals and organizations that can provide additional technical support and assistance with complicated issues.

When you are facing an educational issue involving a delinquent youth, you should:

- 1) Consult the substantive sections of this Toolkit that cover the issue(s) pertaining to your client. You will find information to assist you in identifying the educational rights of your client in all phases of aftercare and guidance on how to proceed.

- 2) Review the “**TOOLS**” referenced in the substantive sections to get more detailed information about what to do in your client’s specific situation. These Tools are policy guidance documents developed by the Pennsylvania Department of Education (called Basic Education Circulars or BECs), school law regulations, and fact sheets developed by the Education Law Center that interpret federal and state education laws. We have also provided links throughout this Toolkit to other documents you might find useful. We did not include all these documents in the Toolkit itself because it would have made the Toolkit too long. If you are unable to obtain any of the documents referenced in this document, please contact the Education Law Center.
- 3) Contact one of the Aftercare Specialists appointed by the Juvenile Court Judges’ Commission (JCJC), the Pennsylvania Council of Chief Juvenile Probation Officers (Chiefs’ Association), and the Center for Juvenile Justice Training and Research to discuss complicated issues and receive technical support. **TOOL 17: Aftercare Specialist Contact Information** provides the contact information for the Aftercare Specialist assigned to your county.
- 4) Use the resources provided by the Education Law Center (ELC) and the Pennsylvania Department of Education (PDE) for further assistance. Specific information about these resources is contained in **Section 8** of this Toolkit: **Where to Go for More Help and Information** on page 43.

TIP: As a preliminary step, you may want to review **TOOL 1: Glossary of Educational Terms and Acronyms** to become familiar with some of the terminology used in the education system.

New Information in the Toolkit and New Tools

All sections of this Toolkit have been updated and revised from the 2006 edition. Certain topics in the Toolkit have been expanded upon in response to feedback from juvenile justice professionals across Pennsylvania. In particular, the sections on student enrollment, school attendance and truancy, and student discipline go into greater detail because many JPOs have raised questions about these topics.

We have also included some new Tools. For example, we have added the Pennsylvania Department of Education’s (PDE) new *Enrollment of Students* BEC which includes a process for filing a complaint with PDE if you cannot get a student enrolled in school. We have included ELC’s fact sheet about this complaint process which provides a sample letter for filing a complaint. We have added PDE’s *Compulsory Attendance and Truancy Elimination Plan* BEC and ELC’s fact sheet on school attendance and truancy.

Finally, some of the BECs included in this Toolkit are in the process of being revised by PDE. **Always make sure to check PDE’s website to see if a new version of a particular BEC has been issued.** Go to www.pde.state.us and on the left-hand side of the page, under “Find Documents,” click on “Basic Education Circulars.”

Checklist of Key Activities from Pre-Placement through Release and Reintegration

At this point, some readers may want to turn to **TOOL 18: Checklist of Key Activities from Pre-Placement through Release and Reintegration**. This is a quick reference list of issues and activities that a juvenile justice professional may want to consider during all phases of aftercare from the pre-placement dispositional hearing through release and reintegration back into the community. All the issues and activities are discussed in more detail in the substantive sections of the Toolkit. The Checklist is only meant as a general guide, and it is not exhaustive.

Section One:

Introduction

A. Who participates in ensuring appropriate educational aftercare for delinquent youth?

There are many “key players” when it comes to ensuring appropriate educational aftercare for delinquent youth. Many individuals and organizations must work together and organize their services to help these youth transition smoothly from a delinquency placement to a community setting and experience educational success.

The **youth’s parent** must work with the juvenile justice and education systems to facilitate the movement of the youth from one to the other and be intimately involved with the educational planning so that the parent understands the terms of probation and will be prepared to advocate for the youth once he or she leaves placement.

The **youth** must “buy in” to the planned educational program and be willing and ready to comply with the terms of this program and juvenile probation.

The **youth’s legal representative** must be knowledgeable about the educational needs of the student and advocate for appropriate educational services while in placement and during the reintegration phase of aftercare.

The **court** must continue its oversight and stress the importance of education and/or require that the youth complete his or her education.

And, the **juvenile placement facility**, the **host school district**, and the **home school district** must maintain and transmit education records in a timely manner and otherwise ensure that the youth receives appropriate educational services before, during, and after placement in a residential facility. Generally, the home school district pays the host school district for the educational portion of the youth’s placement. While payment issues will not be covered in this Toolkit, funding issues should not have an impact on the provision of education to the student while in placement or on enrollment of the student in school after release from placement.

B. What is the role of the JPO in educational aftercare?

A **JPO** has an important and significant role in the educational aftercare of delinquent youth. A JPO is no longer just an officer who simply enforces the terms of probation, but is instead an advocate who promotes the best interests of the youth consistent with aftercare system principles. Under a “best practices” model, a JPO’s role in educational aftercare is:

- Fulfilling the obligations as a monitor, as well as a planner for re-entry, and supporting a youth who has left residential care when he or she returns to a community educational placement.
- Attending the initial case planning conference to ensure that educational goals are clearly understood and a solid plan is put in place to achieve them.
- Collaborating with residential treatment staff on a single plan, developed within 30 days of placement, that integrates treatment and aftercare services, including educational programming and goals developed in consultation with the appropriate school staff from the home and host school districts.
- Advocating on behalf of the client so that any existing educational gaps will be addressed. This will require ongoing communication with the youth, family, and staff from the residential facility, home school district, and host school district.
- Overseeing academic and rehabilitative progress, maintaining contact with the family to manage a successful return, and completing a post-release plan with the youth that outlines further goals and a plan for achieving them. All appropriate educational options should be reviewed and considered (such as attending a neighborhood school, charter school, cyber charter school, alternative education program, taking the GED tests, etc.).

- Coordinating meetings at the school where the youth will be enrolled approximately three to four weeks prior to the recommended release date from placement, and inviting parents, an education specialist (when applicable), and key education personnel from the residential placement facility to attend. These meetings should result in the establishment of clear guidelines and expectations for the youth's return to school during the aftercare phase.
- Adjusting the intensity of supervision proportionate to the risks and needs of the delinquent youth and developing appropriate linkages within the juvenile justice and education systems to facilitate the smooth reintegration of the youth into a community educational placement.

Section Two:

Pre-Placement Dispositional Hearing

A. How do I determine the educational needs of a delinquent youth?

While it may appear that the bulk of a JPO's work begins at the post-disposition phase, a JPO can play an important role at disposition. In doing so, the JPO is laying a significant foundation for a youth's successful reintegration back into school after placement.

As a JPO, you will make a placement recommendation to the judge at the dispositional hearing. The educational needs of the delinquent youth should be a significant factor in making your recommendation.

The best way to determine the educational needs of the youth is to **talk** to those who are familiar with the youth's educational status (teachers, school administrators, family members, and the youth). In particular, you should seek out the involvement and input of the education "experts" – the youth's classroom teachers and other school staff who are familiar with the youth to get a complete picture of the youth's strengths and needs. The more you can engage school staff in the initial educational planning process for a delinquent youth, the easier it should be to ensure a more positive reintegration when the youth returns from placement.

You should also **review** his or her education records. Parents have a right to see the public school education records of their child if the child is under 18 (when youth become 18 years old, they have the right to see and control the release of their own records). **Education records** include most of the information a public school keeps on a student, including report cards, disciplinary reports, attendance records, standardized test results (like PSSA scores), and special education reports and programs (like Evaluation Reports and Individualized Education Programs). However, personal notes of a teacher or other school official that are kept private and are not shared with anyone are not considered to be education records.

A parent (or a legal guardian or an individual acting as a parent in the absence of a parent or a guardian) can "release" his or her right to inspect and review the student's education records to a JPO or other juvenile justice professional. A JPO can use **TOOL 2: Authorization to Release Education Records** to send to a school district. There is no absolute right to have copies of the records sent to you, but many school districts will do so, and you can only be charged for the records up to the actual cost of copying. Schools are only required to comply with a request to review records within **45 calendar days**. As such, it is a better practice to call the school and make an appointment to review the records at a time that is convenient for you and the school staff, and that allows you ample time to go over the information and make an informed placement recommendation to the judge.

TIP: A youth's parents may already have copies of many of the youth's education records, so you should also ask the parents what records they may have. In addition, when you ask the school to see the records, make sure you ask to see ALL the student's records. Many school districts keep records in several different locations (such as at a central administration building and at the child's school), and you want to make sure the school collects the student's entire file.

B. What should I consider in making placement recommendations to the judge?

Different information gathered from reviewing a delinquent youth's education records and talking with teachers, school administrators, family members, and the youth will help you identify an appropriate placement (or placements) and the educational services that will be needed in that setting. Present levels of academic performance and ability can be determined

from reviewing class tests, school projects, homework, and standards-based tests like the Pennsylvania Statewide System of Assessment (PSSA). (The PSSA is currently given to public school students in grades 3 through 8 and 11 for math and reading, in grades 5, 8, and 11 for writing, and in grades 4, 8 and 11 for science.) In-school behavior and the youth's relationship with teachers, administrators, and peers will help you understand the level of his or her social skills and behavioral needs (if any). Special education records will reveal if the student has been identified as having a disability and what services and accommodations are necessary to ensure meaningful educational progress. Input from family members and friends can give you insight into the youth's educational strengths, needs, likes, dislikes, and goals.

Initial placement decisions will ultimately have an impact upon a youth's reintegration into school and/or other community education settings, so a juvenile justice professional should be well-prepared and exercise caution before recommending a particular delinquency placement. For example, the type of academic instruction and educational services in some short-term programs may not align with the academic standards a student will be expected to meet in a post-placement school setting. The staff at some short-term delinquency programs may not be "highly qualified" to teach important core academic subjects like public school teachers would be. Consequently, a short-term placement may not be appropriate for a student who needs intensive academic instruction and who will suffer from a lapse in traditional educational programming. This could be especially true for a student with a disability. For some guidance on implementing special education programs and practices in short-term detention facilities, please see the National Center on Education, Disability, and Juvenile Justice (EDJJ) manual entitled *Meeting the Educational Needs of Students with Disabilities in Short-Term Detention Facilities* at: <http://www.edjj.org/Publications/CD/Meeting%20the%20Educational%20Needs%20of%20Students.pdf> (please note that federal special education law has changed somewhat since this manual was written).

Section Three:

Educational Services in Placement

A. What educational services does a delinquent youth receive at a juvenile placement facility?

There are many different ways that education can be provided to youth in the various types of juvenile placement facilities. For example, education programs at State-run institutions are provided by the Bureau of Correction Education (often through a contract with the local Intermediate Unit). Some other facilities may send youth to the local school district in which the facility is located (called the “host” district), or the local school district or Intermediate Unit may staff and run the educational program on the grounds of the facility. Some privately-operated facilities may receive a license from PDE to operate a private academic school on the grounds of the facility. Some facilities may offer GED test preparation only, while others may be approved to operate an alternative education for disruptive youth program.

The type and amount of education that a youth will receive while in placement can vary tremendously depending upon the type of placement, as do the requirements for teacher certification, PSSA participation, etc. As such, the JPO’s **most important tasks** when planning for a youth’s education while in placement are to: 1) **identify** the youth’s educational needs and establish appropriate educational goals in conjunction with the home school district and the youth’s parents, and 2) make sure that the facility in which the youth is placed can **meet** those needs and goals. For example, if a facility only provides GED test preparation, but the goal is to return the youth to a regular high school upon release from placement, then the youth should not be placed in that facility. Or, if a youth is more likely to complete his senior year of high school while in placement, the issue of which school district will issue the youth a diploma should be resolved at the outset of placement. If the youth is in need of remedial academic support, you should make sure that the institution has a strong credit recovery program, and that the program’s coursework will correspond to the home school district’s curriculum to ensure any credits earned will transfer back to the home district.

Youth who attend a **public school** while in placement must receive the same education as all other students. This includes the same curriculum that is aligned with State academic standards, the same number of school days and hours of instruction, the same qualifications for educational personnel, and the same access to special education services and accommodations. At least 180 days of instruction must be provided each school year and at least 990 hours of instruction at the secondary level and 900 hours at the elementary level must be provided on a yearly basis. Education personnel must be certified and be “highly qualified” if teaching core academic subjects. Special education services and accommodations must be individualized. (For more information on special education, see Section 6 of this Toolkit: *Special Education and Other In-School Services*.)

Youth who attend a public school while in placement should also participate in the PSSA if they are in an assessment grade level. The PSSA is currently given to public school students in grades 3 through 8 and 11 for math and reading, in grades 5, 8, and 11 for writing, and in grades 4, 8 and 11 for science.

Youth who are in their senior year of high school should be able to work toward and receive a **high school diploma** while they are in the placement facility. Efforts to understand and resolve with the host and home school districts at the time of placement or early in the placement period the issue of which district will issue the diploma can go a long way toward avoiding conflicts when youth complete their senior year. This is an area, however, where disputes can arise about which school district is responsible for issuing the diploma and what work and credits count toward the graduation requirements. If you are working with an adjudicated student for whom receipt of a diploma becomes an issue, please contact one of the Aftercare Specialists (see **TOOL 17**) or the Education Law Center for technical assistance. If a youth is confined in a State-operated juvenile correctional facility located in Pennsylvania, the Pennsylvania Department of Education may issue a Commonwealth Secondary School Diploma to that youth if he

or she completes the required secondary school curriculum as specified by the Department.

A common barrier to ensuring that a youth receives appropriate educational services while in placement can be the delay experienced in getting a youth's education records from his or her public school. In some limited circumstances, the law permits the transfer of education records to law enforcement and judicial authorities without parental consent. In addition, parental consent is not necessary to transfer records from a public school to another educational agency that will educate the child. If records are requested by a school district that provides educational services to youth placed in a juvenile facility within its boundaries, State law requires the school district or charter school receiving the request to forward the education records within 10 business days. If records are requested by a State-operated institution for delinquent youth, PDE has advised that requests for education records by such an institution should be honored by public schools within 10 business days. For more information about transfer of records, see PDE's BEC entitled *Transfer of Records* at www.pde.state.pa.us.

In every case, a JPO should prompt the juvenile placement facility (or the school district or Intermediate Unit providing educational services within the facility) to request education records from the youth's home school district as soon as possible to expedite the records transfer. A JPO can minimize administrative delays in the transfer of records by including the youth's home district in the educational planning process before a youth is ordered to a particular placement. If the education records are not transferred or transfer is delayed significantly, a JPO can advocate for the placement facility to conduct its own assessments to help identify appropriate educational services for a student.

It is also a good idea for the JPO to advocate that the student work on the State academic standards appropriate for his or her age and grade level, since all school districts (including the youth's home district) must have a curriculum that is geared toward these standards. Making sure a youth is being instructed and doing work based on State standards can help make the reintegration back into the home school district smoother. For more information about the State's academic standards, go to the Pennsylvania Department of Education's website (www.pde.state.pa.us) and click on "Pre K-12 Schools," then "Assessment," then "Standards".

Of course, if you have received copies of the youth's education records from the school prior to the dispositional hearing, you

can share these records with the placement facility with the parent's consent (see Section 2.A. of this Toolkit: *How Do I Determine the Educational Needs of the Delinquent Youth?*). In addition, if the parent has copies of the youth's education records, he or she should be encouraged to share copies of those documents with the placement facility. Providing the records *directly* to the facility can be the quickest way of ensuring the facility has all the necessary records.

A Resource for Support: One resource to keep in mind if you are working to improve the education a delinquent youth receives is the **Pennsylvania Academic and Career/Technical Training Alliance (PACTT)**.

PACTT focuses on improving the academic and career/technical training that delinquent young people receive, with a particular focus on what happens in residential placement and upon return to the community. It is a grant-funded project of the Pennsylvania Council of Chief Juvenile Probation Officers. PACTT can provide support and technical assistance to probation departments and delinquent residential facilities with questions about the education and job training needs of delinquent youth. You can get more information about the PACTT Alliance at www.pacttalliance.org.

B. What educational services does a youth receive at an adult correctional facility?

In general, students who are under the age of 21 and who have not graduated from high school (referred to as "school age") in adult State correctional institutions receive full education programs, but students in adult local (county) correctional facilities receive limited education services. The law further differentiates between school-age individuals held in local correctional facilities who have been *charged* with a criminal offense and those who have been *convicted* of a criminal offense.

School-age students who are confined to an adult local correctional institution who have been charged with a criminal offense are eligible for educational services in the same manner and to the same extent as a student who has been placed in an alternative education for disruptive youth program. Alternative education for disruptive youth programs may operate outside the normal school day, and may modify other traditional school requirements, including the number of days and hours of instruction.

School-age students who are confined to an adult local correctional facility following a conviction for a criminal offense are eligible for educational services in the same manner and to the same extent as a student who has been expelled from his or her school district. Accordingly, incarcerated students who are under 17 will receive some education services, but no specific amount is guaranteed. Students who are 17 and over have no entitlement to further education, unless they are identified as having a disability.

Students with disabilities have additional educational rights while incarcerated in adult local correctional facilities. In order to receive federal funding, the federal Individual with Disabilities Education Act (IDEA) requires States to ensure that students with disabilities receive a free appropriate public education (FAPE). (See Section 6 of this Toolkit: *Special Education and Other In-School Services* for more information about the IDEA and special education.) Consequently, eligible students are entitled to receive special education services both when they are charged with a criminal offense and after they have been convicted of a criminal offense. School districts, within whose boundaries an adult local correctional facility is located, must ensure that students within the facility are evaluated, identified, and provided appropriate special education services consistent with federal mandates. However, the IDEA does **not** require school districts to ensure that students with disabilities who are convicted as adults and incarcerated in adult facilities participate in State or district-wide assessments (like the PSSA) or to provide transition planning and services to students who will turn 21 before they are released from prison.

For more detailed information on educating students in adult local correctional facilities, see PDE's BEC entitled *Education Services for Students Incarcerated* at www.pde.state.pa.us.

Section Four:

Release and Reintegration into the Community

This section covers detailed information about what a juvenile justice professional needs to know to plan for the education and the reintegration of a youth after he or she is released from a delinquency placement. It explains the range of educational placement options available, starting with placement in a neighborhood school, and it discusses the various types of living arrangements that impact upon where a child has the right to attend school. It also covers exceptions to the compulsory school attendance requirement.

A. The Right to Attend School

Students in Pennsylvania, including delinquent youth, have a right to attend school in the school district in which they live until the end of the school term in which the student turns 21 or until the student graduates from high school (whichever occurs first). Students who turn 21 during the school term are entitled to finish that school term. *Even a student who previously dropped out of school has the right to reenroll up until the age of 21 (provided the student has not received a high school diploma)* In addition, if a student is under age 21 and has passed the GED Tests and received a Commonwealth Secondary School Diploma, that student still has the right to reenroll in school and work toward a regular high school diploma. See page 23 of this Section for more information about the GED Tests. There are different rules if the child has been expelled from a public school. See page 23 about *Options for Expelled Students* in this Section.

B. Compulsory School Attendance

Children between the ages of eight (8) (or when the child starts first grade, if earlier) and seventeen are of “compulsory school age.” (In Philadelphia, compulsory school age starts at age six.) They *must* attend public or private school or participate in an approved education program (such as homeschooling) or potentially face truancy charges filed by their school district. There are limited exceptions to this mandatory school

attendance requirement, described in *Exceptions to Compulsory School Attendance* on page 25 of this Section.

C. Determining the Educational Placement – A Range of Options

When planning for the release of a delinquent youth from a juvenile justice placement facility, a juvenile justice professional should identify, review, and consider all the possible educational options available when the student is released and help facilitate the student’s movement to the appropriate program. Many factors, including the student’s age, preferences and abilities, the family’s wishes, and the court’s mandates will weigh in this determination.

The following is a range of educational placement options that can be considered based on the individual circumstances of your client.

NOTE ABOUT ENGLISH LANGUAGE LEARNERS:

Keep in mind that students and families whose native language is not English (“English language learners”) have certain rights in all public school settings, including not only regular schools but also charter schools and alternative education programs. These include the right, if the student is not yet proficient in English, to daily instruction in “English as a Second Language” (ESL), as well as to adaptations and modifications in other classes as necessary to meet the student’s language needs. *Thus, if a proposed placement does not offer these services, placing the student there would be improper under both Pennsylvania and federal law.* Also required, in any public school setting, are translation and interpretation services for non-English-speaking *parents*. For more information, see PDE’s Basic Education Circular entitled *Educating Students With Limited English Proficiency (LEP) and English Language Learners (ELL)* at www.pde.state.pa.us.

1. *Neighborhood School*

Reintegration into a neighborhood public school is generally the preferred choice for many youth returning from a delinquency placement to the community. If a child will enroll in his or her neighborhood school upon release from residential placement, a juvenile justice professional may *first* have to determine what the “home” school district is for that student and *then* determine what the child’s specific school in the district will be.

b. Step One: Determining the Child’s “Home” School District: Where does the child live and with whom?

In Pennsylvania, a child has the right to attend school where he or she lives with his parent, guardian, or caregiver. This is called a “**home**” school district. The exact neighborhood school which the child will attend generally depends on where the child lives within the “home” district.

Once the “home” school district is determined, then the child has the right to be educated by that district. The enrollment process will be discussed in greater detail in Section 5 under *Enrollment in the Home District* on page 26.

i. Children Living with Their Parents/Legal Guardians

A student has the right to attend public school in the school district where he or she lives with his or her parents or a legal guardian. If the student’s parents live in different school districts, the student may attend school in the district where he or she lives with a parent most of the time, unless a court order or court approved custody agreement specifies otherwise. If the parents have joint custody and the student spends an equal amount of time with each parent, the parents may choose to enroll the student in either district (but not both).

ii. Children Living with a Non-Parent Resident of Another School District

A child living with a relative or other adult in a school district other than where his or her parents live can attend school in

that district where he or she lives **if:**

A. The resident adult has been determined by a court to be the child’s custodian or guardian.

OR

B. The resident meets *all* of the following criteria:

- a. The resident is not receiving any personal compensation or gain for having the student live in his or her home (the following payments are **not** considered personal compensation: receiving public benefits such as SSI, TANF, pre-adoptive payments, support from the military or military personnel, maintenance on public or private health insurance, child support, or other support payments on behalf of the child);
- b. The resident intends for the student to live there all year long, and not just for the school term; and
- c. The resident is willing to assume responsibility for the child with regard to school matters.

The school district may request that the resident file a notarized **affidavit** (often called a “Sworn Statement By Resident Under Section 13-1302”) with the district stating that the above requirements have been met. The district may also ask for reasonable documentation to support the affidavit. For a **sample affidavit** and examples of documentation a district can reasonably request to support the affidavit, see Attachments B and C of **TOOL 3: Enrollment of Students BEC**. For more information about enrollment requirements, please see Section 5 of this Toolkit and ELC’s fact sheet entitled *How to Enroll a Child Living with Someone Other than A Parent* at www.elc-pa.org

iii. Children Living in Institutional Settings

School districts must educate students living in “children’s institutions” within the district’s boundaries. “Children’s institutions” include any agency, supervised or licensed shelter,

group home, maternity home, residence, facility, or orphanage for the care or training of children and adolescents. Whenever appropriate, children in such institutions should be educated in a regular school in the host school district (as opposed to being educated in a program located on the grounds of the institution).

The “host” school district is responsible for the education of children living in institutions in their district even if those children are not attending the local public school. This includes providing for the child’s special education needs and participating in IEP Team meetings at residential placements. The fact that a child’s education may be paid for by the child’s “home” district (where the child’s parent or guardian resides) does not change the host school district’s obligation. For more information about the “host” district responsibilities, see **TOOL 4: Nonresident Students in Institutions BEC** and PDE’s BEC entitled *Educational Portions of “Non-Educational” Placements* available at PDE’s website (www.pde.state.pa.us and click on “Basic Education Circulars” on the left side of the home page). In general, the host school district provides the education and the home school district (where the child’s parent or guardian resides) reimburses the host school district. A delay in payment by the home district should not delay or impact upon the host district’s provision of education to the child.

A child who has been placed in a Pennsylvania facility and whose parents live out of state may still be entitled to attend the local schools. The child must first establish that he or she is a resident of Pennsylvania. For more information about how to do this, see PDE’s BEC entitled *Determination of Residence of Children Living in Pennsylvania Institutions* available at PDE’s website.

iv. Youth in Foster Care

Youth living with foster families have the right to attend school where the foster family lives, regardless of where their birth parents reside. They should be treated in the same manner as students who live in the school district with their birth families, and schools cannot place additional enrollment requirements on children in foster care. See **TOOL 3: Enrollment of Students BEC**. For more information about enrollment requirements, please see Section 5 of this Toolkit.

v. Youth Who Live on Their Own (Emancipated Minors)

Youth who are under 21, and who can show that they have established a home apart from the control and support of

their parents or guardians, are considered to be “emancipated minors” for school purposes. See **TOOL 5: Entitlement of Resident Children to Attend Public School** (22 Pa. Code § 11.11). They can attend school in the district in which they live, regardless of where their parents or guardians live. A student who is married and living with his or her spouse is emancipated for school purposes and can attend school where he or she lives. For guidance on how to enroll an emancipated minor in school, please see the Education Law Center’s website at www.elc-pa.org (click on “Publications & Materials” and then click on “Residency & Enrollment”).

You do not have to be emancipated by a court to be considered emancipated for school enrollment purposes. **Being an “emancipated minor” for school enrollment purposes is not the same as having a court emancipate a youth.** The process for being declared emancipated in Pennsylvania varies from county to county. You should contact the Juvenile Law Center at 1-800-875-8887 if you have questions about the emancipation process.

vi. Youth Who are Homeless

A federal law called the McKinney-Vento Act provides substantial protections for homeless youth to make sure that they continue to attend school. Youth are considered to be “homeless” for school purposes under this law if they:

- Lack a permanent home (meaning a fixed, regular, and adequate place to stay at night);
- Live in a temporary shelter (like a homeless shelter or a motel);
- Live in a space not usually used as a residence (such as a car or abandoned building);
- Live with friends or relatives because they do not have a home (for example, the family lost their home due to a foreclosure or was evicted from an apartment due to failure to pay rent);
- Have run away or have been abandoned or forced out of their homes by their parents or caretakers, separated from their parents for any other reason or are “not in the physical custody of a parent or guardian.” These youth are called “unaccompanied youth” and are considered homeless under federal law; or
- Are awaiting foster care placement.

NOTE: A child “awaiting foster care placement” includes a child who is under the jurisdiction of a child welfare agency and is living in a shelter, emergency, respite or interim foster care, kinship care or in an evaluation or diagnostic center or placement. Other children awaiting placement may also qualify. You should consult the county children and youth agency to determine if the child falls into this category.

Homeless youth have the following rights:

- They are entitled to the same free public education and access to services and school programs as all other students.
- They have the right to immediate enrollment in school in the school district in which they are now living, even though the living arrangements may be temporary. If a homeless youth is missing documents required for enrollment, the school district must enroll the youth first, and then seek the records after the child has already started school.
- A homeless student can stay in the same school he or she attended prior to becoming homeless (called the school of origin), if that is what is best for him or her, even if he or she has moved to another school district. Homeless youth have the right to remain in their “school of origin” for the entire school year in which they became homeless.
- Homeless students can gain a permanent residence in a new district during the academic year, but can still remain in the old school district for the rest of that year regardless of where they are currently living (or, if a new home is gained over the summer, they can remain in the old school district for the next academic year). The school districts involved must arrange and pay for transportation of the student.
- Homeless students have the right to receive help from the school district’s “McKinney-Vento liaison” in order to enroll in school, get records, and explain the child’s special legal protections.

For more detailed information about the education rights of homeless youth, see ELC’s fact sheet entitled ***The Right of Homeless Children to Attend School in Pennsylvania*** at www.elc-pa.org. (ELC has other materials about the education of homeless youth on its website, including a guide about how to enroll a homeless youth). Also see PDE’s ***Education for Homeless Youth BEC*** (updated on February 29, 2008) available at www.pde.state.pa.us.

b. Step Two: Determining In-District School or Specific School Placement Options

Once the school district in which the youth will attend school is determined, you will have to review any district policies that will affect the decision about the specific school to which the student will be assigned. For example, you will need to consider **district “feeder” patterns** (how the district assigns students to each school, which is usually done on a geographic basis) and any **administrative transfer policies** that might be applied due to past in-school violations by the student (for instance, the student may have been assigned to an alternative education program prior to his juvenile placement, and the district may want the student to return to that program). You will also need to consider **grade level placement** and **class scheduling options**.

NOTE: Some school districts may refuse to accept some or all of the credits a youth earned during his or her stay at a juvenile placement facility. You should advocate that the youth’s home school district accept the credits the youth has earned in placement. If you are unable to work out an agreement with a school district about the number of credits a student returning from placement should have, you should contact one of the Aftercare Specialists listed at **TOOL 17** for advice.

There is NO absolute right to attend a neighborhood school within a school district. The district has discretion over which school a student will attend within the district (consistent with the law) and the district’s assignment policies can impact the placement. A school placement decision will be also be guided by the student’s educational placement and academic schedule before juvenile placement as well as what curriculum the student worked on in placement and credits earned as a result. If the child or family prefers High School A to High School B in the district, they certainly can request such a placement, but the ultimate school placement decision rests with the district.

c. Process for Transitioning to a School Placement in the School District of Philadelphia

Youth who will be returning to the School District of Philadelphia from a juvenile delinquency placement or adult correctional facility have a separate “transition” process that first must be followed to determine their school assignment.

The student must usually first attend a transition center operated by the District for a period not to exceed four weeks. Generally, the student attends a program called Reti-Wrap for two consecutive weeks. During this time, the District must develop a transition plan for the student that includes academic goals, identifies school and community services appropriate to the needs of the student, and provides for the student’s direct return to the regular classroom or establishes the terms

and conditions the student must meet prior to returning to the regular classroom. The District will recommend an educational placement for the student. The District may recommend that the student return to a regular public school, an alternative education program for disruptive youth, an accelerated program, a GED program, or another program.

NOTE: Unless the student has been expelled from the School District of Philadelphia, the student has the right to work toward a high school diploma and should not be forced to enter a GED program or some other accelerated program. This does not just apply to Philadelphia – all students have the right to work toward a high school diploma until the end of the school term in which they turn 21.

If the District wants to place the child in an alternative education program for disruptive youth, the child has some due process rights. Like any other student being transferred to an alternative education program, students returning from delinquency placement are entitled to an informal hearing prior to being placed in an alternative program. The purpose of the hearing is to determine whether or not the student is **currently fit** to return to the regular classroom. Factors the District should consider include: whether or not the incident causing the adjudication occurred at school or at a school-sponsored event, the child's behavior in placement, and the recommendations of teachers and other adults, such as juvenile probation officers, who have worked with the youth. Contact the Education Law Center if you believe a youth who is returning from a delinquency placement in Philadelphia is being inappropriately transferred to an alternative education program. See pages 21-22 of this Section under *Alternative Education for Disruptive Youth Programs* and page 41 of Section 7 under *Disciplinary Transfers* for more information about this topic.

2. Charter Schools/Cyber Charter Schools

Charter schools and cyber charter schools offer other educational options for some youth returning from a delinquency placement. Charter schools are public schools created by agreement (a "charter") with a local school board. Cyber charter schools are public schools that are created by agreement with the Pennsylvania Department of Education. Cyber charter schools provide most of their instruction to students through the Internet or by other electronic means.

Charter schools (both brick and mortar charter schools and cyber charter schools) are free of charge to students like traditional public schools. They must provide a minimum of 180 days of instruction per year, but they can offer a longer or different school calendar. Charter schools must provide special

education services to eligible students, and charter schools must follow the same rules as traditional public schools when disciplining students. (For more information about suspensions and expulsions, please see Section 7, page 40 of this Toolkit.)

Any youth who is a resident of Pennsylvania is eligible for admission to a charter school or a cyber charter school. First preference in enrollment must be given to students residing in the district where the charter school is located (or region, in the case of a regional charter school.) Charter schools can also give preference to students of parents actively involved in the creation of the charter school and to siblings of enrolled students. If a charter school has more students apply for admission than it has available slots, the charter school should admit students on a lottery basis.

Charter schools *cannot* limit admission on any basis that would be illegal if used by a school district (such as race or ethnicity). They also cannot limit admission on the basis of intellectual or athletic ability, measures of achievement or aptitude, English proficiency, or disability. Charter schools are permitted to limit their enrollment to a particular grade level or area of concentration (such as the arts, mathematics, or science). They can also limit enrollment to "at risk" students. Charter schools can establish reasonable criteria to evaluate prospective students, but the criteria must be outlined in the charter agreement.

In many cases, students who attend charter schools will be transported by their home school district to the charter school at no cost to the family. Districts must provide transportation to resident students who attend a charter school located within the district, a regional charter school of which the district is a part, or a charter school that is located within 10 miles of the district's borders.

A charter school may be appropriate for a student who needs a smaller school environment or different structure than the neighborhood public school can offer. A charter school may also be appropriate for a student who is interested in a particular area of study, such as performing arts or science. In addition, a cyber charter school might be appropriate for a student who has difficulty in a traditional school setting but who is self-motivated and who can complete coursework without the need for in-person supervision by a teacher.

For more information about charter schools, see **TOOL 6: Charter Schools in Pennsylvania – Frequently Asked Questions** and **TOOL 7: Cyber Charter Schools – Frequently Asked Questions** (both ELC fact sheets). For a list of charter schools and cyber charter schools in Pennsylvania, see the Pennsylvania Department of Education's website at: www.pde.state.pa.us/charter_schools/site/default.asp (click on "Where Are They?").

3. *Alternative Education for Disruptive Youth (AEDY) Programs*

Under Pennsylvania law, a school district (or a combination of school districts) may operate an alternative education program which removes “disruptive youth” from a regular school setting. Such a program must offer an educational course of study and counseling designed to modify disruptive behavior. The Pennsylvania Department of Education (PDE) awards grants to school districts to operate alternative education for disruptive youth (AEDY) programs. PDE also approves a list of private providers with which school districts can contract to operate such programs. AEDY programs must meet certain guidelines developed by PDE, and school districts must provide some due process to students before transferring them to such programs (see below).

A school district must establish policies to identify students who are eligible for alternative education programs. These programs should only be used for currently “disruptive” students - meaning those students who currently show “disregard for school authority” or exhibit any of the other conditions that would allow them to be admitted to such a program. For the definition of “disruptive student,” see **TOOL 8: *Alternative Education for Disruptive Youth BEC.***

Alternative education programs may include services for youth returning from delinquency placements and/or who are on juvenile or adult probation. However, districts cannot automatically send youth to alternative education programs simply because they have been adjudicated delinquent. *Returning from delinquency placement is not a reason by itself to send a child to an alternative program. The relevant question is whether the child is **currently fit** to return to the regular classroom.* If a school district wants to transfer the child to an alternative program, the child has some due process rights before he or she can be transferred.

Before placement in such a program, a student is entitled to an **informal hearing** with the appropriate school official (usually the school principal or assistant principal) unless the student’s presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process. In that case, the student may be immediately removed from the regular education setting with an informal hearing to follow as soon as practical. The informal hearing is the student’s chance to tell his or her side of the story and explain why he or she does not meet the definition of a disruptive student. More information about transfers to alternative programs can be found at page 41 under *Disciplinary Transfers to Alternative Education Programs* in Section 7 of this Toolkit.

TIP: If you believe that the child does not belong in an alternative education program for disruptive youth, you should attend the informal hearing and state your opinion—your input is valuable. Factors the district should consider in determining whether a youth who is returning from a delinquency placement should be transferred to an AEDY program include: whether or not the incident which led to the adjudication occurred at school or at a school-sponsored event, the child’s behavior in placement, and the recommendations of teachers and other adults who have worked with the youth. Contact the **Education Law Center** if you believe a child who is returning from a delinquency placement is being inappropriately transferred to an alternative education program.

Alternative education programs may operate outside the normal school day of the district, including Saturdays. These programs may modify the number of days or hours of instruction as compared to regular education programs. PDE has allowed alternative education programs to provide students with as little as 15 hours of instruction per week (students in regular high school placements are entitled to 27.5 hours per week of instruction), but PDE recently has decided that grant applicants must now provide at least 20 hours of academic instruction per week. In addition to the 20 instructional hours, all new grant recipients must provide 2.5 hours of counseling per week to each student.

School districts must adopt policies for periodic review of students placed in alternative education programs and this review must occur at the end of every semester or more frequently at the district’s discretion. The purpose is to determine if the student is ready to return to regular placement. You should find out the criteria for restoration (often it has to do with attendance, behavior and academic performance) and communicate the criteria to the student to help him or her get ready to return to regular placement.

An alternative education program may be appropriate for some youth in some limited circumstances. For instance, an alternative program might be appropriate if the student needs a high level of structure, if the district operates an alternative school that provides special services tailored to meet the student’s individual needs (such as a credit recovery program), or if the student would have trouble succeeding in the regular education environment right away for various reasons (for example, the student may need a smaller setting for a while). However, you should make sure the student will be able to

return to the regular education environment within a specific time period. In addition, not all alternative programs are created equal. Some programs provide youth with very little real academic instruction, and so you need to proceed cautiously before recommending an alternative program for a client.

For more detailed information on alternative education programs, see **TOOL 8: Alternative Education for Disruptive Youth BEC**. The Pennsylvania Department of Education's website also includes basic information about alternative education programs which receive funding from PDE, including a statewide directory of alternative education programs. To find this information, go to www.pde.state.pa.us and click on "Pre K-12 Schools," then click on "Student Services and Programs."

4. Homeschooling

Parents in Pennsylvania can teach their children at home (generally known as "homeschooling"). Educating a child who is under seventeen (17) at home is one way to comply with the compulsory school attendance law. A child can be homeschooled if 1) the child's parent, guardian or legal custodian conducts an approved "home education program" for the student or 2) the parent has hired a "properly qualified private tutor" to teach the child.

The child's school district approves the proposed home education program. In a home education program, the person teaching the student (called the "supervisor") must be the parent, guardian, or legal custodian and must have a high school diploma or GED certificate (a foster parent does not count as a "supervisor" and cannot conduct a home education program for a foster child). The home education program must provide at least 180 days of instruction per year or 900 hours of instruction per year at the elementary level and 990 hours per year at the secondary level. The student must be instructed in subjects specified by the homeschooling law. Upon a supervisor's request, the school district of residence must lend the supervisor copies of the district's textbooks and other curriculum materials appropriate for the student's age and grade level.

Homeschooled students must take standardized tests and be annually evaluated for educational progress. This information is reviewed by the district superintendent who may ask for further documentation and/or take steps to end the home education program.

Homeschooling is a full time in-home placement selected and provided by the child's parent; it is different from homebound

instruction, which is instruction provided to a student at home by a school district for a short period of time because the student is unable to attend school due to a physical or mental illness (see page 22 in this Section for additional discussion about homebound instruction). Cyber charter schools (discussed on page 20 in this Section) may also be an option for students who would prefer to be educated at home.

Homeschooling may be an appropriate option for a youth who has a parent or legal guardian willing and able to teach the student at home. However, this may not be a viable option in many cases due to the high demands of providing a home education program and the level of education required of the supervisor. In addition, students who are homeschooled may have fewer natural opportunities to interact with other students and develop appropriate social and behavioral skills.

For more information on homeschooling, including a comprehensive list of Frequently Asked Questions, see PDE's website about Home Education and Private Tutoring at www.pde.state.pa.us/home%5Feducation/site/default.asp or see **Homeschooling in Pennsylvania: A Fact Sheet** at www.elc-pa.org (click on "Publications & Materials" and then click on "Other Topics").

5. Homebound Instruction

Students may be temporarily excused from school due to illness or other "urgent reasons." School districts must adopt rules and procedures to govern temporary excusals granted by principals and teachers upon receipt of satisfactory evidence of mental, physical, or other urgent reasons.

The following are the characteristics of homebound instruction:

- Homebound placement may not exceed **three (3) months** unless an extension is approved by PDE.
- A school district, area vocational technical school, charter, or independent school may provide students with homebound instruction during this time period.
- A school district must adopt policies that describe the instruction and define the responsibilities of both the district and the student.
- There is no State-mandated minimum level of service that a district must provide to homebound students. Most school districts provide very little instruction to homebound students. It is usually somewhere between two (2) hours and five (5) hours of instruction per week.

Students who do not have mental, physical, or other urgent

reasons for being excused from school cannot be placed on homebound. The other limitations on homebound instruction are that:

- Students cannot be assigned to homebound instruction simply because they are being released from a delinquency placement.
- A district cannot insist that a child who has been adjudicated delinquent and/or a child with a disability be educated at home due to “safety concerns” arising from the delinquency and/or disability status.

For more information about the very limited circumstances when a home placement may be appropriate for a student with a disability, see PDE’s BEC entitled ***Instruction Conducted in the Home*** (available at www.pde.state.pa.us).

Homebound instruction should only be considered an option for a delinquent youth during the reintegration phase of aftercare if he or she has serious mental, physical, or other urgent reasons for receiving educational services at home (and those reasons are supported by medical documentation). A school district cannot assign a student to homebound instruction simply because the student was adjudicated delinquent.

6. GED Tests

The Tests of General Educational Development (GED) were developed to measure those major outcomes associated with four years of high school education. Many employers consider the GED credential (a Commonwealth Secondary School Diploma) in the same manner as a high school diploma and almost all U.S. colleges and universities accept the GED transcript for admissions purposes.

To be eligible to take the GED tests in Pennsylvania, a youth must be:

- 18 years or older,
- A resident of Pennsylvania,
- Not enrolled in a public, licensed private, registered accredited, or licensed nonpublic secondary school, and
- Able to provide necessary documentation to prove his or her identity.

To be eligible between the ages of 16 and 18 to take the GED, a youth must have a **statement** signed by the superintendent verifying his or her withdrawal from school and the youth must provide a **letter** from one of the following:

- An employer stating that the youth must pass the GED tests in order to gain or maintain employment;
- A college or postsecondary training institution stating that passing GED test scores are required for enrollment;
- A branch of the Armed Services stating that passing GED test scores are necessary for induction; or
- A request for GED scores from the director of a State institution in which the youth is a resident, patient, or inmate.

No one under the age of 16 is eligible to take the GED tests in Pennsylvania.

Taking the GED may be an appropriate educational option for:

- A youth who is 18 years old or older who wants to enter the workforce quickly or who wants to apply for college immediately;
- A youth who is 18 years or older who believes a return to high school would not be appropriate for him or her; or
- A youth who is 16 or 17 years old who meets the criteria listed above.

IMPORTANT POINT: A student cannot and should not be forced by a school district into taking the GED in lieu of returning to school if he or she is otherwise eligible to reenroll in the district. In fact, PDE has taken the position that a student with a GED who is under 21 can return to school to complete a regular high school diploma because passing the Tests of General Educational Development does not signify graduation from high school. See **TOOL 3: Enrollment of Students** BEC under “Other Issues Related to Enrollment.”

A juvenile justice professional should exercise caution before advising a client to pursue a GED when that client may otherwise have the right to return to school. The best interests of the student should be the main factor in making this recommendation, and not pressure from the school district. For more information about the GED, see **TOOL 9: Frequently Asked Questions about the Tests of General Educational Development**.

7. Options for Expelled Students

If a delinquent youth was expelled from school prior to a delinquency placement, he or she may not be able to return to his or her previous school depending upon the terms of the expulsion (for example, if the youth was permanently expelled from the district or has not served the term of a lesser expulsion).

NOTE: An expulsion is an exclusion from school for more than 10 school days in a row. The rules that apply to expulsions will be discussed in greater detail in Section 7 (*School Discipline*) of this Toolkit.

However, students under 17 are still subject to the compulsory school attendance law even if they are expelled from school, and so they must receive an education post-expulsion. The initial responsibility for providing the required education rests with the student's parents or guardians through placement in another school (such as a private school, or a charter school or cyber charter school) or through another education program approved by the district's superintendent (such as homeschooling by the child's parent). For additional discussion of this topic, see Section 7 under *Obligations and Rights of Expelled Students*.

If the parents or guardian are unable to provide the required education, they must submit written evidence to the school district stating this fact within 30 days after the expulsion. The district must then "make provision" for the student's education within 10 days of receipt of the parents' notification. However, no specific level of services or type of instruction is mandated. A district will often meet its obligation by placing the student in an alternative education program or providing five (5) hours per week (or less) of in-home instruction. It is ELC's opinion that, depending upon the child's age and the length of the expulsion, such minimal provision of instruction might be illegal. Students with disabilities under the age of 21 are still entitled to a free appropriate public education (FAPE) post-expulsion. They may need to receive more and/or different services from their district to meet their individual needs.

When looking for an appropriate educational placement for an expelled youth who is under age 17, a juvenile justice professional should first help the youth's family explore other educational options such as a charter school or cyber charter school, private school, etc. If the family cannot locate (or afford) another school for the child, you can help the parent write to the district so that the district must then make provision for the child's education (such as an alternative education program or in-home instruction).

NOTE: For the most part, school discipline is **not** reciprocal among school districts. If a student moves to a new school district after an expulsion, he or she must be accepted into its regular education program unless the student was expelled from his prior district for a weapons offense. If the student was expelled for an offense involving a weapon, then his new school district may provide him with alternative education (such as placement in an alternative education program or provision of in-home instruction) for the length of the expulsion. For more information about this issue, see *Enrollment Rules in Discipline Cases* at Section 5.A.1.c of this Toolkit.

8. Options for Pregnant and Parenting Students

Like all other children, pregnant and parenting students are subject to the compulsory school attendance law until age 17. They have the same educational options as other students. They may NOT be excluded from school or discriminated against based on pregnancy or parenting status. School districts can offer special programs for pregnant and parenting students (such as support programs or twilight programs that operate outside normal school hours), but those students cannot be required to enroll in such programs.

Pregnant or parenting students can obtain a temporary excusal from school in the same manner as other students. They can be excused for up to three (3) months (or longer if approved by PDE) if mental, physical, or other "urgent reasons" exist. Pregnancy itself is not an urgent reason. The pregnant student must have medical evidence for the need for an excusal (for example, the student may need to be on bed rest due to high blood pressure caused by the pregnancy). In such a case, she may be eligible to receive homebound instruction (see page 22 in this Section). A pregnant or parenting student may also be excused from school if he or she meets the criteria for one of the exceptions to the compulsory attendance law as explained below in *Exceptions to Compulsory School Attendance*.

You should consider the whole range of educational options for a pregnant or parenting student in the same manner as any other student. In addition, some school districts may offer evening programs or weekend programs for pregnant or parenting teens. For more information, see PDE's ***Pregnant and Parenting Students BEC*** available at www.state.pa.us.

D. Exceptions to Compulsory School Attendance

As a general rule, a juvenile justice professional should advocate for students who have not obtained a high school diploma to attend school or complete some other appropriate education program upon release from a delinquency placement because it is generally in the student's best long-term interest to obtain a high school diploma. However, there may be special circumstances that support a decision not to do this. A juvenile justice professional should exercise caution before determining that a youth should not reintegrate into an educational program.

Students who are under 17 but meet certain criteria can be exempt from the compulsory school attendance law. The most **common exception** (sometimes called "work release") involves students who:

- Have attained the age of 16,
- Are regularly engaged in any useful and lawful employment or service during the time public schools are in session (PDE's opinion is that "regularly engaged" means 35 or more hours per week of employment), *and*
- Hold an employment certificate issued according to law (these "work papers" are issued by school districts).

There are a few other limited exceptions to the compulsory school attendance requirement. One of these exceptions includes children who are 15 who hold a permit approved by the school district to engage in farm work or domestic service in a private home. For more information concerning this exception, see PDE's BEC entitled ***Farm and Domestic Service Permits*** available at www.pde.state.pa.us. For information about the other limited exceptions to the compulsory school attendance requirement, see **TOOL 10: *Compulsory Attendance and Truancy Elimination Plan* BEC.**

Section Five:

Enrollment, Attendance, and Truancy

This section covers information about public school enrollment requirements, including the documents needed for a child to be enrolled in school. This section also reviews the laws governing school attendance and highlights the need for students of compulsory school age to follow school rules regarding attendance or else risk facing truancy penalties.

A. Enrollment in the Home District

1. Enrollment Requirements

Enrollment requirements are the same for all students, including youth who have been adjudicated delinquent. A school district cannot require more or different documentation from a delinquent youth before permitting enrollment. To help minimize delays, a juvenile justice professional should help a client apply for enrollment as soon as the date of release from the delinquency placement is known so that the student can start school immediately upon release.

A school district or a charter school should normally enroll a student within **one (1) business day**. In no case should they take longer than **five (5) business days** from the date the district or charter school receives the required documents. See **TOOL 3: Enrollment of Students BEC** for more information about enrollment procedures.

a. Required Documents

Listed below are the **only** documents that the school district or charter school can require from the parent, guardian, or other person in charge of the student as a condition of enrolling the student.

1. Proof of the student's age: Acceptable documentation for proof of the child's age includes a birth certificate, baptismal certificate, a notarized statement from the child's parent or relative indicating the child's date of birth, or a prior school record indicating the date of birth.

2. Proof of the student's residence: Proof of the child's residence can include a utility bill with the address on it of the child's parent or guardian, a driver's license or non-driver's identification card from PennDOT, a copy of a paycheck stub with the name and address of employee and employer on it, copy of a State/Federal Program enrollment (such as enrollment in TANF), a deed, **or** a lease. *Remember that a child is considered a resident of the school district in which his or her parents or guardian reside*— so a child's residence for school attendance purposes is dependent upon his or her parent's or guardian's residence — with some notable exceptions. For more information about how to determine where a child can attend school, see *Determining the Child's "Home" School District* in Section 4 on page 17.

3. Proof of immunizations: This is proof that the student has received the immunizations required by law. Students are not permitted to attend school until they have all the required immunizations unless they have received an exemption from the school district superintendent for medical or religious reasons. However, a school district must enroll the child if it receives *oral confirmation* from the child's former school district or the child's doctor that the child has received the required immunizations with a written record to follow. In addition, children who have not yet received all the necessary immunizations may be permitted to attend school based on proof that they have received the first round of shots and are scheduled for additional immunizations. For more immunization information, see PDE's **School Immunization Requirements** BEC at www.pde.state.pa.us.

4. Parental Registration Statement: This is a sworn statement or affirmation, sometimes called an **Act 26 affidavit** or **Parental Registration Statement**, completed by the child's parent, guardian, or other person having control or charge of the child (such as a foster parent) stating whether, to the best of the signer's knowledge, the child is or has been suspended or expelled from any public or private

school in Pennsylvania or any other state for an act involving weapons, alcohol or drugs, or for injury to another person or an act of violence committed on school property. For PDE’s suggested format for this Parental Registration Statement, see Attachment A to **TOOL 3: Enrollment of Students BEC**.

b. Information Not Required for Enrollment

Except for the records listed above, school districts **CANNOT** require ANY other information or documentation as a condition of a child’s enrollment. In particular, school districts **cannot** require:

- A Social Security Number for the parent and/or the child;
- Visa/immigration documents;
- A copy of a court order concerning placement or guardianship (unless the child is relying on a showing of custody to establish residency);
- Reasons the child is living in the district;
- An affidavit from the child’s biological parents (sometimes requested by a school district if the child is applying for admission as a non-resident student living with a non-parent resident adult – for more information about this situation, see *Children Living with a Non-Parent Resident of Another School District* in Section 4 on page 17);
- A physical or dental examination to be conducted as a condition of enrollment; or
- A copy of the child’s IEP or other education records as a condition of enrollment.

c. Enrollment Rules in Discipline Cases

A school district **CANNOT** refuse to enroll a child or automatically place the child in an alternative education program based on the child’s disciplinary record. The only exception is, if a child is currently expelled for a weapons offense, the district may assign that student to an *alternative*

assignment or provide *alternative education services* for the duration of the expulsion. There are no circumstances outside of a weapons violation that give a school district the authority to “honor” an expulsion or suspension from another school district or private school. A school district cannot exclude or punish a student for prior conduct in a different school district outside of the limited exception for a weapons violation. See page 38 in Section 7 under *Expelled Students who Move Into a New School District* for additional discussion of this topic.

2. Education Records Transfer Requirements

The law requires that school districts and charter schools receiving requests for education records from another school district or charter school forward the records within **10 business days of the receipt of the request**. In addition, a school district or charter school does NOT need to get the consent of the child’s parent or guardian to transfer the child’s education records to a new school district or charter school in which the child seeks to enroll.

NOTE: Problems or delays with transferring records should never be a bar to enrollment in a school district or charter school. **A student must be admitted to school while waiting for records to arrive, regardless of where records are being sent from or whether the student will receive a regular or special education program.**

In addition, a district **cannot** keep a child out of school because it does not have the child’s IEP or because the child should be reevaluated. It is *illegal* for a district to refuse to allow a child who receives special education services to attend school because the school is waiting for records or because the school wants to retest him or her. If a school does this, then the school owes the child **compensatory education** (makeup services) for all the time the child should have been in school and was not. A complaint can be filed with the Bureau of Special Education (BSE) if the school refuses to admit the child on such

a basis. See Section 6 of this Toolkit under *Resolving Disputes about Procedural Violations or a Failure to Provide Services* for a discussion about filing a complaint with the BSE.

3. Where to Get More Information about Enrollment Rules in Pennsylvania

To review the law regarding enrollment and records transfer requirements, see **TOOL 5: Entitlement of Resident Children to Attend Public Schools** (22 Pa. Code § 11.11).

TOOL 3: Enrollment of Students **BEC** provides guidance to school districts about enrollment procedures for all students. ELC has several fact sheets and other publications on its website about residency and enrollment issues. For more information, see www.elc-pa.org (click on “Publications and Materials,” and then click on “Residency and Enrollment”).

4. Resolving Enrollment Disputes in Pennsylvania

Sometimes a school district will refuse to enroll a child because the school district believes the child is not a resident of the district, or because the child’s parent or guardian is unable to provide documentation that is not actually required for enrollment. Here is the process for resolving enrollment disputes. (Please note that the process for resolving enrollment disputes for **homeless children** is slightly different. Children who are homeless have the right to receive written notice of a denial of enrollment and they can appeal this denial to the State McKinney-Vento coordinator. See page 18 of Section 3 under *Youth Who are Homeless* for more information about the education rights of homeless youth.)

a. Step One: Send an Enrollment Complaint to PDE

A person trying to enroll a child (including a parent, guardian, caseworker, or JPO) can send an enrollment complaint to:

School Services Unit

Office of Elementary and Secondary Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 19126-0333

Fax the letter to 717-214-4389 or call 717-787-4860 for assistance.

For more information on how to resolve enrollment disputes, including a sample Enrollment Complaint Letter, see

TOOL 11: How to Enroll Your Child in Public School (ELC fact sheet).

b. Step Two: PDE Contacts Relevant Parties

Within **five (5) business days** of receiving the enrollment complaint, whenever possible, PDE will contact the school district, family, or other involved parties to determine the facts, whether the child is entitled to enrollment in the district, and to try to resolve the problem. If the complaint is not amicably resolved, a written determination will be made and sent to the district and the individual who filed the complaint.

c. Step Three: PDE Requests the District’s Position

If the school district does not enroll the student within five (5) school days after receiving the written determination, PDE will request the district’s position on the situation. The district must respond within **five (5) school days**.

d. Step Four: PDE Forwards Matter to Office of Chief Counsel

If the school district refuses to enroll the student or does not respond, the complaint and the response from the school district will be forwarded to PDE’s Office of Chief Counsel. The Office of Chief Counsel and the Deputy Secretary of Elementary/Secondary Education will determine if the district’s explanation to deny enrollment is valid. The Deputy Secretary should let you know what he or she decides.

B. School Attendance and Truancy

1. Attendance Requirements

Once students are enrolled in school, they must follow the school’s attendance policies and rules. Failure to comply with attendance requirements could result in truancy proceedings or “disenrollment” from school. Below is additional information on attendance requirements.

Children in Pennsylvania have the *right to attend school* from age six (6) to high school graduation or until the end of the school term in which the child turns 21, whichever comes first. As discussed in Section 4, children between the ages of eight (8) (or when the child starts first grade, if earlier) and 17 are of “*compulsory school age*” and are required to attend school. There are a few exceptions to this requirement. The major exception is if a student is 16 and is working a full-time job during school hours, then he or she is not required to attend school. The student must hold an “employment certificate issued according to law.” Usually school districts issue these work papers. See page 25 of Section 4 for *Exceptions to Compulsory School Attendance*.

Enrolling a child in a charter school, a licensed private or religious school, or an approved homeschooling program

satisfies the school attendance requirement. Every parent, guardian, or “person in a parental relationship” (for example, an aunt who is caring for the child) is responsible for making sure that the child attends school regularly until the age of 17.

Once a child turns 17, he or she can drop out of school without parental permission. A child who is 17 years old or older cannot be cited for truancy because the compulsory school attendance law does not apply to students 17 years of age or older. However, students 17 years or older who have 10 consecutive days of unexcused absences can be dropped from the school district’s rolls (known as “disenrollment”).

IMPORTANT POINT: A previously disenrolled student does have the right to reenroll in school through the school term in which the student turns 21. In addition, a child who previously dropped out of school has the right to return to school through the school term in which he or she turns 21 as long as the child has not received a high school diploma from somewhere else (but the child can still return to school and seek a high school diploma if the child has passed the GED tests and received a Commonwealth Secondary School Diploma). See **TOOL 3: Enrollment of Students BEC** under “Other Issues Related to Enrollment.”

2. Truancy

a. Definition

While Pennsylvania law does not specifically define the term “truancy,” PDE has said that truancy is *any* unexcused absence from school. Each school district must adopt, and distribute yearly to parents, its own written rules and policies about student attendance, absences, and valid excuses from school.

You should check the school district’s student handbook for its specific rules on school attendance if you are concerned that a youth may not be complying with those rules. Many school districts consider the only lawful absences to be for illness, family emergency, death of a family member, medical or dental appointments, authorized school activities, and educational travel with prior approval.

NOTE: PDE’s policy on truancy and attendance prohibits a school district from counting a child as truant or an absence as unexcused if the child is participating in court-related activities or County Children and Youth meetings. See **TOOL 10: Compulsory Attendance and Truancy Elimination Plan BEC**.

Even if a child is absent from school for just one day, a parent or guardian should *always* provide the child’s teacher or principal with a note explaining the absence. PDE has advised schools that *all* absences should be treated as *unlawful until the school receives a written excuse* from the child’s parent/guardian explaining the reasons for the absence. PDE has said that parents/guardians should provide the written explanation within **three (3) calendar days** of the absence, or else the absence will be permanently counted as unlawful. If the parent/guardian has missed the three-day window, it is still a good idea to try to correct the record with a written explanation from the parent/guardian, along with a doctor’s note, if applicable.

b. Notification of Truancy

If a child misses school for **three (3) total days without a valid excuse**, the school district must provide the parent with written notice of the attendance violation at least three (3) days before bringing court proceedings against a parent. If the child continues to be truant *after* the parent receives this notice, the school district does not need to send more notices. It can then file a truancy petition with the local magisterial district judge (or with Family Court in Philadelphia County). A truancy hearing is then scheduled. For the various penalties that a judge can order if a child is found to be truant, see the next section on *Truancy Penalties*.

c. Truancy Penalties

Listed below are the possible truancy penalties for both the parents and the students.

i. Possible Penalties for the Parent May Include:

- A \$300 fine for each truancy violation;
- An order that the parent complete a “parenting education program”;
- An order that the parent must perform community service in the school district in which the child lives for up to six months; and/or
- A sentence to the county jail for no more than five (5) days if the parent fails to comply with the terms of the court’s order.

ii. A Parent’s Defense to an Allegation of Truancy

It should be noted that, if the parent can show that he or she took **every reasonable step** to ensure school attendance by the child, the parent may not be convicted of a summary offense, and no fines or penalties may be imposed on the parent. However, there is no clear definition of what constitutes

reasonable steps -- the court will consider the individual circumstances of each case in determining whether the actions of a parent were reasonable.

iii. Possible Penalties for the Student (age 13 and older) may include:

- A \$300 fine for each truancy violation (if the parent shows he or she took every reasonable step to ensure school attendance);
- Suspension of the child’s driver’s license for up to 90 days (if it is the first truancy conviction) and up to six (6) months for any additional violation;
- Assignment of the child to an “adjudication alternative program” (such as community service); and/or
- An adjudication of dependency (in severe cases).

d. Where to Get More Information About School Attendance Rules

For more information about school attendance and truancy, see **TOOL 10: *Compulsory Attendance and Truancy Elimination Plan*** **BEC** and **TOOL 12: *What Are the Rules for School Attendance and Truancy in Pennsylvania?*** (an ELC fact sheet). In addition, the ***Pennsylvania Truancy Toolkit*** at www.patruancytoolkit.info provides guidance about how to work with truant students, and it includes answers to Frequently Asked Questions about truancy.

Section Six:

Special Education and Other In-School Services

A. An Introduction

A juvenile justice professional should not expect to become an expert in special education law. However, you should be able to identify special education issues and guide families in the right direction to ensure that a client receives an appropriate special education program in school upon release from a delinquency placement. Many students with disabilities end up in the juvenile justice system, and quite a few are referred by their school district for behavior that is related to their disability. In some of these cases, the district has failed to identify the disability and/or failed to provide an appropriate program of supports and services prior to the referral. If families are aware of the disability and the student's resulting educational needs, they can work with the school to prevent problematic behavior from reoccurring.

This section briefly explains who is eligible for special education services, the process for evaluation and developing an appropriate educational program, how to decide where the student will receive services, and what to do if there is a dispute with the school. For additional information, see **TOOL 13: Overview of the Special Education Process** (an ELC fact sheet).

B. Where to Get More Information about Special Education

More information about the educational rights of children with special needs can be found at **ELC's website** (www.elc-pa.org), on the **Pennsylvania Training and Technical Assistance Network's website** (www.pattan.k12.pa.us), and on the website for the **Office for Dispute Resolution** (<http://odr.pattan.net/>). One publication that you might find particularly helpful when you are working with clients who receive special education services (or who might need special education services) is ELC's manual entitled ***The Right to Special Education Services in Pennsylvania: A Guide***

for Parents and Advocates. (This is sometimes called ELC's "black and white book.") This extensive manual can be downloaded for free at ELC's website. If you have additional questions about the special education rights of a particular client, you can contact the *Disability Rights Network of Pennsylvania (DRN)* at 1-800-692-7443 for assistance.

C. An Explanation of Terms

Children with disabilities who are eligible for special education and related services have the right to receive a **free appropriate public education** (FAPE) from their school district. An "appropriate" special education program must provide "significant learning" and must confer "meaningful educational benefit" to the child. The benefit "must be gauged in relation to the child's potential." There is no set "formula" for deciding whether a child's program is appropriate. Appropriateness is a case-by-case determination based on the facts of each individual child's situation.

The term "**special education**" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. "**Specially designed instruction**" means adapting the content, methodology, or delivery of instruction in order to: 1) address the child's unique needs that result from the child's disability; and 2) ensure that the child has access to the general curriculum so that the child can meet the same educational standards that apply to all students. Special education includes instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. It includes specially designed instruction in physical education and vocational education.

The term "**related services**" means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education. Related services can include speech,

physical, and occupational therapies, as well as psychological services, counseling services, social work services, and assistive technology devices and services that help the student participate and learn in school. The law does not include an exhaustive list of related services – these are just examples of some of the most common related services.

D. Eligibility for Special Education

Under the federal Individuals with Disabilities Education Act (IDEA) and state law (Chapter 14 and Chapter 711), school districts and charter schools in Pennsylvania must identify, locate, and evaluate all children with disabilities residing within the district's boundaries (including youth who are homeless). This is known as the district's "**child find**" duty.

To be eligible for special education services, a child must: 1) have at least one legally recognized disability, and 2) by reason of that disability, require special education and related services.

Below is the list of the **legally recognized disabilities** under special education law:

- Mental Retardation
- Hearing Impairment
- Deafness
- Speech or Language Impairments
- Visual Impairments (including blindness)
- Serious Emotional Disturbance (may be referred to as Emotional Disturbance or "ED")
- Orthopedic Impairments
- Autism
- Traumatic Brain Injury
- Other Health Impairments
- Specific Learning Disability (in reading or math)
- Deaf-Blindness
- Multiple Disabilities

Some of the most frequently identified disabilities are:

- **Serious Emotional Disturbance (SED or ED):** Special education law defines a Serious Emotional Disturbance to mean a condition exhibiting one or more of the following characteristics over a long period of time, and to a marked

degree, that adversely affects a child's educational performance:

- An inability to learn that cannot be explained by intellectual, sensory or health factors;
 - An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - Inappropriate types of behavior or feelings under normal circumstances;
 - A general pervasive mood of unhappiness or depression; and
 - A tendency to develop physical symptoms or fears associated with personal or school problems.
- **Other Health Impairment (OHI):** These include chronic or acute health problems such as asthma, attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome which result in limited strength, vitality, or alertness AND adversely affect a child's educational performance. If the child has a health impairment that does not adversely affect her educational performance, but he or she requires accommodations from his or her school due to physical (or mental) impairment, the child may be eligible for a Section 504 Accommodation Plan. See page 33 of this Section under *School Conducts the Evaluation and Issues an Evaluation Report*.
- **Specific Learning Disability (SLD):** This refers to a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that presents as an imperfect ability to listen, think, speak, read, write, and spell or to do mathematical calculations. It includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include problems that are primarily the result of: visual, hearing, or motor disabilities; mental retardation; emotional disabilities; or environmental, cultural, or economic disadvantage.

E. Evaluations and IEPs

A child must first be evaluated by the school district to determine if he or she is eligible for special education services. Listed below are the major steps in this process.

1. Parent or School Initiates a Special Education Evaluation

Either the school district or the child's parents can initiate a special education evaluation. If the parent requests an evaluation, he or she should do so in writing. A **sample letter** to use when requesting an initial special education evaluation can be found at www.elc-pa.org (click on "Publications & Materials" and then click on "Students with Disabilities"). The district has **60 calendar days** (minus the summer months) to complete the evaluation and issue an Evaluation Report once the parent signs a **Permission to Evaluate-Consent Form**.

Special education law includes a broad definition of who can be a child's **"parent"** for the purposes of making special education decisions. A "parent" can be a biological or adoptive parent, but a foster parent or a "person acting like a parent" (such as an aunt or a grandparent) can also be a "parent" under certain circumstances. In some cases, a "surrogate parent" may need to be appointed for a child with disabilities to make special education decisions on his or her behalf. For more information about who can make special education decisions for a child, see ELC's fact sheet entitled **Who Can Make Special Education Decisions for a Child with a Disability in Out of Home Care in Pennsylvania?** at www.elc-pa.org.

NOTE: Students who were not evaluated and provided special education and related services prior to being adjudicated delinquent may be evaluated and identified while in a delinquency placement. In most cases, the school district or Intermediate Unit in which the delinquency placement is located will do the evaluation and determine the appropriate educational program for the student (called an Individualized Education Program or IEP). The identification and program will follow the student during reentry and reintegration into school until the home school district or charter school develops a new special education program. Although the home school should receive the student's IEP as part of the education records sent from the placement, you may need to alert the home district to the existence of the student's IEP.

2. School Conducts the Evaluation and Issues an Evaluation Report

Once the parent consents to the evaluation, the district must conduct a comprehensive evaluation and provide a written **Evaluation Report (ER)** to the parents. An evaluation team (which includes the parent, usually a certified school

psychologist, the child's regular teacher, and other people with knowledge about the child) must use a variety of tests or strategies to evaluate the child. The child should be tested in the language most likely to give accurate information. All evaluations must be free to the family.

The district completes the ER which provides information on the student's present levels of academic achievement and functional performance, strengths, needs, and identifies any disabilities that interfere with educational performance. The ER must state whether the child is eligible for special education services. If so, it must also make recommendations for the types of special education services that will be needed. To see PDE's **annotated Evaluation Report** (which explains what must be included in an ER), go to www.pattan.k12.pa.us and click on "Special Education Forms."

NOTE: If a child is found ineligible for special education services, he may still be eligible for a **Section 504 Accommodation Plan** (also called an Accommodation Plan, a Chapter 15 Service Agreement, or a 504 Plan) if he or she has a physical or mental impairment that substantially limits a major life activity. For example, a student with diabetes may be allowed to leave class to see the school nurse in order to receive insulin injections. For an explanation about the differences between a Section 504 Accommodation Plan and an IEP, see ELC's fact sheet entitled *A Comparison of Rights of a Child with a Disability who Needs "Special Education" and a Child who is a "Protected Handicapped Student"* at www.elc-pa.org.

3. Individualized Education Program (IEP) is Developed

If the student is identified as eligible for services, the next step is to develop an **Individualized Education Program (IEP)** for the student. An IEP Team, consisting of the child's parents, regular and special education teachers, school administrators, the student (if appropriate), and others, will develop the child's IEP. The IEP Team must meet within **30 calendar days** of the completion of the ER to develop the IEP.

The IEP is the written **"contract"** between the parents and the child's school district that sets out what special education services the district will provide to the child for the child to receive a **free appropriate public education (FAPE)**. See page 31 of this Section under *An Explanation of Terms* for a discussion of what makes a program appropriate. An IEP contains **annual measurable academic and functional goals** designed to meet the student's needs and to help the student participate and progress in the general education

curriculum. It must explain how the student's progress will be measured and when progress reports will be issued.

The IEP must also set out the **appropriate special education and related services** the child will receive in order to make progress toward his or her goals, along with other supports the student will need to be educated with his or her nondisabled peers. See page 31 of this Section under *An Explanation of Terms* for the definition of special education and related services. If the child turns 14 or older during the school year, the IEP must address services that will be provided to help the student **transition** to postsecondary-school objectives.

To see PDE's sample **annotated IEP** (which includes detailed guidance about everything that must be included in a child's IEP), go to www.pattan.k12.pa.us and click on "Special Education Forms." ELC's special education manual – ***The Right to Special Education Services in Pennsylvania: A Guide for Parents and Advocates*** – also provides a lot of information about what must be in an IEP (available for free at www.elc-pa.org).

F. Positive Behavior Support

A child with a disability who is returning from a delinquency placement may have had a history of behavior problems in school which were never addressed appropriately. However, it is important to note that if the child exhibits behaviors that *impede the child's learning or the learning of others*, the child's IEP Team must consider the use of positive behavioral interventions and supports and other strategies to address the behavior.

Positive, rather than negative, measures must form the basis of behavior support programs. Behavior support programs must include research-based practices and techniques to develop and maintain skills that will enhance a student's opportunity for learning. Behavior support programs and plans must be based on a functional assessment of behavior (often called a **Functional Behavioral Assessment or FBA**).

For more information about effective positive behavior supports, see the Pennsylvania Training and Technical Assistance Network's (PaTTAN) website at www.pattan.k12.pa.us (click on "Behavior" under "Evidence-Based Practices"). For a sample Functional Behavioral Assessment worksheet and a sample annotated Positive Behavior Support Plan, go to www.pattan.k12.pa.us (click on "Behavior," and then click on "Publications").

G. Educational Placement – The Least Restrictive Environment (LRE)

After the child's IEP is developed, the IEP Team must decide how much time the student will spend in a regular classroom versus a pull-out special education program (such as an emotional support classroom or learning support classroom), if any. Students with disabilities are entitled to be educated in the "least restrictive environment" (LRE) to the maximum extent appropriate to their needs using "supplementary aids and services." This means that children with disabilities should be educated with their nondisabled peers to the maximum extent appropriate, and LRE is first assumed to be the regular education classroom in the regular neighborhood school with supplementary aids and services.

A child does not have to achieve at the same level or progress at a level near to that of his or her peers without disabilities in order to be educated in a regular classroom. However, if the student needs some separate education (such as a special class or a private school), the IEP Team must decide what kind of separate program, and for how much of the school day, will meet the student's education needs appropriately and for how much of the school day the child will need this separate program.

NOTE: A school district cannot refuse to place a student in a regular classroom and insist on a special program or school solely because of the type or severity of the student's disability (or because of his or her status as a juvenile offender).

Some **examples** of supports that can help a student with a disability in a regular classroom are:

- Special equipment such as a modified desk or communication device
- A modified regular education curriculum
- Provision of a one-to-one aide
- Training for the regular education teacher to meet the child's needs and/or the use of co-teaching (having a regular education and a special education teacher instruct all students in a regular education classroom)
- Provision of various therapies (such as speech, occupational and/or physical therapy) in the regular education classroom

Like all special education decisions, where a child will be educated must be based on the child's *individual* needs as described in his or her IEP and evaluations. A placement decision should not be based on administrative convenience or cost considerations.

H. Notice of Recommended Educational Placement/ Prior Written Notice

Once the child's program and placement have been developed, the school must give the parent a **Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN)**. This document should summarize the recommended program and placement for the child, and describe any other options that were considered. The parent will then be asked to **agree or disagree** with the proposed program and/or placement by signing the NOREP/PWN.

If the parent disagrees, he or she can use one of the procedures listed below to try to resolve the disagreement. *Parents can reject what the school is offering if they do not think it meets their child's needs!* However, the parent must note his or her disagreement and sign the NOREP/PWN within **ten (10) school days** of receiving it. If the parent does not, the school can move forward with implementing the program and placement. *This is a very important document, and if the parent does not understand it, the parent should ask the school to explain it!*

I. Resolving Special Education Disputes

A parent may decide the school's evaluation, proposed IEP, or placement is not appropriate for his or her child. There are several ways to resolve disputes about the appropriateness of a child's special education program.

1. Informal Procedures to Resolve Disputes about a Child's Program

The parents should initially talk to the child's teacher and other school staff to resolve the issue. While a child's IEP must be reviewed at least once a year, parents can **request an IEP Team meeting** at any time to discuss their concerns with the Team. Pennsylvania offers a free alternative dispute resolution option called **IEP Facilitation** that can be used by IEP Teams when a neutral third party might help Team members break a deadlock. For more information about IEP Facilitation (including a link to an IEP Facilitation Request Form), see the Office for Dispute Resolution's website at <http://odr.pattan.net/>.

If the parents are unable to resolve their dispute by using the IEP Team process, the parents can request more formal dispute resolution procedures which include mediation and/or a due process hearing.

2. Formal Procedures to Resolve Disputes about a Child's Program

a. Mediation

Mediation is a free service provided by the State's Office for Dispute Resolution (ODR) that can be used to try to resolve a disagreement about any aspect of the child's IEP. If both the parent and the district agree to mediation (which is a voluntary process), ODR will arrange for a neutral, specially trained mediator to meet with them at a mutually convenient location. The mediator does not make a decision on the disagreement. Rather, the mediator will help both parties try to reach an agreement. If the parties reach an agreement through the mediation session, that agreement will be put in writing and, if appropriate, incorporated into the student's IEP. If the parties cannot reach an agreement, the mediator will end the session. More information about mediation is available at ODR's website at <http://odr.pattan.net/>.

b. Due Process Hearing (a/k/a Special Education Hearing)

A due process hearing is the most "formal" way to resolve disputes about the appropriateness of a special education program. Either a parent or a school district can request a due process hearing. It is not necessary to use mediation first before asking for a hearing. Due process hearings are similar to trials, with a hearing officer presiding and acting as a judge. An attorney will represent the district. The parent may also be represented by an attorney, or may proceed without counsel. Witnesses are questioned and cross-examined, and evidence is admitted into the record for the hearing officer's consideration. At the conclusion of the hearing, the hearing officer issues a written decision with an order, which is a legally enforceable document. A hearing officer's decision can then be appealed by either party to federal or state court.

More information about due process hearings, including how to request a hearing, can be found in ELC's fact sheet entitled *How to Resolve Special Education Disputes* at www.elc-pa.org and also at ODR's website at <http://odr.pattan.net/>.

3. Resolving Disputes about Procedural Violations or a Failure to Provide Services

You may need to help a family resolve a dispute that involves procedural violations or is due to a failure to provide services already in a child's IEP. The parents (*or anyone else with knowledge of the violation, including a juvenile justice professional*) can **file a complaint** with the PDE's **Bureau**

of Special Education (BSE) if their child is not getting the services agreed to in the IEP or procedural rules have been violated. For example, a complaint can be filed if the child's IEP states that he will receive 45 minutes of physical therapy per week, but the child's therapist quit and the child has not received any more therapy. Such a complaint should ask for services to make up for the therapy the child should have received but did not (called **compensatory education**). Another time a complaint can be filed is if a district is not complying with timelines or required procedures (for example, the district has failed to evaluate the child within 60 calendar days, minus the summer months, of receiving parental consent).

A **copy of a complaint form** can be found on PaTTAN's website at <http://www.pattan.net/files/Formspdf/ComplaintForm.pdf>. Please note that the complaint form is sometimes called a Division of Compliance (DOC) complaint after the name of the office in the BSE that investigates the complaint.

J. Other In-School Services

A child might not qualify for special education services, but the child might still need additional help in school. A child may be able to access other support services at school even if he or she is not eligible for special education assistance. Below is just a partial list of some of the in-school services that some schools may offer. Make sure to ask guidance counselors, school psychologists, school nurses, and administrators about the availability of any academic and/or behavioral support programs for your client.

For more information about other possible student services and programs (such as dropout prevention programs or education mentoring programs), see PDE's website on Student Services and Programs (go to www.pde.state.pa.us and click on "Pre K-12" and then click on "Student Services and Programs").

1. Student Assistance Program (SAP)

The Student Assistance Program (SAP) is the vehicle through which districts provide counseling and support services to students who experience problems related to the use of drugs, alcohol, and dangerous controlled substances. For more information about SAP, see PDE's Basic Education Circular entitled ***Drug and Alcohol Education, Counseling and Support Services*** at www.pde.state.pa.us.

2. School-Based Behavioral and Mental Health Services

Some schools also offer behavioral and mental health services to their students who may not qualify for special education services. In the past, PDE offered grants to school districts to provide such services to youth in school. If you have a client who would benefit from behavioral and/or mental health services in school, you should find out what supports the school might be able to offer.

3. School-Wide Positive Behavior Support (SWPBS)

Some schools in Pennsylvania and many others around the country have started to implement School-Wide Positive Behavior Support (SWPBS). SWPBS is an evidence-based approach designed to improve student behavior, reduce unnecessary discipline, and promote a climate of greater productivity, safety, and learning that uses school-wide and individualized teaching and modeling, and that recognizes and rewards positive student behavior. (The positive behavior supports included in some students' IEPs discussed on page 33 under *Individualized Education Program is Developed* in this Section is a separate topic; SWPBS is a school-wide initiative while positive behavior supports are individualized to meet a specific student's needs.)

SWPBS is a systematic, proactive approach to establishing the behavioral supports and social culture needed for all students in a school to achieve social, emotional, and academic success. If you are working with a client who is experiencing behavioral difficulties in school, ask the school district if it has implemented SWPBS, and if so, how SWPBS can be used to improve the student's behavior. For more information about SWPBS generally, see www.pbis.org (the U.S. Department of Education's website on Positive Behavioral Interventions and Supports).

For more information about the implementation of SWPBS in Pennsylvania, contact the Education Law Center or visit the Pennsylvania Training and Technical Assistance Network's (PaTTAN) website at www.pattan.k12.pa.us. This site includes a lists of consultants for school districts interested in implementing SWPBS and a calendar of trainings provided to districts on SWPBS-related topics.

4. No Child Left Behind (NCLB) Act

Some students may be able to get help through the federal *No Child Left Behind Act* (NCLB). If their school has failed to make Adequate Yearly Progress (AYP) for more than two (2) years in a row, these students can get free tutoring (called Supplemental Educational Services or SES). These students may also be able to transfer to a better performing school within their school district. In addition, under NCLB, a student can transfer to a safer public school if his or her school is persistently dangerous or if he or she is the victim of a violent criminal offense at school.

For more information, see **TOOL 14: How Can You Use NCLB to Help Your Own Children Do Better in School** (an ELC fact sheet). For additional guidance about transfer options, see ELC's fact sheet entitled *How Can You Transfer Your Child Into A Better Public School* at www.elc-pa.org.

5. Student Services Plan (a/k/a Chapter 12 Student Services Plan)

Pennsylvania law requires every school district (and charter school) to develop and promote a comprehensive and integrated **Student Services Plan** for grades K-12 (or starting at Pre-K if the district offers it) based on the needs of its students. In its Student Services Plan (also called **Chapter 12 Student Services Plans**), each district must provide services in **each one** of the following categories: 1) developmental services for students (such as guidance counseling and psychological services); 2) diagnostic, evaluation, and referral services for students who are having problems achieving educationally despite their learning potential (such as crisis intervention, evaluation for special education, or psychological counseling); and 3) consultation and coordination services for students who are experiencing chronic problems that require multiple services by teams or specialists (such as referral to community agencies or case management). Student services must be part of the instructional program at *all levels* of the school system – including high school.

If you have a client who might benefit from this type of support, you should ask the district what services can be made available to the student under the district's Student Services Plan. You can also ask the district for a copy of its written plan. More information about Student Services Plans can be found at PDE's website at www.pde.state.pa.us (click on "Pre K-12 Schools" and then click on "Student Services and Programs" and then click on "Chapter 12").

Section Seven:

School Discipline

This section covers detailed information on school discipline and the rights of students, including students with disabilities, who are being disciplined for violations of school rules.

A. Schools' Authority to Impose Discipline

Youth who have been adjudicated delinquent have the same rights and responsibilities as other students in school matters, including student discipline. All students may be subjected to school discipline for violations of school rules and/or policies. School boards and charter schools have the authority to "make reasonable and necessary rules governing the conduct of students in school." Every school board and charter school must adopt a written "**Code of Student Conduct.**"

The district's or charter school's Code of Student Conduct must include the policies governing student discipline and it must list students' rights and responsibilities. Codes of Student Conduct must be published and distributed to students and parents or guardians. Many school districts now make Codes of Student Conduct available on their websites.

NOTE: A school district can exclude a student from school for violations of its Code of Student Conduct regardless of whether charges can or will be brought in the juvenile justice system.

A school *can* punish a student for misbehavior that occurred while **going to or from school**, such as on a school bus or when the student is walking to school. Misconduct that occurs **off school grounds and/or outside of normal school hours** can be punished by a school district:

- If it also involves in-school misbehavior (for example, an agreement to make a drug sale took place while students were in school even though actual sale took place off campus);
- If it occurs at a school-sponsored event (prom); or
- If it has a substantial impact on the school program.
 - However, courts have not upheld punishment for misconduct on school property that occurred outside

of school hours which had **no substantial impact on the school program.** (For example, if a student is caught smoking marijuana on a Friday night on a school playground, the school district does not have jurisdiction to discipline the child. However, he or she may be charged criminally.)

- Courts also have not upheld punishment for misconduct that has **no demonstrable connection** to the school program or property in recent cases.

For additional help in understanding the discipline rights of public school students in Pennsylvania, see **TOOL 15: School Discipline in Pennsylvania** (an ELC fact sheet) and ELC's manual entitled *Fairness in School Discipline in Pennsylvania: A Guide for Attorneys and Advocates who Represent Students* which can be downloaded for free at www.elc-pa.org.

B. Limits on School District's Authority to Impose Discipline

In order for the disciplinary action to be valid, the prohibited behavior must be **clearly set forth** in the Code of Student Conduct so that the student has been put on notice of what types of offenses can lead to exclusion from school. In addition, school rules must be **reasonable, not arbitrary and capricious, and not unconstitutionally vague.**

Pennsylvania regulations **prohibit the use of corporal punishment** (meaning physically punishing a student for an infraction of the discipline policy). In addition, a school district cannot deny issuance of a diploma as a form of discipline if the student earned the credits to receive a diploma (but a school district can prohibit a student from participating in graduation ceremonies as a form of punishment).

1. Expelled Students who Move Into a New School District

If a student has been suspended or expelled from a prior school district, charter school, or private school, the new school district *does not* generally have the authority to discipline the student for behavior that occurred in the prior school district. (See page 27 of Section 5 under *Enrollment Rules in Discipline Cases* for more information about this topic.) For example, if

the student is expelled from School District A for fighting with another student, and then the student moves to School District B, School District B must enroll the student and may not punish him or her for the misconduct that occurred prior to enrollment in the new district (unless the expulsion was for possession of a weapon). If the student was expelled from the prior district for a weapons violation, then the new school can place the student in an alternative education program for the duration of the expulsion. See page 40 of this Section under *Obligations and Rights of an Expelled Student* and page 23 of Section 4 under *Options for Expelled Students* for additional discussion of education post-expulsion.

C. Behavior Which Can Result in School Discipline

Check the School District's Code of Student Conduct for prohibited behavior that might lead to discipline. Some examples include:

- Use of offensive language
- Abuse of computer and Internet privileges
- Repeated violations of the Code of Student Conduct
- Destruction or theft of property
- Bullying or harassment
- Assault on school personnel or another student
- Possession of a weapon

D. Act 26: State Law Prohibiting Possession of a Weapon in School

Act 26 refers to the name of the Pennsylvania law passed in 1995 that requires school districts to expel for at least one year any student who possesses a weapon at school. Act 26 states that:

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.

The text of Act 26 (which was amended by Act 30 in 1997) can be found at: <http://www.safeschools.info/acts26and30.php>.

Act 26 defines the term “**weapon**” to 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). This definition is quite broad and can sometimes encompass seemingly nonthreatening items, such as a butter knife.

E. Safety Valve in Act 26

The law does provide that the superintendent of a school district or an administrative director of an area vocational-technical school “*may recommend modifications* of such expulsion requirements for a student on a case-by-case basis.” 24 P.S. § 13-1317.2 (c). As such, school districts **do have discretion** under this law. A school superintendent can decide not to recommend expulsion of a student for possession of a weapon (such as a butter knife), and a school board may not adopt a “zero tolerance policy” which would require expulsion in all cases involving weapons with no room for individual consideration. In addition, even students who bring weapons to school are entitled to a formal expulsion hearing before being expelled from school.

More information about Act 26 can be found in PDE’s **Safe Schools and Possession of Weapons BEC** at www.pde.state.pa.us and in ELC’s fact sheet on Act 26 entitled **When Can Your Child Be Expelled for Bringing a Weapon to School?** available at www.elc-pa.org.

F. Common Forms of School Discipline

Schools can discipline students by excluding them from school. There are some common forms of discipline that schools use:

1. Suspension: A suspension is an exclusion from school for **one (1) to ten (10) school days** in a row. A suspension may be imposed by the principal or person in charge of the school. An **in-school suspension** is exclusion from classes but not from school. Pennsylvania regulations contain no limit on how many days a student can receive an in-school suspension.

2. Expulsion: An expulsion is *any* exclusion from school for **more than ten (10) school days in a row**. It may include permanent expulsion from the district. For example, if a school wants to exclude a child for 45 days, that is considered an expulsion, *not* a suspension, and the rules for expulsions must be followed before a child can be removed for that length of time.

3. Disciplinary Transfer: A disciplinary transfer occurs when a student is transferred to a different school or program due to misbehavior that is prohibited by the district's Code of Student Conduct. Most disciplinary transfers are to alternative education for disruptive youth (AEDY) programs. For more detailed information about alternative education programs, see the discussion on page 21 in Section 4 under *Alternative Education for Disruptive Youth Programs*.

G. More on Suspensions, Expulsions, and Transfers

Schools must first follow certain procedural requirements before excluding a child from school or transferring him or her.

1. Suspensions

a. Rules that Apply to All Suspensions

A student may not be suspended for any length of time until the student has been **informed** of the reasons for the suspension and given an **opportunity to respond**. (This notice can be as simple as the principal saying to the student: "Five students saw you push John down the stairs. You are being suspended for this behavior. What do you have to say for yourself?") Prior notice of the intended suspension need not be given when health, safety, or welfare of the school community is threatened. The student's parents and the superintendent must be notified immediately **in writing** of the suspension. Students must be permitted to make up exams and work missed while they are serving a suspension.

b. Rules that Apply to Suspensions of Four (4) to Ten (10) School Days

There are additional requirements for suspensions of four (4) to ten (10) days. If the suspension is for **more than three (3) days**, the student and the parent must be given the right to an **informal hearing**. The purpose of the informal hearing is to allow the student to meet with the appropriate school official to explain the circumstances surrounding the event for which the student is being suspended and/or to show why the

student should not be suspended. The informal hearing must be held within the first five (5) days of the suspension. The parent must receive sufficient advance notice of time and place of the hearing. The student has the right to speak and produce witnesses at the informal hearing. The student can question any witnesses present at the hearing.

2. Expulsions

In all cases where a school district is pursuing expulsion, a **formal hearing** must be held before the school board, an authorized committee of the board, or a qualified hearing examiner appointed by the board (unless the child's parent or guardian agrees to waive the hearing, but ELC generally does not advise parents to waive an expulsion hearing except in very limited circumstances). A majority vote of the entire school board (or Board of Trustees, in the case of a charter school) is required to expel a student.

The student has significant **"due process" rights** at the hearing, including the right to prior notification of the charges and the date of the hearing, the right to bring an attorney, the right to question and cross-examine witnesses, and the right to testify and present witnesses on his or her own behalf. The hearing must be recorded. There must be a written adjudication containing the findings and reasons for the board's decision. The student has 30 days to appeal the expulsion decision to the local Court of Common Pleas.

The student **remains in class** pending the outcome of the expulsion hearing *unless*, at an informal hearing, the school finds that allowing the student to remain in school poses a threat to the health, morals, welfare or safety of others. However, the hearing must be held within 15 school days of the notification of the disciplinary charges, unless the parent and district agree otherwise. For more information about expulsion hearings, see **TOOL 16: Expulsions in Pennsylvania: Information for Parents and Guardians** (an ELC fact sheet).

a. Obligations and Rights of an Expelled Student

If a student is under 17 years of age, he or she must still attend school post-expulsion. It can be another public school district, a charter school, a cyber charter school, a private school, or an approved homeschooling program. If none of these can be arranged, the parent must inform the district in writing within **30 days** of the date of the expulsion decision. The district then must "make provision" for the student's education. Sometimes the student is placed in an alternative education program

for the duration of the expulsion. Sometimes, the district just provides the student with five (5) hours per week (or less) of in-home instruction. Depending upon the student's age and length of expulsion, such minimal education might be illegal. Contact the Education Law Center if you have any questions about the education of an expelled student. See page 23 of Section 4 under *Options for Expelled Students* for an additional discussion of this topic.

Students with disabilities who are expelled at any age must continue to receive free appropriate public education (FAPE) post-expulsion up until age 21. They may need to receive more and/or different services from their school district than would be provided to expelled students without disabilities in order to meet their special education needs.

3. Disciplinary Transfers to Alternative Education Programs

The student has the right to an **informal hearing** prior to being transferred to an alternative education program for disruptive students. This informal hearing follows the same rules as the informal hearing required for a suspension that lasts more than three (3) days in a row. See page 40 of this Section under *Rules that Apply to Suspensions of Four (4) to Ten (10) School Days* for a discussion of the informal hearing. The hearing must be held *before* the transfer takes place unless keeping the child in the regular school would pose a danger to others or disrupt the academic process. The informal hearing, which is usually conducted by the school's principal or an assistant principal, is a chance to show why the student does not meet the definition of a disruptive student and should not be transferred. If appropriate, you can attend the hearing or write a letter on behalf of the student if you believe the child should not be transferred to a disciplinary program. For more detailed information about alternative education programs, see the discussion on page 21 in Section 4 under *Alternative Education for Disruptive Youth Programs*.

There are slightly different procedures for transfer hearings in the School District of Philadelphia. See our fact sheet entitled *Transfers to "Alternative Schools" in Philadelphia: Information for Parents and Guardians* at www.elc-pa.org.

NOTE: It is *extremely important* that the student and his or her parents or guardians attend the informal hearing. It is the only real opportunity they have to convince the school that the child should not be transferred to an alternative education program. If the school decides the child should be transferred, the parent or guardian should then request that a limit be set on the amount of time the child will be at an alternative program (for example, 45 days). Once the child is sent to an alternative education program, it can be very difficult to get him or her out. Even though the alternative education program is required to review the child's progress twice a year, there is no specific way to get a program to release a child or require the child's regular school to take him or her back.

F. School Discipline for Students with Disabilities

In general, students with disabilities may be disciplined under the same rules as regular education students. However, the rules for suspension and expulsion are somewhat different. Students with disabilities have the right to additional procedural protections to ensure that they are not punished for behavior that was a **"manifestation"** of a disability. They can be expelled or transferred to an alternative education program only if their IEP Team determines that the misbehavior is unrelated to the child's disability. Students with disabilities usually are entitled to a **"Manifestation Determination Review"** (MDR) prior to a **"change in placement"** for disciplinary reasons. The following is an explanation of these terms:

1. Change in Placement for Disciplinary Reasons

This occurs when a student is suspended, expelled, or transferred to an alternative education program for:

- More than 10 school days in a row, or
- More than 15 total school days in a year, or
- A series of days that "constitute a pattern" exceeding 10 days in a year. The factors considered in determining if this is a pattern include the total days, length of each suspension, and the time between suspensions.
- For a child with mental retardation, any exclusion from school (even for one day) is a "change in placement."

Schools proposing the discipline must give the child's parents written notice of the proposed discipline (provided on a form called a *Notice of Recommended Educational Placement /Prior Written Notice*). The school must inform parents of their right to challenge the proposed discipline, and parents must receive a copy of a *Procedural Safeguards Notice* which explains these rights.

2. Manifestation Determination Review

The child's IEP Team must conduct a "manifestation determination review" within 10 school days of the school's decision to change the child's placement for disciplinary reasons. The child remains in his or her regular placement while this review is being done (with some exceptions discussed under *A Note About Special Circumstances* below).

The child's misbehavior **IS** a manifestation of the disability if it:

- was *caused* by the disability,
- had a *direct and substantial relationship* to the child's disability, or
- was the *direct result* of the school's failure to implement the child's IEP.

The parent is a member of her child's IEP Team, but the school will ultimately make the decision about whether the child's misbehavior was a manifestation of the child's disability. A *Manifestation Determination Review* worksheet is available at PaTTAN's website (click on "Behavior" under "Evidence-Based Practices" and then click on "Publications"). The parent can disagree with an IEP Team's determination that the child's behavior was not a manifestation of the child's disability, and the parent can challenge this decision at a special education due process hearing. The child can be expelled or transferred pending the outcome of the hearing, but if the hearing officer decides that the child's misbehavior was a manifestation of his or her disability, then the child must be returned to the placement he or she was in prior to the disciplinary action (unless the parent and the school agree otherwise).

3. A Note about Special Circumstances

A special education student can be *immediately* transferred to an interim alternative education placement for up to 45 school days without the IEP Team first conducting a manifestation determination review if the student has a weapon or drugs at school, or has inflicted serious bodily injury upon another person while at school.

4. Additional Note about Police Involvement

A school district can report the misconduct of a child with a disability to the police (provided that misconduct occurs while the child is under the school's jurisdiction). However, if a school does refer a child with a disability to law enforcement, for students with disabilities who have positive behavior support plans in their IEP, an updated functional behavioral assessment and positive behavior support plan are required.

5. Where to Get More Information about the Law and Discipline of Students with Disabilities

This is just a brief overview of the procedures a school district must follow if it wants to change a child's placement for disciplinary reasons. For more information about this topic, see ELC's fact sheet entitled ***School Discipline and Students with Disabilities*** at www.elc-pa.org or call the *Disability Rights Network* at 1-800-692-7443 if you have questions about the discipline rights of a child with an IEP.

6. A Final Thought about Preventing Behavior Problems

The best way to deal with discipline issues involving children with disabilities is to avoid them in the first place. If a child with an IEP has behavior problems that are impeding his ability to learn (or that of others), the child should have a **plan** for **positive behavior supports** in his IEP. For more information about the inclusion of positive behavior supports in a child's IEP, see the page 34 of Section 6 under *Positive Behavior Support*.

Section Eight:

Where to Go for More Help and Information

There are other sources of information and additional resources you can use for further assistance with questions about the educational rights of youth returning from a delinquency placement.

A. Whom Should I Call First if I Need Help with an Education Issue?

1. Aftercare Specialists

As a JPO, you have access to “Aftercare Specialists” appointed by the Juvenile Court Judges’ Commission (JCJC), the Pennsylvania Council of Chief Juvenile Probation Officers (Chiefs’ Association), and the Center for Juvenile Justice Training and Research. The Aftercare Specialists can provide you with technical support and assistance on all aftercare issues, including education questions and/or problems. To find the Aftercare Specialist for your county, see **TOOL 17: Aftercare Specialist Contact Information**.

2. What is the Education Law Center-PA and How Can They Help?

The Education Law Center-PA (ELC) is a nonprofit legal advocacy organization devoted to ensuring that all of Pennsylvania’s children have access to a quality public education. ELC works to promote better and fairer public schools for all children in Pennsylvania. ELC provides legal support and technical assistance to the Aftercare Specialists when they need advice on complicated education issues affecting delinquent youth before, during, and after release from juvenile justice placements. ELC also provides direct training to JPOs in selected counties across Pennsylvania when there is a need for additional professional development in those areas. All such trainings are coordinated through the Aftercare Specialists.

JPOs and other juvenile justice professionals can call ELC directly for assistance with education issues if referred by an Aftercare Specialist or if the Aftercare Specialist is unable to answer a question. ELC’s phone numbers are: **215-238-6970** (Philadelphia) and **412-258-2120** (Pittsburgh).

3. What is the Disability Rights Network of Pennsylvania (DRN) and How Can They Help?

The Disability Rights Network of Pennsylvania (DRN) is a statewide, nonprofit organization which advances and protects the civil rights of adults and children with disabilities in Pennsylvania. DRN provides a **free Intake system** which can be called to seek advice about disability rights, access to services (including special education services), and other issues. If a family with whom you are working has questions about special education issues or disability-related issues, they should call DRN. **DRN’s Intake Team** can be contacted by calling **1-800-692-7443**.

4. What is Juvenile Law Center and How Can They Help?

Juvenile Law Center (JLC) is a nonprofit, national, public-interest law firm that advances the rights and well-being of children in jeopardy. JLC uses legal advocacy, publications, projects, public education, and training to ensure that the child welfare, juvenile justice, and other public systems provide vulnerable children with the protection and services they need to become productive adults. JLC serves as lead entity in the Pennsylvania Models for Change Initiative. JLC’s legal and public education and training services are provided at no cost to their clients or to participants. JLC can be contacted at **215-625-0551** or **1-800-875-8887**.

B. Where Can I Find More Information about Public Education in Pennsylvania?

The **Education Law Center’s website** – www.elc-pa.org – has many publications and other resources (including links to school laws) that address a wide range of regular and special education issues in Pennsylvania. The website also has a search engine that can be useful in locating particular publications on the site (click on “Search” to use the search engine).

The **Pennsylvania Department of Education’s website** – www.pde.state.pa.us – contains a lot of information about

public (and private) education in Pennsylvania. For example, PDE's website provides the names, addresses, and phone numbers for all the educational entities PDE serves (including alternative education programs), a map of school districts and intermediate units, a list of charter schools and cyber charter schools, frequently asked questions about transportation, and *much* more information.

In addition, PDE issues **Basic Education Circulars (BECs)** on a wide variety of school-related topics. BECs provide guidance to school districts from PDE about how districts can comply with their various legal obligations. BECs can be located on PDE's website by scrolling down the left side of the home page to where it says "Find Documents" to locate the link for Basic Education Circulars. It is important to note that all BECs published on PDE's website are in effect until revised or removed – even if the BEC itself says that it expires on a certain date.

The **Pennsylvania Training and Technical Assistance Network** (PaTTAN) provides resources and information about services for students with disabilities. PaTTAN's mission is to support the efforts and initiatives of PDE's Bureau of Special Education (BSE), and to build the capacity of local educational agencies to serve students who receive special education services. PaTTAN has three regional offices, with locations in King of Prussia, Pittsburgh, and Harrisburg. These offices develop training courses, offer technical assistance, and provide resources to build the skills of intermediate unit and school personnel, in order to improve student achievement.

PaTTAN's website – www.pattan.k12.pa.us – offers a host of materials about evidence-based practices for educating students with special needs, along with links to PDE's special education forms and regulations.

Section Nine:

Conclusion

As a juvenile justice professional, you have an important and significant role in the educational aftercare of youth returning to the community from a delinquency placement. Hopefully, the information and guidance provided in this Toolkit will allow you to become even more informed about the rights of your clients in public school so that you can help your client take advantage of the various educational placement options. This Toolkit should also provide you with some basic knowledge of how the special education process should work and what other in-school support services might be available to students who are experiencing difficulty in school. In addition, this Toolkit should help you identify illegal roadblocks to enrollment in school and illegal or inappropriate disciplinary procedures.

If you have questions or concerns about a school's actions toward your client, make sure to speak up! Talk to the appropriate school officials. Share your concerns with the client's parents or guardians. Call the Aftercare Specialists for more advice, and contact the Education Law Center, if necessary.

In a world where having access to a high-quality education becomes increasingly important, the job that you do in helping your clients reintegrate back into school could make an enormous difference in the long-term future of your clients. Thank you for taking the time to read this Toolkit.

Tool 1:

Glossary of Educational Terms and Acronyms

Glossary of Educational Terms and Acronyms

Act 26: The “zero tolerance” law that requires a mandatory one-year expulsion for any student who brings a weapon to school or a school-sponsored activity. The superintendent of a school district or an administrative director of an area vocational-technical school may recommend modifications of such expulsion requirements on a case-by-case basis.

AEDY Program: Alternative Education for Disruptive Youth Program. Programs approved by the Pennsylvania Department of Education to provide education to students who meet the definition of a “disruptive youth.” The student must receive an informal hearing from his or her school district before being transferred to such a program.

AYP: Adequate Yearly Progress. Schools and school districts must meet this measure of progress or be subject to consequences under NCLB.

BEC: Basic Education Circular. Policy guidance on education issues from the Pennsylvania Department of Education (PDE).

BSE: The Bureau of Special Education. Office within the Pennsylvania Department of Education that administers and manages the state’s special education resources and oversees compliance with the IDEA.

Chapter 14: Pennsylvania’s state regulations implementing the federal Individuals with Disabilities Education Act.

Chapter 15: Pennsylvania’s state regulations implementing the federal Rehabilitation Act of 1973 (commonly known as “Section 504”).

ER: Evaluation Report. The document given to parents after a school district conducts an evaluation to determine if a student is eligible for special education services.

FBA: Functional Behavioral Assessment. This should be conducted prior to developing a Positive Behavior Support Plan for a student.

Feeder Patterns: The system set up within a school district that determines which school a student will attend (e.g., which high school or middle school) based on his or her home address.

GED: The Tests of General Educational Development. An alternative way for students to obtain high school equivalency credentials.

IDEA: Individuals with Disabilities Education Act. Federal law that requires public schools to provide children with disabilities a free appropriate public education (FAPE) in the least restrictive environment (LRE).

IEP: Individualized Education Program. The written plan for special education and related services provided to an eligible student under the IDEA.

IU: Intermediate Unit. Pennsylvania’s 29 Intermediate Units are regional education service agencies charged with providing programs and services to public, private and non-public (religious) schools.

LRE: Least Restrictive Environment. Requirement in the IDEA that students with disabilities be educated with their non-disabled peers to the maximum extent appropriate.

McKinney-Vento Act: Federal law that protects the rights of children and youth who are homeless and allows them to continue to receive a public education while they are homeless.

MDR: Manifestation Determination Review. Must be conducted by IEP Team prior to imposing discipline on a student with a disability. Purpose is to determine if problem behavior was related to the disability and student should therefore not be punished.

NCLB: No Child Left Behind Act. Requires statewide testing geared to state’s academic standards and designed to eliminate or at least reduce educational gaps between groups of students including students with disabilities, low-income students, minority students, and English language learners. Establishes consequences for schools and school districts that fail to make Adequate Yearly Progress (AYP).

ODR: Office for Dispute Resolution. Office funded by PDE to coordinate special education hearings and other dispute resolution options (such as mediation and IEP Facilitation).

PaTTAN: Pennsylvania Training and Technical Assistance Network. Provides educators, parents, and agencies involved in special education with a statewide network of technical assistance, trainings, and publications.

PDE: Pennsylvania Department of Education. State agency responsible for overseeing the provision of education and educational services to all children within the State.

PSSA: Pennsylvania System of School Assessment. Statewide test measuring student proficiency on State academic standards.

SAP: Student Assistance Program. Vehicle through which districts provide appropriate counseling and support services to students who experience problems related to the use of drugs, alcohol, and dangerous controlled substances.

Section 504 Accommodation Plan: Also known as a 504 Plan, Service Agreement, or Chapter 15 Agreement. Plan adopted for students who are eligible for accommodations or other services due to a disability under Chapter 15 and the federal Rehabilitation Act of 1973 (commonly known as "Section 504.")

Tool 2: Authorization to Release Education Records Form

Authorization to Release Education Records

Pursuant to the Family Educational Rights and Privacy Act (FERPA) and/or the Individuals with Disabilities Education Act (IDEA):

I hereby authorize:

To release copies of education records to:

Name of School District or Educational Agency

Name of Person(s) to whom to Release Records

Address

Address

Address

Address

City/State/Zip Code

City/State/Zip Code

I request the release of all education records created, collected, or maintained by the above-referenced school district or educational agency concerning my child:

Child's Name: _____

Date of Birth: _____

Address: _____

Present School: _____

Grade: _____

"Records" means all education records created, collected, or maintained by the school district or educational agency related to my child, including but not limited to:

- School attendance records;
- Grade reports and progress reports, including standardized test scores;
- Disciplinary records;
- Any psychological, psychiatric, educational, or medical evaluations;
- All special education records, including Evaluation and Reevaluation Reports, Permission to Evaluate forms, Individualized Education Programs (IEPs), and Notices of Recommended Educational Placement;
- Other _____

I consent to this Release of education records to the above-named person(s).

Signature of Parent/Guardian or Surrogate Parent

Date

Signature of Child (if over 18)

Date

Tool 3:

Enrollment of Students

BEC (with attachments)

Pre K-12 Schools

Basic Education Circulars (Purdon's Statutes)



Enrollment of Students



Enrollment of Students 24 P.S. §13-1301 – §13-1306

DATE OF ISSUE: January 22, 2009 (revised – formerly BEC 24 P.S. §13-1301 and BEC 24 P.S. §13-1302, issued July 1, 2002)

PURPOSE

This BEC provides guidance regarding public school enrollment procedures for resident and non-resident children. It replaces the following BECs: Enrollment of Students, 24 P.S. 13-1301 and Education of Children Residing with an Adult Other than the Natural Parent, 24 P.S. 13-1302 and reflects current requirements of the Pennsylvania Public School Code and 22 Pa. Code, Chapter 11. These public school enrollment procedures, consistent with law, exist to ensure that public schools promptly enroll students who are residents or who are eligible non-residents.

ENTITLEMENT TO EDUCATION

Every child of school age who is a resident of a Pennsylvania school district is entitled to a public school education. This entitlement and the requirements to secure enrollment discussed throughout this BEC apply equally to resident students residing with their parent(s); to non-resident students living with a district resident who is supporting the child gratis and seeking enrollment under 24 P.S. §13-1302; to nonresident students living in a facility or institution; and to nonresident students living in a foster home. Provided that the required enrollment documentation described herein is provided, the school district or charter school must enroll non-resident children and permit them to attend school. A child should be permitted to attend school on the next school day after the day on which the child is presented for enrollment, and in all cases within five (5) business days of the school district's receipt of the required documentation. 22 Pa. Code §11.11(b).

REQUIRED ENROLLMENT DOCUMENTATION

Except when a child is homeless, whenever a child of school age is presented for enrollment by a parent(s), school district resident, or any other person having charge or care of the child, the school district or charter school shall require that the following information be documented before enrolling the child and allowing the child to attend school:

1. Proof of the child's age.

Any one of the following constitutes acceptable documentation:
birth certificate; notarized copy of birth certificate; baptismal certificate;
copy of the record of baptism – notarized or duly certified and showing the date of birth; notarized statement from the parents or another relative indicating the date of birth; a valid passport; a prior school record indicating the date of birth.

2. Immunizations required by law.

Acceptable documentation includes: either the child's immunization record, a written statement from the former school district or from a medical office that the required immunizations have been administered, or that a required series is in progress, or verbal assurances from the former school district or

a medical office that the required immunizations have been completed, with records to follow.

3. Proof of residency.

Acceptable documentation includes: a deed, a lease, current utility bill, current credit card bill, property tax bill, vehicle registration, driver's license, DOT identification card. A district may require that more than one form of residency confirmation be provided. However, school districts and charter schools should be flexible in verifying residency, and should consider what information is reasonable in light of the family's situation. See the paragraph on Homeless Students for guidance in that situation.

4. Parent Registration Statement.

A sworn statement ([See Attachment A](#)) attesting to whether the student has been or is suspended or expelled for offenses involving drugs, alcohol, weapons, infliction of injury or violence on school property must be provided for a student to be admitted to any school entity. 24 P.S. §13-1304-A. A school district may not deny or delay a child's school enrollment based on the information contained in a disciplinary record or sworn statement. However, if a student is currently expelled for a weapons offense, the school district can provide the student with alternative education services during the period of expulsion. 24 P.S. § 13-1317.2(e.1) If the disciplinary record or sworn statement indicates the student has been expelled from a school district in which he was previously enrolled, for reasons other than a weapons offense, it is recommended the school district review the student's prior performance and school record to determine the services and supports to be provided upon enrollment in the district.

5. Home Language Survey.

All students seeking first time enrollment in a school shall be given a home language survey in according with requirements of the U.S. Department of Education's Office for Civil Rights. Enrollment of the student may not be delayed in order to administer the Home Language Survey. A copy of the Home Language Survey may be found on <http://www.pde.state.pa.us/esl/cwp/view.asp?A=3&Q=56927>

DOCUMENTS WHICH MAY BE REQUESTED BUT NOT AS A CONDITION OF ENROLLMENT

Items which may be requested.

School districts and charter schools often seek to obtain information from families in addition to the four mandatory items discussed above. Although they may ask for any of this information, they may not require it as a condition of enrolling or admitting a child and they may not delay a child's enrollment or attendance until these documents are provided. Among the documents that a school district or charter school may request are: picture identification, health or physical examination records, academic records, attendance records, Individualized Education Program, and other special education records. In addition, a school district may not require that a physical examination be conducted as a condition of enrollment.

Registration Form.

Some school districts have registration forms which they ask families to complete when enrolling a child. These registration forms for student enrollment may include the following: name, address, telephone number, name of parent(s) or guardian(s) or resident adult(s) with whom the student is living, emergency contact information, former school information, and other locally required information. Whether to use such a form is within the discretion of each school district or charter school but failure to complete the form cannot be made a condition of the student's enrollment.

DOCUMENTATION REQUIRED FROM OTHER SOURCES

A school district or charter school is also entitled by law to receive information on an enrolling student from the previous school, public, charter, nonpublic or private, which the student attended. However, the provision of this information rests with the educational entity and not the family, and so, the receiving school district may not require this information as a precondition to enrollment and may not delay a student's admission for lack of this information.

Student Education Records.

Upon enrollment, the school district or charter school is to contact the student's former school for a copy of the student's education records. The former school district or charter school, if within this Commonwealth, is required to respond by forwarding the records within 10 business days of the date upon which a student's records are requested by another Commonwealth school district or charter school. School districts shall enroll students within 5 business days regardless of receipt of records from the previous districts. 22 Pa. Code §11.11(b)

Disciplinary Records.

Whenever a pupil transfers to another Pennsylvania school entity or nonpublic school, a certified copy of the student's disciplinary record shall be transmitted to the school entity or nonpublic school to which the pupil has transferred. The school entity or nonpublic school to which the student has transferred should request the record. The sending school entity or nonpublic school shall have 10 days from receipt of the request to supply a certified copy of the student's disciplinary record. Failure to receive the student's discipline record cannot be used to deny or delay the student's enrollment or school attendance. A school district may not deny or delay a child's school enrollment based on the information contained in a disciplinary record or sworn statement. However, if a student is currently expelled for a weapons offense, the school district can provide the student with alternative education services during the period of expulsion. 24 P.S. § 13-1317.2(e.1) If the disciplinary record or sworn statement indicates the student has been expelled from a school district in which he was previously enrolled, for reasons other than a weapons offense, it is recommended the school district review the student's prior performance and school record to determine the services and supports to be provided upon enrollment in the district.

PROHIBITED REQUESTS

Items which may not be requested.

For both enrollment and also for residency determinations, a school district or charter school may not request or require any of the following: a social security number; the reason for a child's placement if not living with natural parents; a child's or parent's visa; agency records; or, except in the limited circumstances described in the next section, a court order or records relating to a dependency proceeding.

A child's right to be admitted to school may not be conditioned on the child's immigration status. A school may not inquire regarding the immigration status of a student as part of the admissions process. *Plyler v. DOE*, a U.S. Supreme Court decision, held that it is unconstitutional to deny free public education to children who are not legally admitted into the United States.

STUDENT CLASSIFICATIONS FOR EDUCATION ENTITLEMENT

Resident Students and Court Orders or Custody Agreements- 24 P.S. §13-1301, 13-1302.

Every school age child is entitled to attend the public schools of the child's district of residence, which is the school district where the child's parent(s) or legal guardian resides.

When parents reside in different school districts due to separation, divorce, or other reason, the child may attend school in the district of the parent with whom the child lives for a majority of the time, unless a court order or court-approved custody agreement specifies otherwise. If the parents have joint custody and the child's time is evenly divided between the parents, the parents may choose which of the two school districts the child will attend for the school year. If the parent enrolling the

child is relying on a court order or custody agreement as the basis for enrolling the child, then the school district or charter school may require that the parent provide a copy of the order or agreement.

As stated below, a school district may also require a resident to provide a custody or dependency order when the resident is seeking to enroll the child under 24 P.S. §1302(a)(1) which requires "appropriate legal documentation to show dependency or guardianship." A school district or charter school may not, however, require a custody order or agreement as a condition of enrollment in any circumstances other than the two circumstances specified above.

Students Living With a Resident Adult other than a Parent - 24 P.S. § 13-1302.

When a child is living with a district resident, who is supporting the child without personal compensation, (gratis) the child may attend the public schools of that resident's school district, provided that resident makes application and supplies the required enrollment information noted in the section entitled Required Enrollment Documentation. In addition, before accepting the child as a student, the district shall require the resident to file **only one** of the following:

1. **A sworn and notarized statement** from the resident of the school district consistent with the requirements of 24 P.S. §13-1302(a)(2), indicating that the signer is a resident of the school district, is supporting the child without receiving personal compensation, that the child is living with the resident continuously and not just for the school year, and that the resident will accept all responsibilities relating to the child's schooling ([See Attachment B for a model statement](#)), **or**
2. **Appropriate legal documentation to show dependency or guardianship**, which may include a custody order.

The school district may, pursuant to the attached guidelines ([See Attachment C](#)), require other information to be submitted by the resident to substantiate the sworn statement. The natural parent(s) or former guardian(s) of the student may not be required to provide information. Once the requested information is provided, the school district must enroll the child and permit him or her to begin to attend school without delay, but in no case more than 5 days.

A resident's receipt of payments, such as Supplemental Security Income (SSI), Transitional Assistance for Needy Families (TANF), pre-adoptive or adoptive support, maintenance on public or private health insurance, support from the military or military personnel or other payments for or on account of the child such as child support, shall not be deemed to be personal compensation or gain.

Foster Students - 24 P.S. §13-1305.

Nonresident children placed in foster care must be educated in accordance with 24 P.S. §13-1305(a), which provides that a nonresident child in paid foster care is "entitled to all free school privileges accorded to resident children of the district. . . in the same manner as though such child were in fact a resident child of the district." The provision that permitted school districts to refuse to accommodate foster students has been held to be unconstitutional. In addition, nonresident exceptional school-aged persons should be afforded the same rights to an appropriate program of special education as are resident exceptional school-aged persons per 24 P.S. §13-1371 et seq. and 22 Pa. Code Chapter 14 and 22 Pa. Code Chapter 16. A school district may request verification that the child is residing with a foster parent or is in a pre-adoptive or adoptive home in the form of a letter from the appropriate agency, but the district cannot require a court order or agency records.

Children placed into foster care often move from one foster home to another and such moves may involve school changes as well. In order to minimize the impact of change upon these children, school districts are strongly encouraged to develop policies or agreements to enable a student who is in foster care to remain in the educational program in the same school or school district even if that student is moved to a residence in another school attendance area within the district or in another school district.

Students Living in Institutions - 24 PS §13-1306.

School districts in which children's institutions, including detention homes, drug and alcohol treatment centers and other similar facilities are located (referred to as host school districts) are required to provide an education and, when appropriate, special education to nonresident students of the host district who are placed into the institution. This includes the right to attend the school district's public schools if appropriate for the child. Enrollment of these students follows the same requirements as resident students of the school district. [See BEC 24 P.S. §13-1306 Nonresident Students in Institutions.](#)

Emancipated Minors.

An emancipated minor is a student under the age of 21 who has established a domicile apart from the continued control and support of parents or guardians or who is living with a spouse. The school district in which this student is living is his or her resident school district and the student may enroll without any additional assistance from an adult.

Homeless Students.

Educational agencies shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youth. Homeless students may reside in shelters, hotels, motels, cars, tents or be temporarily doubled-up with a resident family because of lack of housing. In the case of homeless students, traditional concepts of "residence" and "domicile" do not apply. Homeless children and youth lack a fixed, regular, and adequate nighttime residence. Included within the definition of homeless children and youth are those who are "awaiting foster care placement" and "unaccompanied homeless youth."

Unaccompanied homeless youth may enroll without documents and without the help of an adult. Unaccompanied homeless youth includes any child who is "not in the physical custody of a parent or guardian." Falling within this definition are students who have run away from home, been thrown out of their home, or been abandoned or separated from their parents or guardians.

Youth awaiting foster care placement include those who are placed in emergency, interim or respite foster care; kinship care; evaluation or diagnostic centers or placements for the sole purpose of evaluation. When necessary, local school officials should consult with their county children and youth agencies to determine if a child meets the definition of "awaiting foster care placement", including, on a case-by-case basis, whether a child who does not clearly fall into one of these categories is nevertheless a child "awaiting foster care placement."

Homeless youth are entitled to immediate enrollments and their families are not required to prove residency regarding school enrollment. These students should be enrolled without delay, in the district where they are presently residing, or continue their education in the district of prior attendance. See the McKinney-Vento Act, 42 U.S.C. §11431 *et seq.* and the [BEC 42 U.S.C. §11431 et seq. Education for Homeless Youth for more details.](#)

Pre-Adoptive and Adoptive Students.

The Federal Adoption Assistance Program, among other things, provides for adoption assistance payments to encourage the placement of certain hard-to-place children with adoptive parents, 42 U.S.C. §673. Pennsylvania has adopted companion legislation, known as the Adoption Opportunities Act. See 62 P.S. §771 *et seq.* Children living with pre-adoptive parents who are receiving adoption assistance subsidies, pre-adoptive foster payments, or other payments such as Supplemental Security Income (SSI) or Transitional Assistance for Needy Families (TANF), are entitled to attend school in the school district in which the pre-adoptive parents reside. Notwithstanding receipt of any of the above payments, children living in pre-adoptive situations are considered residents of the school district in which their pre-adoptive parents reside under 24 P.S. §13-1302. Children living with adoptive parents are entitled to all free school privileges accorded to resident school children of the district under 24 P.S. §13-1302.

Re-enrollment of Students Returning from Delinquency Placements.

When a student returns to a school district from a delinquency placement, the school district cannot automatically place a child in an alternative education program for disruptive youth merely because the child had been adjudicated delinquent. Like any other student being transferred to an alternative school, students returning from delinquency placement are entitled to an informal hearing prior to being placed in an alternative education program. The purpose of the hearing is to determine whether the student is currently fit to return to the regular classroom or meets the definition of a disruptive student. Factors a school should consider include: whether the incident causing the adjudication occurred at school or at a school-sponsored event, the child's behavior in placement, and the recommendations of teachers and other adults (such as juvenile probation officers) who have worked with the youth.

School-Age Children of Military Personnel.

When Pennsylvania residents who are military personnel are deployed and their school age children are living with relatives or family friends in a school district for that period of time, the students are entitled to attend school in the school district in which they are residing. These students should be enrolled using the §1302 statement/affidavit process, except that the resident is to be presumed to be supporting the child without personal compensation or gain (gratis).

OTHER ISSUES RELATED TO ENROLLMENT

Address Confidentiality Program (ACP).

Some families may enroll a student using an ACP card which lists a post office box as their address. This is their legal address and school districts shall not require additional information about their residence. School records from the student's former school will be forwarded through the ACP. If there are questions about the family's eligibility for enrollment, contact the ACP at 1-800-563-6399.

Age.

Children are considered school age from the time they are admitted to the public school educational program until graduation from high school or the age of 21. The local school board has the right and responsibility to establish the age at which a child can begin the kindergarten program. Once the age requirement is established, districts cannot refuse admission to a child who meets the age requirement. [See BEC 24 P.S. §05-503 Admission to Kindergarten.](#)

During the time a child is of school age, the child or student is entitled to attend the public schools of the resident school district or a charter school, or to attend other school districts as an eligible nonresident. Students who turn 21 during the school term are entitled to finish that school term. If a student is under age 21 and has a Graduation Equivalency Diploma ("GED"), the student can enroll in school and work towards a diploma. For subsidy purposes, students who reach age 21 after the school term begins are eligible to be counted for the entire school term. The Department will accept requests to allow students to be counted in membership for subsidy purposes for an extended school program beyond age 21 if the request includes a hearing officer decision or court order.

Children and Families with Limited English Proficiency.

Children and families with limited English proficiency must be provided translation and interpretation services to the extent needed to help the family understand the enrollment process and enroll the student in school promptly per the Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d et seq. and the Equal Education Opportunity Act, 20 U.S.C. § 1703.

Twins and Multiple Siblings 24 P.S. § 1310.1.

Twins or higher order multiple siblings are to be enrolled in the same manner as all other students. The School Code provides for parental discretion in the classroom placement of twins or higher order multiples. A parent or guardian of twins or higher order multiples who attend the same grade level at the same school may request that the children be placed in the same classroom or separate classrooms. The parent or guardian must make the request no later than ten days after the beginning of the school year or ten days after the first day of the student's attendance, if the students are enrolled after the school year commences.

The school district may recommend classroom placement to the parents and provide professional education advice to the parents to assist them in making the best decisions for their children's education. The school district shall provide the classroom placement requested, unless, after consultation with the school district superintendent or designee, the principal determines that alternative placement is necessary. The law affords the parents the opportunity to appeal that denial. A school district is not required to place twins or higher order multiples in separate classrooms if the request would require the school district to add an additional class to the grade level of the siblings.

SUBMITTING ENROLLMENT COMPLAINTS TO THE DEPARTMENT OF EDUCATION

When a dispute arises regarding enrollment of a student, the person attempting to enroll the child or the school district may bring the dispute to the attention of the Department's School Services Unit. A complaint may be filed by mail, email or by phone with written follow up. After receipt of a complaint, a Department representative will contact the school district, family or other involved parties to determine the facts, whether the child is entitled to enrollment in the district and to try to resolve the problem. These contacts, whenever possible, will occur within five (5) days of receipt of the complaint. If the complaint is not amicably resolved, a written determination will be made and sent to the school district and the individual who filed the complaint.

If the school district does not enroll the student within five (5) school days after receiving the written determination, the Department will issue a letter to the school district requesting its position on the situation. The school district will have five (5) school days to respond to the request. If the school district refuses to enroll the student or does not respond, the matter will be forwarded to the Department's Office of Chief Counsel (OCC). The OCC and the Deputy Secretary for Elementary/Secondary Education will determine if the school district's response is valid to deny enrollment. If not, the Deputy Secretary will determine what additional measures may be necessary to assure enrollment.

WRITTEN POLICIES

Each school district and charter school must adopt a written policy on student admission; which policy shall be a public record. 22 Pa Code §11.41. The Department recommends that school district and charter school admission policies and procedures be posted on the entity's website.

REFERENCES

Purdon's Statutes

24 P.S. §13-1301
24 P.S. §13-1302
24 P.S. §13-1302(a)(1)
24 P.S. §13-1302(a)(2)
24 P.S. §13-1305
24 P.S. §13-1306
24 P.S. §13-1310.1
24 P.S. § 13-1317.2(e.1)
24 P.S. §13-1371 et seq.
24 P.S. §13-1304-A
62 P.S. §771 et seq.
23 Pa. C.S.A. § 6701

State Board of Education Regulations

[22 Pa. Code §4.26](#)
[22 Pa. Code §11.11](#)
[22 Pa. Code, Chapter 11](#)
[22 Pa. Code, Chapter 14](#)
[22 Pa. Code, Chapter 16](#)

Federal Statutes

20 U.S.C. §1703

42 U.S.C. §673

42 U.S.C. §2000d et seq.

42 U.S.C. §11431 et seq.

Other

Plyler v. DOE, 457 U.S. 202 (1982)

CONTACT BUREAU/OFFICE:

School Services Unit
Office of Elementary and Secondary Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Phone: 717.787.4860
email: RA-PDE-SchoolService@state.pa.us

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School Services Unit
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Telephone: (717) 783-3750

Attachment A -Parental Registration Statement

(School District Letterhead)

Student Name _____

Date of Birth _____ Grade _____

Parent or Guardian Name _____

Address _____

Telephone Number _____

Pennsylvania School Code §13-1304-A states in part “Prior to admission to any school entity, the parent, guardian or other person having control or charge of a student shall, upon registration provide a sworn statement or affirmation stating whether the pupil was previously or is presently suspended or expelled from any public or private school of this Commonwealth or any other state for an action of offense involving a weapon, alcohol or drugs, or for the willful infliction of injury to another person or for any act of violence committed on school property.”

Please complete the following:

I hereby swear or affirm that my child was _____ was not _____ previously suspended or expelled , or is _____ is not _____ presently suspended or expelled from any public or private school of this Commonwealth or any other state for an act or offense involving weapons, alcohol or drugs, or for the willful infliction of injury to another person or for any act of violence committed on school property. I make this statement subject to the penalties of 24 P.S. §13-1304-A(b) and 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities, and the facts contained herein are true and correct to the best of my knowledge, information and belief.

If this student has been or is presently suspended or expelled from another school, please complete:

Name of the school from which student was suspended or expelled:

Dates of suspension or expulsion:

(Please provide additional schools and dates of expulsion or suspension on back of this sheet.)

Reason for suspension/expulsion (optional) _____

(Signature of Parent or Guardian)

(Date)

**Attachment B - SWORN STATEMENT BY RESIDENT UNDER §13-1302
TO BE COMPLETED BY RESIDENT ONLY**

Instructions: Please complete the following statement. If the potential student is living, or will be living, in a household with more than one resident adult who will assume responsibility for the student, all such adult residents must complete and sign this statement.

This is a legal document. You may ask to see a copy of 24 P.S. §13-1302 prior to signing this document, and consult with an attorney if you have any questions or do not understand any portion of this document.

1. Your Name _____
Home Address _____
Home Telephone Number _____ Work Number _____

2. Do you live in the school district and does the child live with you? Yes ____ No ____

3. Child's Full Name _____
Birth Date _____ Grade _____
Name & Address of Last School Attended _____
Date child began/will begin to reside in your home _____

4. Are you supporting this child gratis (without personal compensation or gain)?
Yes ____ No ____

5. Will you assume all personal obligations related to school requirements for this child that may include providing for required immunizations, uniforms, fees/fines, citations/fines for truancy, attending parent-teacher conferences, or attending meetings/hearings concerning discipline? Yes ____ No ____

6. Do you intend to keep and support the child continuously and not merely through the school term? Yes ____ No ____

Through my notarized signature, I/We understand that the school district, pursuant to guidelines issued by the Department of Education and their own written policy, may require other reasonable information to be submitted to confirm this sworn statement.

Signed by resident(s) and notarized _____

Per 24 P.S. §13-1302, a person who knowingly provides false information in the above statement for the purpose of enrolling a child in a school district for which the child is not eligible commits a summary offense and shall, upon conviction for such violation, be sentenced to pay a fine of no more than three hundred dollars (\$300) for the benefit of the school district in which the person resides or to perform up to two hundred forty (240) hours of community service, or both. In addition, the person shall pay all court costs and shall be liable to the school district for an amount equal to the cost of tuition calculated in accordance with §2561 during the period of enrollment.

**Attachment C - GUIDELINES FOR REASONABLE INFORMATION
TO SUBSTANTIATE SWORN STATEMENT BY RESIDENT UNDER 24 P.S. §13-1302**

Pursuant to Act 35 of 2001 (24 P.S. §13-1302(a)(2)), school districts may request information from the resident to substantiate the assertions made in the sworn statement of the resident, provided that the district has adopted a policy regarding this additional substantiating information and that the policy conforms with this Basic Education Circular. If the school district has elected to require substantiating information and advised the resident thereof, then the resident must submit the information before the district is required to accept the child as a student.

A district may require that more than one form of residency confirmation be provided. However school districts and charter schools should be flexible in verifying residency, and should consider what information is reasonable in light of the family's situation. Examples of documentation that can support the factors in §1302 include:

Signer is a Resident of the District

- Current Utility bill, or
- Deed, or
- Lease, or
- Department of Transportation identification or drivers license, or
- Pennsylvania Department of Transportation vehicle registration, or
- Property tax bill, or
- Copy of State/Federal program enrollment, (examples include, but not limited to, TANF or CHIP), or
- Current credit card bill.

Signer is Supporting the Child Gratis

- Copy of completed county form or court order transferring child support payments to resident, if applicable, or
- Copy of completed State form notifying Department of Welfare of child's new residence, if applicable,
- Copy of lease/rental agreement identifying the child as a tenant, if applicable, or
- sworn statement by the resident.

A resident's receipt of payments, such as Supplemental Security Income (SSI), Transitional Assistance for Needy Families (TANF), pre-adoptive support, child support, maintenance on public or private health insurance, support from the military or military personnel or other payments for or on account of the child shall not be deemed to be personal compensation or gain.

Signer will Assume All Personal Obligations for the Child Relative to School Requirements

Sworn statement by resident shall be satisfactory evidence thereof.

Signer Intends to so Keep and Support the Child Continuously and Not Merely Through the School Term

Sworn statement by resident shall be satisfactory evidence thereof.

Tool 4:

Nonresident Students in

Institutions BEC

Pre K-12 Schools

Basic Education Circulars (Purdon's Statutes)

Nonresident Students in Institutions

24 P.S. Section 13-1306

DATE OF ISSUE: July 1, 1999

DATE OF EXPIRATION: June 30, 2004

REPLACES: Nonresident Students in Institutions,
BEC 24 P.S. 13-1306,
issued September 1, 1997

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 identified as "1306" students. These students may be in a variety of residential centers, homes or institutions, such as Drug and Alcohol Treatment Centers, homes for orphans or other "institutions for the care and training for orphans or other children."

SCHOOL DISTRICTS WHICH HAVE STUDENTS RESIDING IN A CHILDREN'S INSTITUTION LOCATED WITHIN THEIR BORDERS ("HOST" SCHOOL DISTRICTS) ARE RESPONSIBLE FOR EDUCATING THE STUDENTS IN THOSE CHILDREN'S INSTITUTIONS.

Under Section 1306 of the School Code, the host school district is required to allow nonresident students in children's institutions, including detention homes, drug and alcohol treatment centers and others, located within their borders, to attend the public schools of the host school district. For some students living in these children's institutions this may not be appropriate because of the terms of the institutionalization or because of the particular educational needs of the student. In some cases, the host school district may wish to conduct an educational or alternative education program at the institution. These districts should apply to PDE for approval to run an experimental or alternative program for these students using the process set forth in 22 Pa. Code Section 4.82 of the State Board of Education Regulations or programs for disruptive youth per 24 P.S. Article XIX-C. In other cases, the host school district may contract with another educational entity, such as an Intermediate Unit, to provide an educational program for the students in the institution. Some children's institutions may wish to apply to PDE for approval to operate education programs as nonpublic schools.

FINANCING NON-RESIDENT STUDENTS LIVING IN CHILDREN'S INSTITUTIONS

If a student residing in a children's institution is found to be exceptional, the host school district is responsible for providing the student with an appropriate program of special education and training consistent with Chapters 14 and 342 of the Pennsylvania regulations and standards. This means the host school district is responsible for making decisions regarding the goals, programming, and educational placement for each student. The host school district is also responsible for seeking advice from the resident school district with respect to the student, and keeping the resident school district informed of its plans to educate the student. Other arrangements may be made in writing between the two districts regarding educational and procedural responsibilities, with the approval of the Department of Education and notice and opportunity to respond by the parents.

Host school districts will finance the provision of the educational program for the students in children's institutions through Section 1306 of the school code, "Non-resident inmates of children's institutions." This section allows the host school district to charge the school district where the student's parents live, or "resident" school district, the host district's tuition rate, as determined by Section 2561, for the education of these students. Arrangements for this payment are made directly between the two school districts.

For a student residing in a children's institution who is eligible for special education services, the host

school district may charge up to the total net cost of the services provided, minus any amount already received as a tuition charge. The Pennsylvania School Code, 24 P.S. Section 1309(2), allows the host school district to charge the full cost of providing special education programs and services for all institutionalized students.

RESIDENT SCHOOL DISTRICT RESPONSIBILITIES INCLUDE DIRECT PAYMENT TO THE HOST SCHOOL DISTRICT FOR PROVIDING THE EDUCATIONAL PROGRAM AND STAYING INFORMED OF THE EDUCATIONAL SERVICES BEING PROVIDED TO A STUDENT ELIGIBLE FOR SPECIAL EDUCATION.

INTERMEDIATE UNITS (IUS) MAY CONTINUE TO PROVIDE THE EDUCATIONAL PROGRAM FOR STUDENTS IN SOME INSTITUTIONAL SETTINGS AND WILL CONTINUE TO RECEIVE SUPPORT FROM THE COMMONWEALTH FOR THESE STUDENTS. RESIDENT SCHOOL DISTRICTS WILL PAY THE DIFFERENCE BETWEEN THE SUPPORT FROM THE COMMONWEALTH AND THE COST OF EDUCATING INSTITUTIONALIZED STUDENTS IN NEED OF A SPECIAL EDUCATION PROGRAM, IF NECESSARY.

The Public School Code, at Section 2509.1 (b.1), allows the Department to pay intermediate units (IUs) for costs associated with "operating and administering classes or schools for institutionalized children." This section of the School Code does not require IUs to operate these classes, but IUs are allowed to do so, and are required to do so to the extent that it is not feasible for a school district to take care of the education of some or all of such students. To support efforts in this area, PDE expends funds up to the limit allowed by the General Assembly, from the total amount appropriated for special education. This will not necessarily fund intermediate units for 100% of their current expenses, because Section 2509.1 (b.1) calculates payments on prior year amounts and because the maximum available to IUs under Section 2509.1(b) is currently established in law.

This system also includes a tuition recovery procedure, whereby the resident school district (that is, the district in which the student's parents reside) pays to the Commonwealth a tuition charge. The tuition charge is the tuition amount of the resident school district, calculated in accord with Section 2561 of the School Code. This tuition amount is recovered by the Commonwealth following determination of the student's resident school district in accordance with procedures in Section 1308.

In cases where:

1. the host school district has implemented all of its responsibilities under Section 1306,
2. the child is an eligible student under Chapter 14, and
3. the host school district can show that the cost for the IU program used by the host school district exceeds the funds provided to the IU by the Commonwealth, then the resident school district is responsible for paying these additional costs of the special education program.

Amendments to Section 1309 of the School Code established the special education charge which may now be the total net cost of the special education program provided. In the case of a child with exceptionalities who is an inmate of an institution and who is served under Section 2509.1(b), the host school district may charge the district of residence an amount that does not exceed the total cost of the special education program provided minus the amount received per child from the Commonwealth under Section 2509.1(b).

For billing purposes, the IU may act as a billing agent for the host school district. When an IU does so, it should clearly identify itself as acting in that capacity in order to trigger the tuition recovery process called for in Section 1309. Regardless of who does the billing, that entity should certify that the above listed conditions are satisfied.

PROCEDURES TO FOLLOW TO ESTABLISH RESIDENCY FOR A "1306" STUDENT

The following procedure is set forth in 24 P.S. §13-1308 to establish the residency of a student living in a children's institution but whose parents are not residents of the school district in which the institution is located.

- The officers of the institution submit to the board of school directors of the host school district a sworn statement listing the names, ages and school district of each resident of the institution.
- The host school district forwards a form PDE-4605, Determination of District of Residence for Students in Facilities or Institutions, by certified mail, to the school district in which the institution declares the student's parents reside (the resident school district). The secretary of that school district must sign the form to acknowledge or disclaim the residence of the student.
- If the resident school district does not return the form within fifteen days, the host school district shall send the form to the resident school district again.
- If the resident school district again does not return the form within fifteen days, the host school district may construe such neglect to be acknowledgment of the student's residence.
- The resident school district shall pay the tuition (and any applicable special education charge) billed by the host school district for its residents upon receipt of the bill.
- The resident school district may appeal the tuition bill to the Secretary of Education. The Secretary's decision as to the amount of the bill and/or which school district is responsible for the tuition is final.
- If the resident school district neglects or refuses to pay the amount billed or determined by the Secretary of Education if appealed, the Secretary has the authority to deduct the amount owed by the resident school district from funds due from the Commonwealth and pay that amount to the host school district.
- Any school-aged person living in an institution in Pennsylvania whose parent(s) or legal guardian resides outside Pennsylvania is entitled, upon request, to PDE review of his or her place of residence. Procedures used by PDE to make such determination are described in BEC 24 P.S. Section 13-1308.
- Students from out-of-state must have a guarantee or actual tuition paid prior to the student enrolling in the school district program. See BEC 24 P.S. 13-Section 1308(1).
- For a student determined to be emancipated, use his or her last address to establish the school district of residence.
- Due to the brief institutionalization periods for some students in institutions, host school districts are encouraged to bill the resident school district on a regular and periodic basis.

REFERENCES:

Purdon's Statutes

24 P.S. Section 13-1306
 24 P.S. Section 13-1308
 24 P.S. Section 13-1309
 24 P.S. Section 25-2509.1
 24 P.S. Section 25-2561

State Board of Education Regulations

22 Pa. Code Section 5.252(a)
 22 Pa. Code Section 11.18
 22 Pa. Code Chapter 14

Department of Education Standards

22 Pa. Code Chapter 342

Other

Bermudian Springs School District v. Department of Education,
475 A 2d 943 (Pa. Commonwealth, 1984)

CONTACT BUREAU/OFFICE:

Pennsylvania Department of Education
School Services Unit
333 Market Street, 5th Floor
Harrisburg, PA 17126-0333
Phone: (717) 787-4860

For approval to operate a nonpublic school:

Division of Nonpublic and Private School Services
Bureau of Community and Student Services
Phone: (717) 783-5146

For copies of form PDE-4605, Determination of District of Residence for Students in Facilities or Institutions:

Division of Subsidy Data and Administration
Bureau of Budget and Fiscal Management
Phone: (717) 787-5423

Content Last Modified on 12/29/2008 9:22:58 AM

School Services Unit
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Telephone: (717) 783-3750

Tool 5:
Entitlement of Resident Children to
Attend Public School
(Regulation from 22 Pa.
Code Section 11.11)

ADMISSION TO PUBLIC SCHOOLS

§ 11.11. Entitlement of resident children to attend public schools.

(a) *Entitlement.*

(1) A school age child is entitled to attend the public schools of the child's district of residence. A child's district of residence is that in which the parents or the guardian resides. When the parents reside in different school districts due to separation, divorce or other reason, the child may attend school in the district of residence of the parent with whom the child lives for a majority of the time, unless a court order or court approved custody agreement specifies otherwise. If the parents have joint custody and time is evenly divided, the parents may choose which of the two school districts the child will enroll for the school year. If the child is an emancipated minor, the resident school district is the one in which the child is then living. For purposes of this section, an emancipated minor is a person under 21 years of age who has chosen to establish a domicile apart from the continued control and support of parents or guardians. A minor living with a spouse is deemed emancipated.

(2) Transportation for students must be provided consistent with the policy of the school district that the students are attending.

(b) *Enrollment.* A school district or charter school shall normally enroll a child the next business day, but no later than 5 business days of application. The school district or charter school has no obligation to enroll a child until the parent, guardian or other person having control or charge of the student making the application has supplied proof of the child's age, residence, and immunizations as required by law. School districts and charter schools receiving requests for educational records from another school district or charter school shall forward the records within 10 business days of receipt of the request.

(c) *Nonresident children.* The requirement of subsection (b) applies equally to nonresident children who are children living in facilities or institutions as defined in § 11.18 (relating to nonresident child living in facilities or institutions), or foster homes, or with a district resident who is supporting the child without personal compensation as defined in § 11.19 (relating to nonresident child living with a district resident), provided that the person making the application has supplied the documentation required by law.

(d) *Immigration status.* A child's right to be admitted to school may not be conditioned on the child's immigration status. A school may not inquire regarding the immigration status of a student as part of the admission process. This provision does not relieve a student who has obtained an F-1 visa from the student's obligation to pay tuition under Federal law.

(e) *Home language survey.* A school entity shall administer a home language survey to all students seeking first time enrollment in its schools in accordance with requirements of the

Authority

The provisions of this § 11.11 amended under section 1317(a) of The Administrative Code of 1929 (71 P. S. § 367(a)); and sections 1327, 1330, 1372, 1511 and 2603-B of the Public School Code of 1949 (24 P. S. § § 13-1327, 13-1330, 13-1372, 15-1511 and 26-2603-B).

Source

The provisions of this § 11.11 amended December 19, 1986, effective December 20, 1986, 16 Pa.B. 4874; amended October 22, 2004, effective October 23, 2004, 34 Pa.B. 5798. Immediately preceding text appears at serial pages (244452) and (271457).

Notes of Decisions

Out-of-State Schools

Order of State Board of Education disclaiming authority to decide upon continuance of school board's practice of utilizing out-of-state schools to educate some of district's children is not a regulation and does not give school district sole discretion over the assignment of students to attend out-of-state schools. *Wayne Highlands School v. Department of Education*, 488 A.2d 1172 (Pa. Cmwlth. 1985).

Cross References

This section cited in 22 Pa. Code § 11.18 (relating to nonresident children living in facilities or institutions); and 22 Pa. Code § 11.19 (relating to nonresident child living with a district resident).

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Tool 6:
Charter Schools in Pennsylvania –
Frequently Asked Questions
(ELC fact sheet)



CHARTER SCHOOLS IN PENNSYLVANIA - FREQUENTLY ASKED QUESTIONS

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

1. What is a charter school?

Charter schools are public schools created by agreement ("a charter") with a local school board. They must be run as non-profit organizations and be free to students and parents. Charter schools cannot teach religion. Charter schools are created and run by parents, teachers, community members, business people, museums, non-religious colleges or universities. The school must include the words "charter school" in its name.

Charter schools are schools of "choice" and are an alternative to traditional public schools. Charter schools are exempt from some -- but not all -- of the laws and regulations that apply to other public schools. Charter schools must provide at least 180 days of instruction. They are also required to take part in Pennsylvania's testing system. Charter schools must comply with laws protecting civil rights and student health and safety. Charter schools must obey state law when they suspend or expel students. They must also obey federal special education laws.

2. Who can enroll in a charter school?

Any child who lives in Pennsylvania can apply for admission to a charter school. First preference must be given to students who live in the district where the charter is located. If there is not enough space for all the students who apply, qualified

students must be selected randomly (e.g. by lottery). Non-resident students can be admitted if there is enough space.

3. Can a charter school limit admission to a particular group or exclude some students?

Charter schools ***cannot*** restrict admission based on anything that would be illegal if done by a school district. The school district also ***cannot*** restrict admission based on:

- Academic or athletic ability
- Test scores
- Limited English language skill
- Disability

A charter school ***cannot*** deny enrollment or discriminate in its admission policies or practices based on a student's disability or the student's need for additional aids or services. A charter school must admit students regardless of the nature and severity of their disability if they meet the other requirements for enrollment.

Charter schools ***are allowed*** to limit enrollment to a grade level or area of study (the arts, mathematics, or science). Charter schools ***may*** create fair standards to judge prospective students, but the standards must be listed in the charter agreement.

Charter schools ***may*** also limit admission to a group of "at risk" students. At risk students include students who may fail due to limited English skill, poverty, community factors, truancy, or academic problems. Charter schools ***may*** give preference to students with siblings attending the school and with parents involved in the creation of the charter school.

4. Can charter schools charge tuition?

No. Charter schools must be free to parents and to students. Charter schools cannot charge registration fees or impose other costs that would prohibit the enrollment of some students.

5. *Once a student is enrolled in a charter school, must the parent re-apply each year for admission?*

No. Once a student is enrolled in a charter school, he or she has the right to continue to attend the charter school without having to re-apply for admission.

6. *Who can teach children within a charter school?*

In Pennsylvania, only 75% of the teachers in charter schools need to be certified teachers. The other 25% do not have to be certified but if they are teaching a "core" subject area like math or social studies, they must demonstrate some expertise in the area. Persons who teach special education or provide services to children with disabilities in charter schools must be certified to teach those children.

7. *Do students in charter schools have to participate in statewide assessments?*

Yes. Charter schools must participate in the Pennsylvania System of School Assessment (PSSA) in the same manner in which the school district in which the charter school is located is scheduled to participate.

8. *Do charter schools have to operate on the same school calendar as other public schools?*

No. Charter schools must provide a minimum of 180 days of instruction per year, but are free to provide a longer or different school calendar.

9. *Who is responsible for transporting children to and from charter schools?*

Districts must provide free transportation to students who live in the district and:

- Attend a charter school located within the district
- A regional charter school of which the school district is a part
- A charter school that is located within 10 miles of the district's borders

This is true whether or not the district transports students attending other district schools. For example, a district has to transport a high school student attending a charter school within the district, even if the district does not transport

students to its own high schools. A school district must also transport students to a charter school while the school is in session, whether or not its own schools are in session.

If the Pennsylvania Department of Education (PDE) finds that a school district is not providing transportation to students who attend a charter school, PDE will pay the charter school to transport these students. PDE will deduct the cost of this transportation from funds it provides to the district. Districts that transport students to charter schools in other districts can receive money to cover some of the costs from PDE.

10. Can a charter school suspend or expel a student?

Charter schools must provide all students attending the charter school the same protections that children in other public schools get before suspending or expelling a child. (A suspension is any removal from school for 1 to 10 school days in a row. An expulsion is any removal from school for more than 10 school days in a row.) These include notice of the misbehavior and an opportunity to challenge the suspension or expulsion. Charter schools must give students with disabilities and their parents the additional special protections required by federal law. This includes determining whether the behavior for which the child is being punished is related to the child's disability.

ELC has several Fact Sheets on discipline issues for children with disabilities. A guide titled "Fairness in Discipline" is also available. These papers address the often complex issues of discipline in traditional schools. Although most of this information applies to charter schools, there are some differences for children in charter schools. Attorneys at ELC are very interested in discipline at charter schools, and are happy to talk to parents, students, and advocates with specific concerns.

11. How are charter schools monitored?

The local school board has the authority to revoke the charter or to refuse to renew it. This is true even if the charter has been granted by the Charter Schools Appeal Board (which means that the local district originally refused to grant the charter, and was reversed by the Appeal Board). Charter schools must follow the charter agreement they enter into with the local school board. They must also submit an annual report to the district no later than August 1st of each year.

The local school board must determine whether each charter school is meeting the goals of its charter. Before the five-year renewal of the charter, the district must conduct a thorough review. The Charter School Law also gives the school board the right to see the charter school's records and inspect its facilities. This is to make sure that the terms of the charter are being met and that the charter school is complying with other legal requirements.

PDE also monitors charter schools. PDE is responsible for making sure that charter schools comply with relevant state and federal laws - including federal disability and civil rights laws.

Parents and members of the community can also monitor charter schools by attending public board meetings and speaking with parents, teachers and administrators.

12. Can a parent withdraw a child from a charter school at any time?

Yes. Charter schools are schools of choice. A parent may withdraw a child at any time and re-enroll the child in the local school district or elsewhere. If a child is expelled from a charter school for a "weapons" offense, the district decides whether to admit the student or not (although the local district may still have an obligation to provide some services to the child).

13. Can students enrolled in a charter school participate in extra-curricular activities (e.g. athletic teams, band, chorus, etc) in their local school district?

Yes, but only if the charter school does not offer the same opportunity or activity. For example, a student enrolled in a charter school can play on the high school's soccer team only if the charter school does not have its own soccer team.

14. Do charter schools have to comply with special education laws?

Yes. Charter schools must comply with all federal disability laws, including:

- The Individuals with Disabilities Education Act
- Section 504 of the Rehabilitation Act
- The Americans with Disabilities Act

Charter schools must provide eligible students with all of the federally required rights and protections. This means that children with disabilities who attend charter schools have a right to a free appropriate public education. A free appropriate public education includes related services and all of the procedural protections guaranteed to students and parents by federal law. Charter schools do *not* have to comply with Pennsylvania's special education regulations (Chapters 14 and 15) or with Pennsylvania's regulations governing gifted education (Chapter 16).

For more specific information about charter schools and children with disabilities, please see other ELC publications, including our fact sheet titled, "Charter Schools and Children with Disabilities."

15. When parents feel that charter schools are violating a child's rights, where do the parents complain?

Parents should first speak with the teacher or an administrator at the charter school to resolve their argument. If this is not successful, parents can contact the Board of Trustees of the charter school and report your concerns. You may also want to notify the school board where the charter school is located to report violations. Parents may also want to consult with an attorney to explore further legal action against a charter school.

Parents of children with disabilities may request mediation and/or a special education due process hearing to resolve arguments that arise with charter schools concerning the child with disabilities. Parents of children with disabilities also have the right to file a complaint with the Pennsylvania Department of Education's Bureau of Special Education.

16. Can a charter school ever be closed?

A charter school must apply for a renewal of their charter every five years. During this process, the district asks the charter school to provide information to show that they met the requirements of their charter. The school district then decides whether to renew the charter based on information about the school. If the district finds that the charter school has not met the requirements of the charter or has committed some legal or ethical violation, the district can decide not to renew the charter. The charter school has many opportunities to appeal the decision but

ultimately can be shut down. A charter school may be closed at any time if the district finds that the health and safety of students and staff has been threatened.

If you have questions or concerns about students attending charter schools, please call ELC and we will be happy to discuss these with you. You may also want to get a copy of our other fact sheets related to charter schools:

- *Students with Disabilities Attending Public Charter Schools*
- *What to Do If You Have Concerns About Your Child's Charter School*
- *Questions to Ask Before You Enroll Your Child in a Charter School*

These are available from ELC by calling the Philadelphia number listed below, or by visiting our web page.

Prepared by: *Education Law Center (Rev. 8/08)*
(215) 238-6970 (Philadelphia)
(412) 258-2120 (Pittsburgh)
www.elc-pa.org

Tool 7: Cyber Charter Schools – Frequently Asked Questions (ELC fact sheet)



Cyber Charter Schools – Frequently Asked Questions

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

What are they?

A cyber charter school is a **public** charter school that provides most of its instruction to its students **through the Internet** or **by some other electronic means**. Students who are enrolled in a cyber charter school do most of their schoolwork at home over the computer – they do not go to classes in a school building.

A cyber charter school must operate as a non-profit organization that is governed by an independent board of directors. New cyber charter schools are created by **written agreement (a "charter") with the Pennsylvania Department of Education (PDE)**, unlike "brick and mortar" charter schools which are given their charters by a local school board. PDE also decides if a cyber charter school's charter will be renewed.

Who can attend?

Any child who lives in Pennsylvania can apply for admission to any cyber charter school. For instance, a child can live in Philadelphia and still enroll in a cyber charter school which is located in Pittsburgh. If more students apply than there are slots at the cyber charter school, qualified students must be selected randomly (e.g. by lottery).

Cyber charter schools also **cannot** limit admission on the basis of intellectual or athletic ability, measures of achievement, English proficiency, or disability. Cyber charter schools **are permitted** to limit their enrollment to a particular grade level or area of concentration (the arts, mathematics, or science). Cyber charter schools **may** establish reasonable criteria to evaluate prospective students, but the criteria must be outlined in the charter agreement. Cyber charter schools **may** also limit admission to a targeted group of "at risk" students.

Can cyber charter schools charge tuition?

No. Cyber charter schools must be free to parents and to students. Cyber charter schools cannot charge registration fees or impose other costs that would prohibit the enrollment of some students.

Are all cyber charter schools the same?

No. Each cyber charter decides how it will deliver its education program, so it's important to speak with someone at the school to find out what the school offers. Cyber charter schools usually provide their students with free computers and pay for, or reimburse families for, an Internet connection. Some schools may offer "in-person" activities in addition to computer-based programs.

There are some rules all cyber charter schools must follow. For example, at least 75% of the teachers at each cyber charter school must be State-certified. All cyber charter schools must obey civil rights laws, and all cyber charter schools must provide special education services to eligible students.

Is there a list of cyber charter schools?

A list of cyber charter schools and their contact information is available at: http://www.pde.state.pa.us/charter_schools/cwp/view.asp?a=3&Q=46378&charter_schoolsNav=|565|&charter_schoolsNav=. A list is also attached to this fact sheet, but you should also check the website for the most recent version of the list.

For more information about charter schools generally, please see ELC's fact sheets titled "*Charter Schools - Frequently Asked Questions*" and "*Questions to Ask Before You Enroll Your Child in a Charter School*." These are available from ELC by calling the Philadelphia number listed below, or by visiting ELC's website at www.elc-pa.org.

Tool 8:

Alternative Education for

Disruptive Youth BEC

Pre K-12 Schools

Basic Education Circulars (Purdon's Statutes)

Alternative Education for Disruptive Youth

Alternative Education for Disruptive Youth 24 P.S. § 1901-1906 C

DATE OF ISSUE: July 9, 2009 (Replaces Alternative Education for Disruptive Youth, BEC 24 P.S. Article 19-C issued July 1, 2002.)

PURPOSE

This Basic Education Circular (BEC) provides guidance regarding placement of students in Alternative Education for Disruptive Youth (AEDY) Programs. It also provides guidance on AEDY program requirements to ensure that students in these programs are provided appropriate academic and behavioral support services.

INTRODUCTION

24 P.S. §19-1901C, also known as Act 30 of 1997, gives authority to the Pennsylvania Department of Education to approve Alternative Education for Disruptive Youth (AEDY) programs and to provide grants for these programs. AEDY programs may be implemented by a school district, an area vocational-technical school, a combination of school districts, an intermediate unit, or, according to a 2008 amendment to 24 P.S. §19-1901-C, a qualifying charter school. Charter schools must meet the following criteria to qualify for funding to operate an AEDY program:

1. Their central mission is to provide an alternative education program within or to a chartering school district or school districts.
2. The charter school has a written letter of support from its chartering school district.¹

School districts where these facilities are located are responsible for providing regular and special education services as described in 24 P.S. §13-1306. AEDY programs serve the purpose of temporarily removing persistently disruptive students from regular school programs. AEDY programs must provide students with a sound educational course of study that meets or exceeds state standards as mandated by 22 Pa Code Chapter 4 and allows students to make normal academic progress toward graduation in their home district. AEDY programs must also provide behavioral supports and counseling aimed at modifying the disruptive behavior that led to the transfer. AEDY programs may operate outside the hours of the normal school day and on Saturdays. School districts that do not apply for and receive approval from PDE to operate an AEDY program must provide basic and special education programs for all students in conformity with all requirements of the School Code and the Pennsylvania Board of Education Regulations, including days, hours, curricula and teacher certification requirements. Any alternative program not approved by PDE must adhere to the same requirements as a regular education setting, including at least 900 instructional hours per year for 6th grade and at least 990 instructional hours per year for 7-12th grade (22 Pa. Code §11.3); and "highly qualified" teacher requirements (22 Pa. Code §403.4).

Eligible applicants must apply for AEDY program approval as prescribed by the Pennsylvania Department of Education. PDE may revise guidelines for program approval and grant funding on an annual basis. Before applying, eligible applicants should review the most current AEDY Program

Guidelines at: http://www.pde.state.pa.us/alt_disruptive/site/default.asp

Private Alternative Education Institutions (private providers) must seek approval on a renewal basis every 3 years as required by 24 P.S. §19-1903-E. PDE approval allows private providers to enter into contractual agreements with eligible public school entities to provide AEDY services. **PDE approval does not provide or imply any licensure or accreditation for any** private provider entity.

Private provider applications are found at: http://www.pde.state.pa.us/alt_disruptive/cwp/view.asp?a=3&q=140052.

Eligible public school entities that wish to contract with an approved private provider must submit an AEDY Program Application PRIOR to placing students in the private provider program.

Eligible Students and Allowable Transfers

AEDY programs are designed for seriously and persistently disruptive students. By law, districts may refer students to AEDY programs only if, **at the time of the recommended transfer**, they demonstrate, to a marked degree, any of the following conditions:

- (1) disregard for school authority, including persistent violation of school policy and rules;
- (2) display or use of controlled substances on school property or during school activities;
- (3) violent or threatening behavior on school property or during school-affiliated activities;
- (4) possession of a weapon on school property, as defined under 18 Pa. C.S. §912;
- (5) commission of a criminal act on school property or during school-affiliated activities;
- (6) misconduct that would merit suspension or expulsion under school policy; and,
- (7) habitual truancy.

Students in grades 6-12 are eligible for placement in an AEDY Program. The program must enable all students to make normal academic progress and to meet the requirements for graduation in their home school district. Placement in an AEDY program should be considered only after all other options for improving behavior have been exhausted. This includes the use of the school's Student Assistance Program.

All students recommended for assignment to an AEDY program must be provided with due process **prior to placement** including an informal hearing in accordance with 22 Pa. Code §12.8 (c). The informal hearing is held to bring forth all relevant information regarding the event for which the student may be transferred to AEDY and for students, their parents or guardians and school officials to discuss concrete strategies for avoiding future offenses. The following due process requirements shall be observed in regard to the informal hearing:

1. Notification of the specific reasons for the recommendation of transfer shall be given in writing to the parents or guardians and to the student.
2. Sufficient notice of the time and place of the informal hearing shall be given.
3. A student has the right to question any witnesses present at the hearing.
4. A student has the right to speak and produce witnesses on his or her own behalf.
5. The school entity shall offer to hold the informal hearing prior to placement in the program. However, if the student's presence in the regular classroom poses a danger to persons or property or provides a disruption of the academic process, immediate placement in the alternative program for disruptive youth may occur with the informal hearing to follow as soon as practicable.

Students Formerly Adjudicated Delinquent or Convicted of a Crime

AEDY programs may include services for students returning from placements or who are on probation resulting from being adjudicated delinquent or who have been convicted of committing a crime in an adult criminal proceeding. When a student returns to a school district from a delinquency placement, the school district cannot automatically place a child in an AEDY program merely because the child had been adjudicated delinquent. ***Each specific case must be examined on an individual basis.*** As with any other student being transferred to an AEDY program, students returning from delinquency placement are entitled to an informal hearing prior to being placed in an alternative education program. The purpose of the hearing is to determine whether the student is currently fit to return to the regular classroom or meets the definition of a disruptive student. Factors a school should consider include: whether the incident causing the adjudication occurred at school or at a school-sponsored event, the child's behavior in placement, and the recommendations of teachers and other adults (such as juvenile probation officers and residential treatment staff) who have worked with the youth.

Students often make significant progress while in placement and some may be best served by returning to a regular classroom. Many want the chance to prove they are able to thrive in a regular school setting. Thus each case should be considered individually, based on the circumstances of a student at the time of return to the district.

SPECIAL EDUCATION STUDENTS

AEDY programs must comply with the Individuals with Disabilities Education Act (IDEA) and all related federal and state regulations (20 U.S.C.A. §§1400-1485, 34 C.F.R. §300 & 30, and 22 Pa. Code Chapters 14, 15 & 16). The sending school district maintains the ultimate responsibility for ensuring that special education students in AEDY programs receive a free and appropriate public education (FAPE) that conforms to federal and state law and regulations.

No student eligible for special education services pursuant to the IDEA shall be transferred to an AEDY program except in accordance with 34 C.F.R. §§ 300.530-300.536, 22 Pa. Code §14.143, and 22 Pa. Code § 711.61 (pertaining to charter schools). See PDE B.E.C. "Disciplinary Exclusions of Students Who Are Eligible for Special Education." A special education student placed in an AEDY program must be appropriately supported in making progress toward the goals in his or her Individualized Education Program (IEP).

Special education services must be provided to a child with a disability who has been removed from the child's current placement and whose IEP Team has determined the educational setting, such as AEDY, is appropriate.

Where a child is removed from the current placement for more than 10 consecutive school days or 15 cumulative days and placed in an AEDY Program he/she must:

- a. Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
 - b. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again.
- The disciplinary exclusion of a student with a disability for more than 10 consecutive or 15 cumulative days in a school year will be considered a pattern so as to be deemed a change in educational placement (22 PA Code 14.143(a)). A removal from school is a change in placement for a student who is identified with mental retardation, except if the student's actions are consistent with 34 CFR 300.530(g)(1)-(3) (relating to authority of school personnel).

- The parent can agree to the change in educational placement via the notice of recommended educational placement/prior written notice.
- The LEA must conduct a manifestation determination. Within 10 calendar days of any decision to change the placement of a child with a disability because of violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file.
- A functional behavioral assessment must be conducted if it is determined that the child's behavior impedes the child's learning or that of other and a positive behavioral support plan is required.
- A change in placement could occur if the student has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year, because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals, and because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another (34 CFR 300.536(2)(i)(ii)(iii)).

Before a school may effect a change in placement for disciplinary purposes, the student's IEP Team must meet and determine whether the behavior for which the transfer is considered is a "manifestation" of the child's disability (called a "manifestation determination"). Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that does not constitute a change in educational placement i.e., is for 10 consecutive school days or less and not a change of placement), the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- b. If the conduct in question was the direct result of the LEA's failure to implement the child's IEP.

If the LEA, the parent, and relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

- If the LEA, the parent, and relevant members of the child's IEP Team determine that the conduct in question was the direct result of the LEA's failure to implement the IEP, the LEA must take immediate action to remedy those deficiencies. For a copy of a manifestation determination worksheet developed by the PA Department of Education, go to <http://www.pattan.k12.pa.us/files/Behavior/ManiDetermin102907.pdf>. The school may not transfer the student until the IEP Team has met and determined whether the behavior was *a manifestation of the student's behavior*.

3. In specific circumstances regarding drugs, weapons and serious bodily injury, whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to 45 school days, if the child:

- a. Carries a weapon (see the Definitions below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the LEA;

- b. Knowingly has or uses illegal drugs (see the Definitions below), or sells or solicits the sale of a controlled substance, (see the Definitions below), while at school, on school premises, or at a school function under the jurisdiction of the LEA; or
- c. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a LEA.

Definitions

Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

Weapon has the meaning given the term "dangerous weapon" under *paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.*

If one of the above exceptions applies, the student can be transferred to an AEDY program for up to 45 school days without a manifestation determination. See 34 C.F.R. §300.530(g).

If the child is transferred, the **IEP Team** must determine what services the student will require while in the AEDY program in order to:

- participate in the general education curriculum and to progress toward the goals set out in his or her IEP, and
- receive, as appropriate, a functional behavioral assessment and behavior intervention services and modifications that are designed to address the misbehavior that triggered the transfer so that it does not recur

PROGRAM REQUIREMENTS

In order to receive approval and/or funding to operate or place students in an AEDY program, applicants must demonstrate how they will meet the requirements listed below. School districts – whether they implement their own internal program or contract with an intermediate unit or approved private provider - remain accountable for students' progress in AEDY programs. Districts must hold the programs that serve their students accountable for adherence to program guidelines, academic standards and for students' academic and behavioral progress. PDE may remove funding and/or approval if a district or program fails to meet program requirements. Specific program requirements are as follows:

1. Programs must offer **at least 20 hours of academic instruction per week** and provide a course of study that satisfies the requirements of the State Board of Education Academic Standards (22 Pa. Code Chapter 4) for each student according to his or her grade level.
2. Programs must be developed in consultation with the faculty and administrative staff of the school and parents and members of the community.
3. Programs must establish policies that identify students as eligible for placement in the AEDY program and clearly communicate that to parents, students, and school staff.
4. Programs must comply with the informal hearing procedures set forth in 22 Pa. Code §12.8(c) prior to placement of students. Placement in an AEDY program may occur only when other established

methods of discipline and intervention (such as student assistance) have been utilized and have failed, unless the seriousness of the student's behavior warrants immediate placement. School districts are required to demonstrate that any student recommended for placement in an AEDY program have participated in the Student Assistance Program. School districts must document other methods utilized **prior** to assigning a child to an AEDY program. Schools must also consider whether a child might need an evaluation for special education prior to making a decision to recommend a transfer, in accordance with the school's Child Find responsibilities under the IDEA and 22 Pa Code Chapter 14.

5. Programs must operate five days per week, at least 180 days per year, **and a minimum of 810 hours per year (Programs operating below 990 hours annually must have PDE approval)**

6. Students being served in an AEDY program must be provided with:

- a. a course of instruction sufficient to make normal academic progress and work toward the requirements for graduation as defined by the placing district
- b. clear and measurable academic performance goals, established after administering required academic assessments described in AEDY Guidelines. Plans for individual students' academic programs should be formulated in close collaboration with the sending school and school district.
- c. a course of instruction that recognizes their special needs and prepares them for successful return to a regular school curriculum and/or completion of the graduation requirements established by their home district
- d. individual evaluation to measure progress in the core academic subjects in relationship to the academic standards established by 22 Pa Code §4.

7. Programs must provide at least **2.5 hours per week** of individual or group counseling for every student. The goal of the counseling is to remediate the behavior that triggered the transfer and to help prepare the student for return to the regular classroom. ***The 2.5 hours of counseling per week must be provided in addition to the required hours of academic instruction.***

8. Programs must develop a behavior plan for each student that has clear and measurable goals. This plan must address the disruptive behavior that preceded placement in the AEDY Program. The goal of the behavior plan is to prepare students for return to the regular classroom. AEDY programs are required to use approved behavioral assessment tools, as explained in the AEDY Guidelines, to measure and document student success towards behavioral goals.

9. Programs must have in place a formal, documented process for periodic review and evaluation of each student's academic and behavioral goals to determine the appropriateness for return to the regular classroom. This review must occur, at a minimum, **at the end of every semester** the student is in the program, but may occur more frequently at the program's discretion. The purpose of this review is to determine whether the student is ready to return to the regular classroom. **The review team should consist of AEDY Program administrators, teachers, counselors and a representative from the sending school's administration. In addition, the parent, student, and any other advocate(s) with knowledge of the child's history should be involved in this process.** The review will include an evaluation of the student's academic and behavioral progress. This review must be documented and kept on file in each individual student's record. ***Within each school year, programs are expected to return students to the regular school environment at a target rate of 20%.***

10. Teachers assigned to AEDY programs must be highly qualified and possess a Level I or Level II Pennsylvania Professional Teaching Certificate in the area of instructional assignment, as provided for in 22 Pa. Code Chapter 49, relating to certification of professional personnel. Approved private provider program staff are exempt from this requirement. However, any student eligible for special

education services under IDEA in a public or private AEDY program must be taught by a teacher with a special education certification.

11. Applicants seeking **renewal** for AEDY Programs must demonstrate a track record of effectiveness in improving the academic and behavioral performance of students.

12. LEAs must collect data and submit program reports as required by PDE to document student academic and behavioral progress and the rate of return to the regular school setting. Details can be found in the program guidelines, issued annually by PDE. Districts that contract with private providers must make sure that providers are collecting and recording all data that the district will need to satisfy the state reporting requirements.

PERFORMANCE MEASUREMENT AND ACCOUNTABILITY

Funding and program approval decisions for AEDY programs are made annually based on program performance and outcomes data submitted to PDE by sending school districts on all students and programs. End of year reporting will require programs to provide data from individual student academic and behavioral assessments. The results will be reviewed by PDE to ensure compliance and quality implementation of programming. LEAs that contract with private providers are responsible to ensure that these programs operate in compliance with school code and PDE AEDY Guidelines. LEAs are required to analyze program data to ensure students are receiving appropriate academic and behavioral services. Specific data reporting requirements and protocols will be established and published by PDE.

BEST PRACTICES FOR AEDY PROGRAMS

PDE strongly recommends that AEDY programs adhere to nationally recognized “best practices” for alternative education for disruptive youth. Adherence to best practices will be considered in the review of funding and approval of applications.

- Full-day programs totaling at least 27.5 hours per week
- Student teacher ratios at or below 10:1
- Individual Program Plans for each student and flexible instruction
- Positive emphasis in behavior management
- Integration of a career preparation component within the academic curriculum
- Experiential learning opportunities
- Integration of evidence-based programs that support pro-social behavior
- Adult mentors in the program
- Parent and community involvement
- A formal comprehensive periodic review of each student’s progress toward achieving individual goals established upon placement in the AEDY Program

¹ Charter schools applying for program approval and/or funding must submit documentation as follows:
a) Original signed copy (by Chief Executive Officer) of the charter school’s mission statement on school letterhead
b) Original signed copy (by Superintendent) of the chartering school district’s letter of support

REFERENCES:

Purdon’s Statutes

24 P.S. Article 19-1901C

State Board of Education Regulations

22 Pa. Code § § 4.1-4.83

22 Pa. Code Chapters 14 & 15
22 Pa. Code §12.8(c)
22 Pa. Code §711.61

Federal Statutes

Individuals with Disabilities Act, 20 U.S.C. § § 1400 et seq
34 C.F.R. §§ 300.530-300.536

CONTACT BUREAU/OFFICE:

Division of Student and Safe School Services
Office of Elementary/Secondary Education
Pennsylvania Department of Education
333 Market Street, 5th Floor
Harrisburg, PA 17126-0333
Voice: 717.705.6908

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School Services Unit
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Telephone: (717) 783-3750

Tool 9: Frequently Asked Questions about the Tests of General Educational Development (GED)



Frequently Asked Questions about the Tests of General Educational Development (GED®)

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What is the GED test?

The Tests of General Educational Development were developed in 1942 to certify a high school level of academic skills for those people who did not graduate from high school. They were originally used to test veterans of World War II to determine whether returning GIs were qualified to attend higher education institutions. All 50 states, the District of Columbia, 11 Canadian provinces, and the U.S. insular areas and freely associated states use the GED tests as a basis for awarding high school equivalency credentials. Most U.S. employers consider the GED credential in the same manner as a high school diploma. Almost all U.S. colleges and universities accept the GED transcript for admissions purposes. GED tests are available in English, French, and Spanish versions.

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Who is eligible to take the GED in Pennsylvania?

If you are 18 years old or older, you must meet the following criteria to take the GED tests in Pennsylvania:

- Are a resident of Pennsylvania
- Have not graduated from high school or received a high school diploma or equivalency certificate
- Are not enrolled in a public, licensed private, registered accredited, or licensed nonpublic secondary school
- Can provide necessary documentation to prove your identity

If you are 16 or 17 years of age, you must meet the above criteria and also provide written verification from your school superintendent or principal stating that you are withdrawn from school. In addition, you must provide a letter from one of the following:

- A letter from an employer stating that you must pass the GED tests in order to gain or maintain employment
- A letter from a college or postsecondary training institution stating that passing GED test scores are required for enrollment
- A letter from a branch of the Armed Services stating that passing GED test scores are necessary for induction
- A letter requesting GED scores from the director of a state institution in which you are a resident, patient or inmate

These letters must be written on company/school letterhead and signed by the appropriate staff. Persons 16 years old and older who are under the direction of correctional facilities or parole/probation offices are eligible to take the GED tests while enrolled in school, if so ordered by a court. No persons under the age of 16 are eligible to take the GED tests in Pennsylvania.

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What is the GED diploma?

Pennsylvania issues the **Commonwealth Secondary School Diploma** to all candidates who successfully complete the GED tests. Some school districts may exchange the Commonwealth Secondary School Diploma for a high school diploma. Interested applicants must contact their school district directly.

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What is the minimum passing score?

Pennsylvania requires a passing score of 2250 total points on all five GED tests. Each test score can be no lower than 410 points. If you receive at least 410 on each of the five tests but do not receive a total score of 2250, you may retest on any of the tests to achieve the points necessary for a 2250 total score.

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Is retesting allowed?

Applicants may retest any test they do not pass. An applicant may take each test only three times a year because there are only three different forms of the tests. It is at the discretion of the Chief Examiner to determine the frequency of testing and retesting. Applicants are encouraged to attend GED preparation classes prior to retesting.

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How do I get a diploma?

Upon a candidate's successful completion of the GED test, the Pennsylvania Department of Education will issue a Commonwealth Secondary School Diploma. Only one diploma will be issued per candidate; duplicate diplomas are not issued. The diploma will be sent to the address the applicant provides. Transcripts are issued with diplomas and can be re-issued upon request. Candidates who take the GED tests before turning 18 years old will be issued diploma on their 18th birthday.

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Where can I take the test?

The test is given at over 150 sites throughout Pennsylvania. You can find a GED test center near you by clicking [GED test center locator](#).

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Is the GED test available online?

There are no online GED testing programs recognized by the GED Testing Service of the American Council of Education or by the Pennsylvania Department of Education. Authentic Commonwealth Secondary School Diplomas earned by passing the GED tests in Pennsylvania are only issued by the GED office of the Pennsylvania Department of Education.

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Where can I prepare to take the test?

Free GED preparation classes are available throughout the state. Look at the map of Pennsylvania at right and click in the area where you live. You will need to inquire about specific class times and locations.

You also can prepare for your GED outside of the classroom using the Internet, workbooks, and/or videos. This is a good option for people who cannot attend a class due to family obligations, transportation issues, or work schedules, or for people who prefer not to attend class. For more information, go to [Distance Learning](#).



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How can I get a copy of my transcript?

Individuals who have passed the GED tests may fill out a GED transcript request form online, then mail in the form and \$3.00 fee per transcript in the form of a money order. The \$3.00 fee is nonrefundable. [Click here for online request form](#).

Requests for GED transcripts MUST be accompanied by a money order for \$3.00 per transcript made out to the Commonwealth of Pennsylvania. Money orders for an amount other than \$3.00 per transcript, as well as personal checks and cash, are not accepted.

Transcripts can be picked up at the GED office in Harrisburg. With the \$3.00 money order and a photo ID, a transcript can be issued while you wait. Duplicate diplomas are not issued. When sending a request, please include:

- Name at time of testing
- Approximate year of testing
- Birth date
- Social security number
- Address where transcript is to be sent
- Phone number where you can be reached during the day
- \$3.00 money order or cashier's check for each transcript
- Signature

Mail to:

Commonwealth Diploma Program
333 Market Street, 12th Floor
Harrisburg, PA 17126

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Are there accommodations for taking the tests?

If you have a physical, mental, emotional, or learning disability that makes it difficult for you to take the GED tests, you may request special testing accommodations. Ask

your test examiner for the appropriate request form and instructions. Each request is considered on an individual basis.

There are also accommodations that do not need prior approval. Before test day, inform the GED examiner if you want to use any of these accommodations. They include:

- Large print tests
- Colored transparent overlays
- Clear transparent overlays and a highlighter
- "Sticky" notes (for example, Post-It® Notes) for spatial directions
- Earplugs
- Magnifying devices
- Priority seating
- One test per day
- Straightedge
- Request to wear a cap or hat to limit the effects of fluorescent lighting
- Graph paper

These accommodations do not need prior approval because they do not affect the test administration or interpretation. You should practice using these accommodations before you test.

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GED Brochure

The Bureau of ABLE has available a brochure publicizing GED® testing in PA and providing GED testing information for the general public. It is directed toward anyone interested in taking the GED tests in PA who is not familiar with the tests or aware of the basic requirements or procedures for GED testing in the Commonwealth.

Copies of the brochure are available to any agency encountering potential GED candidates.

Individuals wanting one copy of the brochure may [contact an ABLE agency](#) or [download a PDF file of the brochure](#) to print out. (For best results, use laser output.)



[Download a PDF file](#) of the brochure to print .

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Links

Instructors! [Link to GED lesson plans!](#)

For additional information on the GED, go to the GED Testing Service's Web site at www.gedtest.org and or [download a brochure](#) about GED testing in Pennsylvania.

- ▶ [E-mail the GED Section in the Bureau of Adult Basic and Literacy Education](#)
- ▶ [Go to main GED page: Frequently Asked Questions](#)
- ▶ [Go to GED Examinees page](#)
- ▶ [Go to GED Examiners page](#)
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For more information contact:

Name: Mary Cain
Title: Bureau of ABLE
Email: mcain@state.pa.us
Voice: (717) 787-6747

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Tool 10:

Compulsory Attendance and Truancy Elimination Plan BEC

Pre K-12 Schools

Basic Education Circulars (Purdon's Statutes)



Compulsory Attendance and Truancy Elimination Plan

24 P.S. 13-1327 Compulsory Attendance and Truancy Elimination Plan

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DATE OF EXPIRATION: June 20, 2011

I. Introduction

Educational success promotes workforce opportunity and development and builds a strong economic future for our state. The Pennsylvania Department of Education's (PDE) goals are for every child to be known by name, be proficient or advanced in the core subjects, be graduates from high school, and achieve equitable outcomes regardless of background or 'condition.' The Commonwealth of Pennsylvania is committed to improving school attendance rates. In order for students to realize the opportunities and benefits from school, students have to not only be in attendance, but they must also be meaningfully connected to the school and experiencing success. To achieve this, there must be a collaborative effort across agencies, both at the state level and locally, to work with students and families to address the source issues that result in truant behavior.

This BEC is the result of the work of the Statewide Task Force on School Attendance and Truancy Reduction, so magisterial district judges, parents, and schools will receive guidance on what they can do to help Pennsylvania's children. The Department of Education and the schools of the Commonwealth are obligated to comply with state and federal requirements for student attendance and truancy. As "No Child Left Behind" and the Pennsylvania Accountability System place increased emphasis on student achievement and attendance, it has become even more important to improve Pennsylvania's efforts to reduce truancy.

Development of this BEC has been driven by recommendations made by the Task Force to facilitate a consistent statewide response to truancy and absenteeism and for the development of a continuum of prevention and intervention strategies that involve collaboration among schools, law enforcement agencies, social services providers, as well as faith-based and youth-serving agencies. This BEC describes Pennsylvania law pertaining to pupil attendance and truancy and offers recommendations made by the PDE to encourage the adoption of proven truancy reduction efforts. This document also provides recommendations using national experience and best practices that have proven successful in reducing truancy.

There should be a common understanding among school personnel that the initial responsibility to address truancy rests with teachers, principals and guidance counselors. School districts are advised to develop creative and innovative approaches to ensure that children are active participants in their education. Every effort should be made to keep youth in school and reduce the school district's referrals to the courts, child welfare or juvenile justice systems in order to effectively intervene and eliminate truant behavior. Children are truant for many reasons and schools should seek to understand and address those issues. In Section IV (A)(3) of this BEC, the Department recommends that schools develop a Truancy Elimination Plan (TEP) as a means to address truancy.

Section II of the BEC describes Pennsylvania's law on attendance; Section III provides guidance for schools to use in working with partners to prevent truancy; Section IV outlines the recommended policy on truancy for districts to adopt; Section V addresses proceedings and penalties for violation of compulsory attendance requirements; and Section VI addresses charter schools.

This BEC does not apply to first class school districts. The truancy procedures and programs of the School District of Philadelphia are developed and implemented by the district's Office of Transition

and Alternative Education and the City of Philadelphia's Office of Truancy Prevention in the Department of Human Services.

II. Attendance

A. Compulsory Attendance Requirements

Compulsory school age refers to the period of a child's life from the time the child enters school as a beginner, which may be no later than eight years of age, until the age of seventeen or graduation from a high school, whichever occurs first. It is mandatory for all children of compulsory school age having a legal residence in Pennsylvania to attend a day school in which the subjects and activities prescribed by the Standards of the State Board of Education are taught in the English language, except in the following situations found in sections 1327, 1327.1, 1329, and 1330 of the Pennsylvania School Code:

1. Attendance at a private trade school or private business school continuously through the entire term congruent with the school term of the resident school district and that meets the requirements set forth by the State Board of Education or the State Board of Vocational Education when:
 - . The child is 15 and has approval from the district superintendent and Secretary of Education, or
 - . The child is 16 and has approval from the district superintendent.
2. Attendance at a school operated by a bona fide church or other religious body which provides a minimum of 180 days of instruction or 900 hours of instruction per year at the elementary level or 990 hours per year of instruction at the secondary level.
3. Privately tutored or home school students provided a minimum of 180 days of instruction or 900 hours of instruction per year at the elementary level or 990 hours per year of instruction at the secondary level.
4. Children who are 16 and regularly engaged in useful and lawful employment during the school session with a valid employment certificate. The Department of Education's opinion is that "regularly engaged" means 35 or more hours per week of employment.
5. Children who have been examined by an approved professional and identified to be unable to profit from further public school attendance and excused by the school board.
6. Children who are 15 who hold a permit approved by the school district to engage in farm work or domestic service in a private home.
7. Children who are 14 and satisfactorily completed the equivalent of the highest grade of elementary school in their district who hold a permit approved by the Secretary of Education to engage in farm work or domestic service in a private home.

B. Temporary Attendance Excuses

Principals or teachers in any public, private, or other school may also excuse any child for non-attendance during temporary periods following their respective school district's policy and Pennsylvania law in excusing students. The board of school directors is required to adopt written policies governing pupil absences and excusals.

C. Categorizing Absences: What is Unlawful Absence from School?

The school district is responsible for monitoring and maintaining records of the attendance of students. All absences should be treated as unlawful until the school district receives a written excuse explaining the reason(s) for an absence. Parents/guardians and students should submit the written explanation within three calendar days of the absence and should be informed that if they fail to provide a written excuse within three days of the absence, the absence would be permanently counted as unlawful. The PDE recommends that schools immediately inform parents in writing upon each incident of unlawful absence.

Pennsylvania law broadly defines absences as excused when a student is prevented from attendance for mental, physical, or other urgent reasons. Many school districts consider illness, family emergency, death of a family member, medical or dental appointments, authorized school activities, and educational travel with prior approval as the only lawful absences. An absence that should not be categorized as unlawful is one in which a student who is involved with the county children and youth agency or juvenile probation office is required to leave school for the purposes of attending court hearings related to their involvement with these agencies. It is the responsibility of each district to determine the validity of excuses and have clear written policies regarding absences.

Under Section 11.24, students who miss ten consecutive school days shall be dropped from the active membership roll unless the school is provided with evidence the excuse is legal or the school is pursuing compulsory attendance prosecution. Students of compulsory school age, who have not complied with compulsory attendance requirements, may be offered alternative education services or other provisions of education. Students are entitled to a free public education until the age of 21 years of age or until they receive a high school diploma, whichever occurs first.

D. Cumulative Lawful Absences

A maximum of ten days of cumulative lawful absences verified by parental notification may be permitted during a school year. All absences beyond ten cumulative days should require an excuse from a physician.

E. Reports of Attendance Public and Private Schools (24 PS 13-1332 and 1354)

Every principal or teacher in a public or private school and every private teacher (tutor) is required to report at once to the superintendent, attendance officer, home and school visitor, or secretary of the board of school directors of the district, cases when a child of compulsory school age has been absent three days, or their equivalent, without a lawful excuse. The rationale of such reporting is to actively engage in cases of habitual truancy appropriately. A systemic response should be initiated only when a demonstrated pattern of truancy has been developed. If parents are neglectful in providing written excuses or do not meet such requirements in a timely fashion, reasonable allowances should be made to accept parent's explanations for their child's absences without initiating any punitive response.

III. Creating a Community Plan to Keep Children in School

A. Informing Stakeholders

Every school district should develop with their truancy reduction partners (e.g. parents, magisterial district judges, juvenile probation department, and county children and youth agency) comprehensive policies regarding attendance, absenteeism and truancy reduction. Updates should be distributed to all parties as soon as changes in policy take place. School district policies should be posted and available to the public and community organizations, including potential student employers.

The county-based integrated children's services team should be part of the development of any truancy reduction efforts including the development of policies related to school attendance. Partnerships with the judicial system and agencies or organizations that are concerned with truancy reduction are a critical linkage that school districts must develop. These stakeholders should assist in

identifying student needs and potential family environments that contribute to high rates of absenteeism. The county children and youth agency is especially important in this regard. School districts that enlist the assistance of these agencies have had success at reducing truancy and building a community effort to emphasize the importance of keeping children in school.

B. The Role of Parents and Families

Family involvement is essential to keeping children in school. Parents and/or families should play a key role in the development of policies. Establishing immediate positive and proactive personal contact with families from the time the school year starts is critical to developing a working partnership. In an effective school environment, parents and families are the school districts' best partners and should be approached as valuable resources in addressing a truancy issue. Section 11.41 (b) of State Board regulations provides that parents/guardians must be given copies of the district's attendance policy yearly and the Department suggests that copies be provided at the beginning of each year and to all new enrollees. It is important that such material is written in a way that is easily understood by all parents and translated when there are large populations of non-English speakers residing in the district. Parents and/or families should be provided with a list of community-based resources and a school representative that they can contact when they have concerns or issues related to their child's school attendance. To ensure that parents have dedicated the time necessary to understand the school's truancy policy, signature forms that acknowledge parental/guardian understanding of attendance policies are recommended.

School personnel designated to inform parents of truant behavior should approach parents as equal partners and express concern related to how the school can help address the reason the child is not attending school. It is important that information be shared with parents about the consequences and penalties associated with violation of state law and school board attendance requirements. This information should be shared in a factual, non-threatening manner. Schools should document and maintain a record of all communications, including telephone calls, written correspondence, and any other documents used.

C. The Role of the School and School District

Teachers serve as a first line of defense against habitual absenteeism. It is important to involve teachers in the development of attendance expectations and district policy. Likewise, it is important to listen to observations made by teachers about students in their classes. Teachers should take an active role by meeting with students individually and contacting the parent or guardian to encourage better attendance. The district's Student Assistance Teams should be made aware of all instances of unlawful absences. Districts should be developing a team response at the elementary level, as well as at the secondary level. In many instances of truancy, there will be underlying issues of school safety, family health, substance abuse, or mental health problems. The Department strongly recommends that school districts take a proactive approach and work with parents and families to avoid having the child identified as a habitual truant.

D. Mandatory Employees – Attendance Officer or Home and School Visitor (24 PS 13-1341)

First, second, and third class school districts are required to employ at least one person holding the title of attendance officer, or home and school visitor. (PDE issues Home School and Visitor certification only.) Many attendance officers also hold this certification but it is not mandatory. The employee is to enforce the provisions of the Pennsylvania School Code regarding compulsory attendance. These individuals have full police power without warrant, and may arrest or apprehend any child who fails to attend school in violation of compulsory attendance. State, municipal, port authority, transit authority, housing authority and school police officers are provided with the same arrest powers. Many districts have personnel with the title of school resource officer or district security officer; however, they are not empowered to arrest students for truancy. In cases where students are arrested or apprehended, the apprehending or arresting officer is required to promptly notify the parents, guardian, or person in parental relation and to place the child in the public school

in which the child is, or should be, enrolled unless the parent, guardian, or person in parental relation requests placement in a school other than a public school. Certification by the PDE is required for all individuals employed as home and school visitors. School districts of the fourth class may also employ attendance officers or home and school visitors with the same powers and responsibilities. Districts may join in cooperative agreements to employ an attendance officer.

Whenever school personnel charged with overseeing attendance discover that any child of compulsory school age is unable to attend school due to the lack of necessary clothing or food, the case must be reported to any suitable relief agency operating in the school district. If a proper relief agency is not found in the district, the case should be referred to the proper county board of assistance for investigation and relief.

IV. PDE Recommended School Responses to Unlawful Absences

Habitual truancy negatively impacts a child's school performance and increases the likelihood of juvenile delinquency. An intensive and timely response to truancy is critical in those cases where a clear pattern of habitual truancy is evident. School districts shall not wait until a child has missed an excessive number of days before initiating a response, however, school districts should exercise caution and reason when utilizing punitive measures and involving other systems.

A . PDE's Recommended Policy

PDE recommends that a notice be sent to the parent/guardian after each unlawful absence. See Section IIC, page 3, for a definition of unlawful absence. Specific recommendations for each notice and step are found below. PDE recommends that unlawful absences do not trigger a formal response until the district has exhausted all efforts to work collaboratively with the parent/guardian to address the truancy of the student and until the student has three unlawful absences over the course of the school year. Schools are a critical part of a child's support system and have a significant opportunity to assist children and families.

(1) First Unlawful Absence

Parent/guardian receives a notice of unlawful absence from the school district. The legal penalties established by law for violation of compulsory attendance requirements should be attached to the notice (see sample notices in Attachment). In addition to stating the legal punishments, the name and telephone number of a school contact person shall be included. Parents are then able to contact a specific person to request assistance in resolving the child's truant behavior.

(2) Second Unlawful Absence

Parent/guardian receives a second notice of unlawful absence from the school district. Once again, the legal penalties established by law for violation of compulsory attendance requirements and the name and telephone number of a school contact person shall be included. Additionally, another offer of assistance should be made to the parent.

(3) Third Unlawful Absence

Parent/guardian receives a third notice of unlawful absence by certified mail providing "official notice of child's third illegal absence." Attached to this notice will be penalties for violation of compulsory attendance requirements as they pertain to both the student and the parent/guardian, including information that three days after giving such notice, the student or parent/guardian who again violates the compulsory attendance requirements shall be liable without further notice.

School districts shall coordinate a school/family conference to discuss the cause of the child's truancy and develop a mutually agreed upon Truancy Elimination Plan (TEP) to resolve truant behavior. Issues to be reviewed at the school/family conference include the appropriateness of the child's educational environment, current academic difficulties, physical or behavioral health issues, and family/environment concerns. At the end of the conference all parties should sign a comprehensive TEP that is agreed to by the school representative, the child, and the parents and/or family. The plan could include accessing academic and social/health supports from the school and community organizations, an outline of family/parent and student responsibilities, and levels of performance monitoring that include rewards and consequences.

(4) Subsequent Unlawful Absence

After agreeing to a TEP, or if there is not agreement on a truancy elimination plan and 3 days have passed since the parent/guardian received the official notice of the child's third illegal absence, if a child is unlawfully absent, at any point within the school year, an official notice of unlawful absence will be sent home. The purpose of this correspondence is to inform the child's parent/guardian that the child has violated the TEP or, if there is not a TEP, to inform the child's parent/guardian that the child has again violated the compulsory attendance requirements, and advise the parent/guardian that a citation will immediately be sent to the magisterial district judge. To ensure the parent/guardian receives the notice, it is recommended that such a notice be sent through certified mail. After this step, the school is not obligated to inform parents in writing of absences but it is recommended that the school continue to call the parent/guardian to inform them of additional truant behavior. Schools should refer all future incidents of truancy directly to the magisterial district judge having jurisdiction in the region.

(5) Referral to County Children and Youth Agency

(a) Children Under 13 Years of Age

Any child who has not attained the age of 13 who fails to comply with the compulsory attendance requirements and is habitually truant, shall be referred by the school district to the local county children and youth agency for services, which may include addressing family issues that may be responsible for the child's truant behavior, or possible adjudication as a "dependent" child under the Juvenile Act. The referral to the county children and youth agency may be in addition to proceeding against the parent/guardian by sending the citation to the appropriate magisterial district judge or a school may decide to refer a family to the local county children and youth agency instead of sending a citation to the appropriate magisterial district judge. If the parent/guardian provides written consent, a copy of the TEP should be forwarded to the county children and youth agency.

(b) Children 13 Years of Age and Older

Any child who has attained the age of 13 who fails to comply with the compulsory attendance requirements and is habitually truant may, in lieu of being prosecuted (as described in Section V below), be referred by the school district to the local county children and youth agency for services, which may include addressing family issues that may be responsible for the child's truant behavior or, possible adjudication as a dependent child under the Juvenile Act.

(c) Habitually Truant

The School Code defines habitually truant as absence for more than three (3) school days or their equivalent following the first notice of truancy given after a child's third unlawful absence.

B. Continued Truancy

If a child of any age continues to be truant after the above actions have been taken, then school districts are encouraged to file citations with the local magisterial district judge citing the child's continued truancy on a weekly basis. It is imperative that the local magisterial district judge be kept informed if truant behavior continues after a plan is in place.

V. Proceedings and Penalties for Violation of Compulsory Attendance Requirements (24 PS 13-1333 and 1338.1)

A. School Code

Every parent/guardian of any child of compulsory school age is subject to penalties if compulsory school-age attendance requirements are not met. While school districts are required to give three days written notice of violation of compulsory attendance prior to proceeding against the offending party it is strongly recommended that school districts make a concerted effort to address the cause of a child's truant behavior before referring the child to another system.

Possible sentences for parents found to be in violation of compulsory attendance law:

- Paying a fine up to \$300 for each offense and court costs, or
- Completing a parenting education program, and
- In cases where the party convicted fails to pay the fine or complete the parenting education program, a subsequent sentencing to the county jail for no more than five days.
- Completing in lieu of, or in addition to the previous penalties, community service within the school district for a period of no more than six months.

(Magisterial district judges may suspend all or portions of the sentence if the child is no longer habitually truant.)

The board of school directors may bring a student before the court. Possible dispositions for children found in violation of compulsory attendance law:

1. If the parent/guardian is not convicted by the magisterial district judge because the parent/guardian took every reasonable step to insure the child's attendance at school and the child has attained the age of 13, the child may be:
 - subject to a fine of no more than \$300 for each offense, or
 - assigned to an adjudication alternative program pursuant to 42 Pa.C.S. § 1520, and
 - alleged to be dependent under 42 Pa.C.S. §6303(a)(1) by the magisterial district judge if the child fails to pay the fine or comply with the adjudication program.
 - referred by the school district for services or possible disposition as a dependent child as defined under 42 Pa.C.S. § 6302(5), in lieu of prosecution or assignment to an adjudication alternative program, if the child fails to comply with compulsory attendance provisions and

is habitually truant

(Magisterial district judges may suspend all or portions of the sentence if the child is no longer habitually truant.)

2. Any child who has not attained the age of 13 who fails to comply with the compulsory attendance requirements and is habitually truant, shall be:
 - Referred by the school district for services or possible adjudication as a dependent child as defined under 42 Pa.C.S. § 6302(5).
3. For children convicted of violation of compulsory attendance requirements by the magisterial district judge, the court, including a court not of record, must send a certified record of the conviction or other disposition to the Department of Transportation.
 - Upon first conviction, the child's operating privilege for operating an automobile will be suspended for 90 days.
 - Upon the second or subsequent conviction, the child's operating privileges will be suspended for six months.
 - Children who do not yet have a driver's license will be ineligible to apply for a license for the time periods of 90 days for the first conviction and six months for the second and any subsequent conviction.
4. If a student of compulsory school age cannot be kept in school on account of truancy, the school district may proceed against the student before the juvenile court.

B. Further corrective measures for violation of compulsory attendance

General protective services are defined as services to prevent the potential for harm to a child. Under Title 55 Pa Code, Chapter 3490.223, children who are habitually and without justification truant from school while subject to compulsory school attendance are subject to an assessment to determine if there is a need for general protective services. Children shall not be referred to the county children and youth agency for assessment as possibly needing services until after the school district has made a formal effort to involve the family and child in resolving the cause of the truant behavior.

VI. Charter Schools

A. Charter School Responsibilities

Charter schools must report to the student's school district of residence when a student has accrued three or more days of unlawful absences. It is the responsibility of the school district to enforce the compulsory attendance laws in accordance with the Public School Code. However, charter schools should also follow PDE's Recommended Responses to Unlawful Absences for the first, second and third unlawful absences including the school/family meeting and implementation of a TEP. Charter schools should also refer the child to the county children and youth agency as stated in Section V above.

B. School District Response to Charter School Absences

Under compulsory attendance laws, the parents/guardians of a student who has accumulated three unlawful absences are to receive notice stating any subsequent unlawful absences will result in a citation being filed with the magisterial district judge. The school district of residence should send the notice to parents/guardians immediately upon notification of the third unlawful absence by a charter school. It is recommended that such notice be sent through certified mail. Future unlawful absences should be filed with the magisterial district judge.

For brick and mortar charter schools, a school district may file truancy documents with the magisterial district judge in whose jurisdiction the charter school is located, which is where the cause of action arose, or where the charter school student resides, which is where the parent/guardian may be served. For cyber charter schools, a school district may file truancy documents with the magisterial district judge in whose jurisdiction the charter school student resides, which is where the cause of action arose and where the parent/guardian may be served. Charter schools and cyber charter schools must cooperate with school districts by providing necessary documentation for the truancy filings, and attending the hearings to provide testimony, if necessary.

REFERENCES:

Purdon's Statutes

- 24 PS §13-1326
- 24 PS §13-1327
- 24 PS §13-1329
- 24 PS §13-1330
- 24 PS §13-1332
- 24 PS §13-1333
- 24 PS §13-1334
- 24 PS §13-1338
- 24 PS §13-1338.1
- 24 PS §13-1339
- 24 PS §13-1341
- 24 PS §13-1343
- 24 PS §13-1354

The Juvenile Act- 42 Pa.C.S. §§ 6301- 6365

Public Welfare Regulations

[55 Pa. Code § 3490.223](#)

State Board of Education Regulations

- [22 Pa. Code §11.34](#)
- [22 Pa. Code §11.41](#)

ATTACHMENTS:

(Note: PDF files require Acrobat Reader)

[Sample parent notification letters \(Word\)](#)
[Sample parent notification letters \(PDF\)](#)

[Sample Truancy Elimination Plan \(Word\)](#)
[Sample Truancy Elimination Plan \(PDF\)](#)

CONTACT BUREAU/OFFICE:

Bureau of Community and Student Services
Office of Elementary and Secondary Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Voice: 717.783.3755

TDD: 717.783.8445

School Services Unit
Office of Elementary and Secondary Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Phone: 717.783.3750

Bureau of Policy and Program Development
Office of Children, Youth and Families
Program Policy Unit
Pennsylvania Department of Public Welfare
Bertolino Building
1401 North 7th Street
Harrisburg, PA 17105
Phone: 717.783.7287

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School Services Unit
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Telephone: (717) 783-3750

School-Family Conference and Truancy Elimination Plan (TEP)

The Truancy Elimination Plan (TEP), as described in Section IV (A)(3) BEC 24 P.S. 13-1327, is designed to serve as guidance. The TEP is developed cooperatively with involved stakeholders through a school-family conference, which is required upon the school's notice to the student's parent/guardian upon the third unlawful absence. Teachers are the first line of defense for compulsory attendance, as they are the first to recognize students with possible attendance issues. Therefore, teachers should implement a plan of action including (but not limited to):

- Sharing and reviewing school policy on attendance and student responsibilities with students and families;
- Contacting the student's parent/guardian upon his/her absence;
- Meeting individually with students to discuss reason(s) for absence;
- Following up with the building principal (or assigned truant officer);
- Making referrals to guidance counselors and;
- Collaborating with Student Assistance Teams as appropriate.

Pursuant to the BEC 24 P.S. 13-1327, schools are required to notify the parent/guardian regarding the need for a joint conference upon the third unlawful student absence. The school-family conference engages all participants involved in the student's life to explore possible solutions to increase the student's school attendance. Maintaining open communication between the student and adults will facilitate positive outcomes.

The purpose of the school-family conference is to discuss the cause(s) of the truancy and to develop a mutually agreed upon plan to assure regular school attendance. The school-family conference provides both parties with the opportunity to identify, understand and explore all issues contributing to the student's truant behavior. Participation by the student and family is an integral component for this conference. In addition, representatives from relevant and/or involved community-based agencies, community and school services, and school personnel should be invited to participate. During the school-family conference, a Truancy Elimination Plan (TEP) shall be developed cooperatively with the student and other meeting participants as described in Section IV (A)(3) BEC 24 P.S. 13-1327. A sample TEP is located at the end of this document and can be used as a guide for schools when developing their own plan format.

Issues to be addressed at the school-family conference should include but not be limited to:

- Appropriateness of the student's educational environment;
- Possible elements of the school environment that inhibit student success;
- Student's current academic level and needs;
- Social, emotional, physical, mental and behavioral health issues;

- Issues concerning family and home environment and;
- Any other issues affecting the student's attendance.

The participants in the school-family conference should work collaboratively to conduct a holistic assessment to determine the reason(s) the student is exhibiting truant behavior. Every member should have a vested interest in and responsibility for determining an appropriate plan to assist the student to succeed both socially and academically. This school-family conference also provides an opportunity to ensure that both the student and the family clearly understand the legal ramifications of not adhering to the state's compulsory attendance requirements. This methodology promotes full understanding and appreciation of the root causes of truancy as well as the resultant personal and societal impacts when truant behavior is not adequately addressed. The primary goal of the school-family conference is the development of a comprehensive TEP which is understood by, agreed upon and supported by the student, the parent/guardian, the school representatives and all other conference participants. The TEP should include but not be limited to the following components as appropriate:

- Identification and provision of appropriate academic supports by the school and/or community organization(s);
- Identification and provision of appropriate social, emotional, physical, mental and behavioral health supports from the school and/or community organization(s);
- Identification of the school environment issues that affect the student's success and solutions to address these issues;
- Explanation of the student's strengths and responsibilities related to the TEP;
- Explanation of the family's strengths and responsibilities related to the TEP;
- Clarification of method(s) used for monitoring the effectiveness of the TEP;
- Explanation of the consequences for each stakeholder if the TEP is not fully implemented;
- Discussion of the benefits for successfully implementing the TEP;
- Following up and reporting the outcome of the TEP.

The TEP substantiates efforts made by the school, the family and other vested third parties to assist the student in addressing and resolving school attendance issues. This comprehensive system of supports and services provides documentation of the "good faith" effort between the school and the student's family should future action be required (e.g. citation to the magisterial district judge and referral to the county children and youth agency upon the fourth unexcused absence).

Directions to complete the Truancy Elimination Plan (TEP)

The TEP should be completed at the school-family conference. The school administrator should complete the TEP in collaboration with other conference participants. Participants should include, but are not limited to: student, parent/guardian, other relevant family members, school staff, partner organizations, community-based organizations and other agencies involved with family (e.g. Children and Youth, Juvenile Probation.). To identify and resolve root causes of truancy, all members should contribute their unique knowledge about the student and his/her environment to group discussion. Only then can meaningful results be achieved.

Directions

- 1. Goal: Increase** (insert student's name) **school attendance.**
- 2. Date:** Enter the date when TEP is being completed
- 3. Student Information (enter the following):**
 - a. Name of the student (First M. Last)
 - b. Birth date (mm/dd/yyyy)
 - c. Gender (male/female)
 - d. Grade Level (K-12)
 - e. Home Address
 - f. Home Phone Number
 - g. Special Needs (include any special needs identified through an IEP, and/or other accommodations not mandated by IEP, etc.)
 - h. Health Concerns (these can be identified by student, parent/guardian, school staff, and others)
- 4. School Information (enter the following):**
 - a. Name of School
 - b. School Address
 - c. Phone Number(s)
 - d. Principal's Name
 - e. Referring Teacher's Name
 - f. Email address/es (can be provided to ensure ongoing communication)
- 5. Parent/Guardian Information (enter the following):**
 - a. Name
 - b. Home Address
 - c. Home Phone Number
 - d. Work Address
 - e. Work Phone Number
 - f. Email address(es) (can be provided to ensure ongoing better communication)

6. Absence (enter the following):

- a. Dates of each absence
- b. Whether or not an excuse was provided
- c. Reason(s) for each absence
- d. Action taken by the school on each incident of absence
- e. Provide meaningful information for future reference, including the name of the person taking the action, the date action was taken and any other relevant information.

7. Assessment (enter the following):

- a. Identify root cause/s of the truancy. It is crucial (yet sometimes overlooked) to build rapport with the student. This dialogue benefits all involved parties.
 - i. Student: academic, social, physical, mental, behavioral health issues
 - ii. Parent/Guardian: home environment, work schedules, unsupervised time for student, special circumstances, etc.
 - iii. School: school environment, student's interaction with other adults and with other students, school schedule, etc.
- b. Consider possible solutions:
 - i. These may include maximizing programs and services available in the school or community to involve the student.
 - ii. They could include pairing the student with a mentor (family member, teacher, school staff, community businesses, etc.)
 - iii. They may involve coordination of services to student and/or family to address health, social or financial issues.
 - iv. They may include activities intended to build self-esteem or confidence (e.g. the student may be asked to tutor elementary school students for some type of credit).
- c. Responsible party (enter the following):
 - i. Name of the person/agency that will take ownership for each stated solution (will ensure that the action step is completed).
 - ii. Contact information for each person/agency listed (to assist in monitoring/follow up).

8. Strengths (enter the following):

- a. Identify the strengths of the student, family and the school to support the goal of increasing attendance for the student.
- b. Relate each strength to the plan's overall goal.
 - i. For example: If the student reads well, a solution could be the student tutoring elementary students. This engages the older student in a meaningful activity, increases confidence, and supports his/her sense of responsibility by tutoring a younger student, thereby regular school attendance and academic success of both the older and younger student.

- ii. If the student has plans for employment or further schooling after high school graduation, then appropriate activities could include:
 1. Discussing the ramifications of any future absences and how they could negatively impact those future plans.
 2. Pairing the student with a business member in the field that interests the student. This may help the student to understand the relevance of what he/she is learning in school and future endeavors.
 - iii. If the student has a single parent who works in the evening, leaving the student unsupervised, an appropriate action step could be to have a neighbor, extended family member or other adult either stay with the student or be in contact with the student during the parent's absence.
 - iv. If the student values school and the absences occurred three days in a row, then perhaps this was an isolated incident. However, it should be made clear that consequences for the fourth absence will result in a citation to the magisterial district judge and referral to the county children and youth agency.
9. **Consequences for Non-compliance:** Outline consequences for the student, parent/guardian, school, and other participants if they do not follow-through with the recommendations of the TEP and the BEC.
10. **Benefits for Compliance:** Benefits could include better grades for the student, graduation, higher graduation rates for the school, more involved community members, improved self-esteem, better relationship with parent/s and other adults, etc.
11. **Signatures:** The student, parent, and school official will sign and date the TEP as verification that all parties understand and agree to all components of the TEP.
12. **Outcome Meeting:** With school-family participants present, a follow up meeting will be scheduled. At that time each responsible party listed in the Solutions section will report on the progress of their area of responsibility.
13. **Outcome:** The group members will list the outcome(s) of the TEP and outline Next Steps, if any.
14. **Signatures:** The student, parent/guardian, and school official will again sign and date the TEP.

- **A copy of the TEP will be retained in the student's file.**
- **A copy of the TEP must be provided to the:**
 - **student**
 - **parent/guardian**
 - **appropriate school personnel**

Truancy Elimination Plan (TEP)

Date: _____

Goal: Increase *(Insert Student's Name)* school attendance.

<u>Name of Student</u> <u>Date of Birth</u> <u>Gender</u> <u>Grade Level</u>	Address Phone Number	<u>Special Needs</u> Health Concerns
<u>Name of School</u>	Address Phone Number	<u>Principal's Name</u> <u>Referring Teacher's Name</u>
<u>Name of Parent/Guardian</u>	Home Address Home Phone Number	Work Address Work Phone Number

Date of Absence	Written Excuse Provided? (Y/N)	Reason(s) for Absence	Action Taken <small>(e.g. Parent Letter 1 sent out on 04/01/2006, John Doe called parent, Mrs. Smith to discuss</small>
1.			
2.			
3.			
4.			

Assessment

Description	Solution(s)	Responsible Party
1.		
2.		
3.		

Strengths

Description	Relevance to the Plan
1.	
2.	
3.	

Solutions

Description	Responsible Party(ies)	Completion Date
1.		
2.		
3.		

Consequences for non-compliance
1.
2.
3.

Benefits for compliance
1.
2.
3.

This TEP was created collaboratively to assist the student in improving attendance, to enlist the support of parent/guardian and to document the school's attempts to provide resources to promote student success.

Student: _____ **Date:** _____

Parent or Guardian: _____ **Date:** _____

School Official: _____ **Date:** _____

cc: student ____ (initial upon receipt)
parent/guardian ____ (initial upon receipt)
school personnel ____ (initial upon receipt)
other ____ (initial upon receipt)

Date for Follow-up Outcomes Meeting:

<p><i>Outcomes:</i></p> <p>1.</p> <p>2.</p> <p>3.</p>
<p><i>Next Steps:</i></p> <p>1.</p> <p>2.</p> <p>3.</p>

Student: _____

Date: _____

Parent or Guardian: _____

Date: _____

School Official: _____

Date: _____

In order for agencies outside of the school district to assist with this plan, your permission is needed to release the plan to the following:

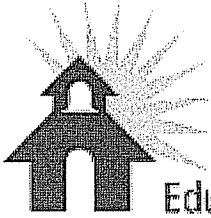
Please sign below:

Parent or Guardian: _____

Date: _____

Tool 11:

How to Enroll Your Child in Public School (ELC fact sheet)



Education Law Center

How to Enroll Your Child in Public School

May, 2009

Education Law Center
The Philadelphia Building
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107-4717
Phone: 215-238-6970

www.elc-pa.org

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

Dear Parent,

Making sure that your child enrolls in and goes to public school is very important for her education and future. By following these four simple steps, we can help you enroll your child in public school (which includes charter school.)

Step 1: Is the Child Living with You?

A child can attend school in the school district where she lives with her parent.

Step 2: How to Enroll

A child can be enrolled by a parent, foster parent, guardian, caseworker or anyone having charge or care of the child.

Go to the central registration office in the school district where you live. You must bring with you:

- Proof of the child's age
- Proof of where you live
- The child's immunization records.

Remind the secretary to request the child's education records from her old school! The child's old school must send the records to the new school in 10 business days.

NOTE: See Top Ten Questions for more information

Step 3: What Happens If the Child is NOT Enrolled in Five Business Days?

If the child has not started school within five (5) business days of completing Step 2, call the district's registration office and ask them why the child has not been enrolled.

- *The law says that the child must be enrolled and going to school within five business days of the school receiving all enrollment documents.*

If the school district does not allow the child to start school after five (5) business days, file a complaint with the Pennsylvania Department of Education. We have included a complaint letter for you to use—just fill out “Tool #1” and mail or fax it or you can call the Pennsylvania Department of Education at this special number: 717-783-6610. If the Pennsylvania Department of Education does not help, call us at 215-238-6970.

Step 4: Is there Anything Else You Should Know Before the Child Starts School?

Yes. You can ask to talk to a counselor or an administrator at the child's new school about these issues:

- Find out what credits the school requires for graduation. Make sure that the school is giving the child credit for ALL the courses she has already taken.
- If the child has an IEP, make sure that the school has a copy of it. The school must follow the old IEP until you have a new IEP Team meeting. If you asked for a special education evaluation at your child's old school, tell your child's new school about it.
- If the child needs tutoring or wants to be in a vocational class or is interested in participating in an extracurricular activity, ask about it.
- Remember: Even if the child was in an alternative education program at her last school district, the new school district cannot automatically place her in an alternative education program UNLESS she is CURRENTLY expelled for a weapons offense from her prior school.

Top Ten Questions About Enrolling Your Child in School

1) Can the school district ask you to provide proof of the child's age?

Yes, but they can only require that you bring in ONE of the following: birth certificate, passport, baptismal certificate, notarized statement from a parent or relative of the child's age, or prior school records.

2) Can the school district ask you to give them proof of the child's physical or dental examination or a physical health or mental health history in order to enroll in school?

No! This information can never be required as a condition of enrollment.

3) Are there any documents that a school district CANNOT ask you to provide?

Yes! School districts can never ask for a child's social security number or card, immigration documents, or information about why the child is living with you.

4) Can a school district ever ask about a child's immigration status?

No!

5) If a child is under age 21 and has passed the GED Tests, can the child still enroll in school and work towards her regular high school diploma?

Yes, unless the child is currently expelled from the school district in which she wants to enroll.

6) If the child was in a delinquency placement and now wants to reenroll in her school district, can the school district automatically place the child in an alternative education program for disruptive youth?

No, the child has a right to an informal hearing before she is sent to an alternative education program. The child must be currently disruptive in order to be sent to an alternative education program.

7) Can the school district ask that you provide proof of where you live?

Yes. Examples of documents that you can use as proof of where you live are: a lease, a deed, a property tax bill, driver's license, state or federal documents (such as mail from the Social Security Administration), current utility bills, vehicle registration, or a notarized statement signed by you that says where you and the child live.

8) Can a school district delay enrollment to decide the child's classroom placement, have an IEP Team meeting, or conduct academic testing?

No. A child is entitled to start school within five (5) business days of providing the required enrollment documents so that the child does not fall behind.

9) Is a child "too old" to be in school if she is 19 or 20 years old?

No. A child has a legal right to go to school in Pennsylvania until she is 21 years old (as long as she has not yet graduated from high school).

**Funding for this brochure was provided by
Pennsylvania Interest on Lawyers Trust Account Board (PA IOLTA)**

*Prepared by: Education Law Center (Rev 5/09)
(215) 238-6970 (Philadelphia)
(412) 258-2120 (Pittsburgh)
www.elc-pa.org*

Tool 1

Enrollment Dispute Letter

Fill this letter out and mail it to:

Sarah Pearce
Office of School Services
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333

_____ (your name)
_____ (address)
_____ (phone number) (optional)
_____ (email) (optional)

Date: _____

Re: Enrollment Dispute of _____ (child's name) Birth date: _____

Dear Ms. Pearce:

I am writing to complain that _____ School District is refusing to enroll the above named child or is otherwise violating 22 PA Code §11.11. The child lives with me at _____, PA. As of today, the child has been out of school for approximately ____ days.

I provided to the District proof of my child's age, immunization records and proof of residency on _____ (date).

I understand that this student must be enrolled and able to attend school within five (5) business days of the submission of this information. I hereby request that the Department investigate and take appropriate corrective action. I understand that PDE will fax a letter to the school district within five (5) business days of receiving this complaint. Please send a copy of this letter to me and fax a copy of this and any further correspondence to the Education Law Center. The school district then has five (5) business days to respond.

Thank you very much for your prompt attention to this matter. Please let me know upon your receipt of this letter by phone [or email if appropriate] if you need any additional information.

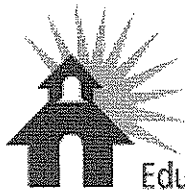
Sincerely,

_____ (sign here)

KEEP A COPY OF THIS LETTER FOR YOUR RECORDS

Tool 12:

What Are the Rules for School Attendance and Truancy in Pennsylvania? (ELC fact sheet)



Education Law Center

*Making sure that all of Pennsylvania's children
have access to quality public schools*

WHAT ARE THE RULES FOR SCHOOL ATTENDANCE AND TRUANCY IN PENNSYLVANIA?

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

WHO MUST ATTEND SCHOOL IN PENNSYLVANIA?

In Pennsylvania (except for Philadelphia), all children of "compulsory school age" - that is, children between the ages of **8 and 17** - must attend school. In Philadelphia, all children must attend school starting at age six (6). Also, once a child enrolls in first grade, the child must continue to attend even if s/he has not yet reached age eight.

"Attend school" means that the child must go to a regular public school, a charter school, a cyber charter school, a licensed private or religious school, or an approved homeschooling program.

Exception: If a student is 16 and holds a full-time job during school hours, then s/he does not have to attend school. The student must get an "employment certificate" (often called "working papers") from her/his school district.

WHO MUST MAKE SURE A CHILD ATTENDS SCHOOL?

The person(s) who are caring for the child - usually the child's parent(s), but sometimes a guardian, relative, or foster parent - are legally responsible for making sure that the child attends school.

WHAT IS A VALID EXCUSE FOR AN ABSENCE FROM SCHOOL?

Each school district has rules and policies about student attendance and absences.

Check your school district's student handbook or website for this information. Many school districts will excuse absences only for illness, family emergency, death of a family member, medical or dental appointments, school activities, and educational travel with prior approval.

Even if your child is absent for just one day, you should *always* provide your child's teacher or principal with a note explaining the absence. Send the note in right away, and keep a copy for your records. If your child's absence was due to illness, send a doctor's note, if possible (and keep a copy).

WHAT IF MY CHILD IS AFRAID TO GO TO SCHOOL?

If your child becomes upset or fearful about attending school, s/he may have a learning or mental health problem. You should ask to meet with school personnel to discuss the problem and develop a plan to deal with it. (See below for more information about developing a "Truancy Elimination Plan.") You may also want to talk with a mental health professional.

In addition, you can ask for a **special education evaluation** to find out whether your child has a learning problem or an emotional problem that isn't being addressed at school. See ELC's fact sheet, *Getting a Special Education Evaluation for Your Child*, at www.elc-pa.org for more information. If your child is already receiving special education, you can request an Individualized Education Program (IEP) team meeting to discuss whether your child needs additional help.

More information about **school phobia** (also called school refusal or school avoidance) can be found at:

- <http://orp.uoregon.edu/downloads/school%20refusal%20handout.pdf>
- http://www.aap.org/publiced/BK5_SchoolAvoid.htm

WHAT IF MY CHILD IS IN PHYSICAL DANGER AT SCHOOL?

The Education Law Center receives many calls from parents who fear for their children's safety at school. Unfortunately, the law does not excuse children from attending school in these situations. **You should always meet with the school principal, and, if necessary, the Superintendent, to discuss ways to address your concerns.** Be sure that you explain, orally and in writing, why you think your child is in danger. In addition, you can call the police if your child is being threatened or has been harmed by other students.

For suggestions about how to handle bullying at school, see our fact sheets, *What Can You Do If Your Child is Being Bullied by Other Students* and *What to Do When Your Child is Being Bullied at a Philadelphia Public School*, at www.elc-pa.org.

IF A CHILD MISSES SCHOOL BECAUSE OF A COURT-ORDERED HEARING, MUST THE SCHOOL EXCUSE THE ABSENCE?

Yes.

MY RELIGION CELEBRATES AN IMPORTANT HOLIDAY ON A SCHOOL DAY, AND I WANT MY CHILD TO ATTEND RELIGIOUS SERVICES. MUST THE SCHOOL EXCUSE THIS ABSENCE?

Yes. Make a written request to the principal asking that your child be excused from school for a religious holiday or instruction.

WHAT IS TRUANCY?

Pennsylvania school law does not specifically define truancy. The Pennsylvania Department of Education says that **truancy is any unexcused absence from school**. Under the law, every principal or teacher must report to the superintendent, attendance officer, or the secretary of the school board any child who has had **three (3) unexcused absences in a school year**.

IS THE SCHOOL REQUIRED TO HELP ME DEAL WITH ATTENDANCE PROBLEMS?

The Pennsylvania Department of Education has said that, if your child has had **three (3) unexcused absences** in a school year, the school must hold a meeting with you to develop a "Truancy Elimination Plan" for your child. You and your child's teachers should meet to figure out what might be keeping your child from coming to school, and what can be done to help. To see a sample Truancy Elimination Plan, visit: http://www.pde.state.pa.us/k12/lib/k12/TEP_section_7-26-06_2nd.pdf.

CAN A CHILD BE ARRESTED IF S/HE IS NOT ATTENDING SCHOOL?

Yes. An attendance officer, a home and school visitor, or a law enforcement officer may arrest a child who is truant. When the child is arrested, the person arresting the child must promptly notify the parents. Usually, the arresting officer will then take the child to school.

WHEN AND HOW DO THE COURTS GET INVOLVED?

The school district must provide the parent with written notice if the child has three (3) unexcused absences in a school year. **If you receive such a "truancy notice," you should contact the school AS SOON AS you receive this notice to discuss your child's attendance problem.** Contacting the school, and working with it, may help prevent legal proceedings.

If the child continues to miss school *after* the parent receives this notice, the district can file a **truancy petition** with the local district justice (or with Family Court in Philadelphia County). A truancy hearing is then scheduled in court or before the district justice. For more information about Philadelphia's process, see our fact sheet *The Truancy Process in the School District of Philadelphia* at www.elc-pa.org.

WHO MUST APPEAR AT TRUANCY HEARINGS AND WHAT HAPPENS THERE?

The child and the parent/guardian are required to appear at truancy hearings. Parents and children have the right to present witnesses and documents to the court, and to testify in their own behalf. If you have any doctor's notes or any other written information that shows your child should have been legally excused from school, you should bring it to the hearing. If you have anyone who can describe what steps you took to get your child to school, you should have that person testify.

DO I NEED AN ATTORNEY?

It is helpful, although not required, to bring an attorney or an advocate to a truancy hearing. To find an attorney, you can call the Pennsylvania Bar Association's Lawyer Referral Service at 1-800-932-0311. Some **legal services centers** may provide free legal representation to eligible parents and students in truancy hearings. To find your local legal services center, call 1-800-322-7572 or go to http://www.palegalservices.org/legal_help_finder.htm.

IF A JUDGE FINDS THAT THE CHILD IS TRUANT, WHAT CAN HAPPEN?

The parent can be found guilty of a summary offense and **fined up to \$300 for each truancy violation.** Or, the judge can require the parent to complete a "**parenting education program.**" The judge can also decide that instead of, or in addition to, the fine or education program, the parent must perform **community service** in the school district where the child lives for up to six months.

If the parent fails to comply with the judge's order, the parent can be sentenced to serve up to five (5) days in a county jail. However, if the parents haven't paid the fine that the court has ordered, they can only be sent to jail after a hearing is held to determine whether they had the financial ability to pay the fine.

If the child is 13 years old or older, the judge can fine the child up to \$300 for each truancy violation, if the parents can show they tried to get the child to go to school. Or, the judge can assign the child to an "adjudication alternative program" (such as an education program or community service).

A child who is found to be truant can also lose her/his driver's license for 90 days (for the first truancy conviction) and an additional six months for every *additional* truancy conviction. If the child does not have a driver's license, the chance to apply for one will be suspended for 90 days for the first truancy offense, and six (6) months for additional offenses.

WHAT IF THE PARENT HAS TRIED TO GET THE CHILD TO ATTEND SCHOOL AND THE CHILD STILL DOES NOT GO?

If the parent can convince the court that s/he took **every reasonable step** to ensure school attendance by the child, the parent cannot be fined or penalized. The court must consider the individual circumstances of each case in determining whether the parent did as much as was reasonably possible.

CAN A PARENT OR CHILD APPEAL A FINE OR OTHER COURT ORDER?

Yes. A parent or student may appeal to the local county Court of Common Pleas within **30 calendar days** of the district justice's order. To appeal, the parent or child must post a bond equal to twice the original fine and court costs. For more information about your local Court of Common Pleas (which should be able to tell you how to appeal a truancy fine or other penalty), visit <http://www.pacourts.us/T/CommonPleas/>.

WHAT CAN HAPPEN IF A CHILD IS CONTINUALLY TRUANT?

Continual attendance problems may also cause a judge to refer a child to the local Children and Youth agency for services. The child could also be referred to the juvenile or family court for a decision on whether s/he is a **dependent child**. This could lead to the child's removal from the home and placement in a foster home or other setting. This is

why it is **SO IMPORTANT** that parents take action as soon as they receive the first truancy notice.

WHERE CAN I GET MORE INFORMATION ABOUT THE TRUANCY LAWS AND HOW TO PREVENT TRUANCY?

For Pennsylvania's Truancy Toolkit, including answers to frequently asked questions and resources to help prevent truancy, go to: <http://www.patruancytoolkit.info/> We have attached the Pennsylvania Department of Education's Frequently Asked Questions about truancy to this fact sheet.

For the Pennsylvania Department of Education's (PDE) Basic Education Circular (BEC) on "Compulsory Attendance and Truancy Elimination Plan," go to: <http://www.pde.state.pa.us/k12/cwp/view.asp?A=11&Q=121159>. This BEC has a **sample Truancy Elimination Plan** attached to it.

**Funding for this brochure was provided by the
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*Prepared by: Education Law Center (Rev 12/08)
(215) 238-6970 (Philadelphia)
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Frequently Asked Questions

The following questions and responses are discussed elsewhere within this toolkit, or constitute actual questions related to truancy that the staff of PDE have received in the past.

Use the "Back" button on your browser to return to the top of the page.

- What is an "excused" absence from school?
- Is participation in religious instruction outside of the public school considered an excused absence?
- What is an unexcused absence?
- What are the responsibilities of parents/guardians/students in reporting a student's absence from school?
- What happens if a parent/guardian/student does not provide a written excuse within three calendar days of the absence?
- What is truancy?
- What is the penalty for having one unexcused absence?
- What is the penalty for habitual truancy?
- Who is responsible for notifying the Pennsylvania Department of Transportation regarding suspension of driver license operating privileges?
- Does tardiness count as truancy?
- Can a kindergarten student be cited for truancy?
- Can a student 17 years old or older be cited for truancy?
- Who may approve a student's absence from school?
- What sanctions can be imposed on truant students not covered by compulsory attendance?
- Can any student who has 10 consecutive days of unexcused absences be dropped from the rolls?
- What are some ways school personnel can support and assist truant students and their families?
- As a chief school officer, what are my responsibilities in reporting truancy data to the Department of Education?
- What are the responsibilities of Charter Schools relative to a student's unlawful absence?
- What are the school district's responsibilities when a Charter School reports that a student has accrued three or more days of unlawful absences?
- What are the responsibilities of Nonpublic Schools relative to a student's unlawful absence?
- Are schools required to employ an attendance officer or home school visitor?
- Can an attendance officer or home and school visitor, employed by a school district, arrest or apprehend a child who fails to attend school in violation of compulsory school attendance?
- What happens to the child when they are arrested or apprehended by an attendance officer or home and school visitor?
- What are the responsibilities of school personnel when they discover that a child is unable to attend school due to the lack of necessary food and/or clothing?
- What is meant by Compulsory School Age and Compulsory Attendance?
- What are the consequences and penalties associated with violation of state law and school board attendance requirements?

Q: What is an "excused" absence from school?

A: Pennsylvania law broadly defines absences as excused when a student is prevented from attendance for mental, physical or other urgent reasons. Many school districts consider illness, family emergency,

death of a family member, medical or dental appointments, authorized school activities and educational travel with prior approval as the only lawful absences. It is the responsibility of each district to determine the validity of excuses.

Q: Is participation in religious instruction outside of the public school considered an excused absence?

A: Upon written parental request, a student shall be excused from school to attend classes for religious instruction under section 1546 of the Public School Code of 1949 (24 P. S. § 15-1546). The excusal shall be limited to a total of not more than 36 hours per school year.

Q: What is an unexcused absence?

A: An unexcused absence is defined by school policy and occurs when no written notification by a parent/guardian is provided to the school.

Q: What are the responsibilities of parents/guardians/students in reporting a student's absence from school?

A: All absences should be treated as unlawful until the school district receives a written excuse explaining the reason(s) for an absence. Parents/guardians and students should submit the written explanation within three calendar days of the absence.

Q: What happens if a parent/guardian/student does not provide a written excuse within three calendar days of the absence?

A: If they fail to provide a written excuse within three days of the absence, the absence will be permanently counted as unlawful.

Q: What is truancy?

A: Truancy is any unexcused absence from compulsory school attendance.

Q: What is the penalty for having one unexcused absence?

A: If an unexcused absence is listed as an offense in the student code of conduct, students can be disciplined.

Q. What is the penalty for habitual truancy?

A. After a student accumulates three days of unexcused absences, the school must notify the parents that any additional unexcused absences can result in a referral to the magisterial district judge. The judge may impose fines, educational classes, and/or suspend driver license operating privileges. For students under the age of 13 years of age, they shall be referred to a county child and youth agency for possible disposition as a dependent child.

Q. Who is responsible for notifying the Pennsylvania Department of Transportation regarding suspension of driver license operating privileges?

A. The magisterial district judge.

Q: Does tardiness count as truancy?

A: Yes, Section 1332 of the School Code states that the names of students who have been absent without a lawful excuse for three days, "or their equivalent", shall be reported to the attendance officer.

Q: Can a kindergarten student be cited for truancy?

A: No. Only students of compulsory school age can be cited. Compulsory school age begins at age 8 or when the student begins first grade.

Q: Can a student 17 years old or older be cited for truancy?

A: No. The compulsory school attendance law does not apply to students 17 years of age or older.

Q: Who may approve a student's absence from school?

A: Principals or teachers in any public, private or other school may excuse any child for non-attendance

during temporary periods following their respective school district's policy and Pennsylvania law in excusing students. The board of school directors is required to adopt policies governing pupil absences and excusals.

Q: What sanctions can be imposed on truant students not covered by compulsory attendance?

A: Unexcused absences should be part of the student code of conduct, which allows progressive disciplinary measures to be taken. Students 17 years old and older must be dropped from the attendance rolls after 10 consecutive days of unexcused absences.

Q: Can any student who has 10 consecutive days of unexcused absences be dropped from the rolls?

A: No, only students 17 years old or older. Students of compulsory school age cannot be dropped from the rolls.

Q: What are some ways school personnel can support and assist truant students and their families?

A: Students should be referred to the local Student Assistance Team and the county Children and Youth Agency for further assessment and evaluation.

Q: As a chief school officer, what are my responsibilities in reporting truancy data to the Department of Education?

A: The US Department of Education, through No Child Left Behind legislation, is working in collaboration with states to determine essential truancy data elements that should be collected. PDE will keep chief school officers apprised of any reporting requirements.

Q: What are the responsibilities of Charter Schools relative to a student's unlawful absence?

A: Charter schools must report to the student's school district of residence when a student has accrued three or more days of unlawful absences. It is then the responsibility of the school district to comply with the compulsory attendance laws in accordance with the Public School Code. However, charter schools are strongly encouraged to inform parents as unlawful absences occur, as suggested above, and work closely with their respective school district in reporting absences.

Q: What are the school district's responsibilities when a Charter School reports that a student has accrued three or more days of unlawful absences?

A: Under compulsory attendance laws, the parent/guardian of a student who has accumulated three unlawful absences are to receive notice stating any subsequent unlawful absences will result in a citation being filed with the magisterial district judge. The notice to parents/guardians should be sent immediately upon notification of third absence by a charter school. It is recommended that such notice should be sent through certified mail. Future unlawful absences should be filed with the magisterial district judge.

Q: What are the responsibilities of Nonpublic Schools relative to a student's unlawful absence?

A: Every principal or teacher in a public or private school and every private teacher (tutor) are required to report at once to the superintendent, attendance officer, home and school visitor or secretary of the board of school directors of the district, cases when a child of compulsory school age has been absent three days, or their equivalent, without lawful excuse.

Q: Are schools required to employ an attendance officer or home school visitor?

A: First, second and third class school districts are required to employ at least one person holding the title of attendance officer or home and school visitor. School districts of the fourth class may also employ attendance officers or home and school visitors with the same powers and responsibilities. Districts may join in cooperative agreements to employ an attendance officer or home and school visitor.

Q: Can an attendance officer or home and school visitor, employed by a school district, arrest or apprehend a child who fails to attend school in violation of compulsory school attendance?

A: Yes. The employee is to enforce the provisions of the Pennsylvania School Code regarding

compulsory attendance. These individuals have full police power without warrant and may arrest or apprehend any child who fails to attend school in violation of compulsory attendance. State, municipal, port authority, transit authority, housing authority and school police officers are provided with the same arrest powers.

Q: What happens to the child when they are arrested or apprehended by an attendance officer or home and school visitor?

A: In cases where students are arrested or apprehended, the apprehending or arresting officer is required to promptly notify the parent/guardian to place the child in the public school the child is, or should be, enrolled.

Q: What are the responsibilities of school personnel when they discover that a child is unable to attend school due to the lack of necessary food and/or clothing?

A: Whenever school personnel charged with overseeing attendance discovers that any child of compulsory school age is unable to attend school due to the lack of necessary clothing or food, the case must be reported to any suitable relief agency operating in the school district. If a proper relief agency is not found in the district, the case should be referred to the proper county board of assistance for investigation and relief.

Q: What is meant by Compulsory School Age and Compulsory Attendance?

A: Compulsory school age refers to the period of a child's life from the time the child enters school as a beginner (first grade), which may be no later than eight years of age, until the age of seventeen or graduation from a high school, whichever occurs first. It is mandatory for all children of compulsory school age having a legal residence in Pennsylvania to attend a day school in which the subjects and activities prescribed by the Standards of the State Board of Education are taught in the English language, except in the following situations found in sections 1327, 1327.1, 1329, and 1330 of the Pennsylvania School Code:

1. Attendance as a day student in a private trade school or private business school continuously through the entire term congruent with the public school term that meets the requirements set forth by the State Board of Education or the State Board of Vocational Education when:
 - The child is 15 and has approval from the district superintendent and Secretary of Education, or
 - The child is 16 and has approval from the district superintendent.
2. Attendance at a school operated by a church or other religious body which provides a minimum of 180 days of instruction or 900 hours of instruction per year at the elementary level or 990 hours per year of instruction at the secondary level.
3. Privately tutored or home school students provided a minimum of 180 days of instruction or 900 hours of instruction per year at the elementary level or 990 hours per year of instruction at the secondary level.
4. Children who are 16 and regularly engaged in useful and lawful employment during the school session with a valid employment certificate.
5. Children who have been examined by an approved professional and identified to be unable to profit from further public school attendance and excused by the school board.
6. Children who are 14 and satisfactory completed the equivalent of the highest grade of elementary school in their district who hold a permit approved by the Secretary of Education to engage in farm work or domestic services in a private home.

Q: What are the consequences and penalties associated with violation of state law and school board attendance requirements?

A: Every parent, guardian or person in parental relation having responsibility over any child of compulsory school age is subject to penalties if compulsory school-age attendance requirements are not met. School districts are required to give three days' written notice of violation of compulsory attendance

prior to proceeding against the parent or student. The school district may initiate proceedings with the magisterial district judge three days immediately after the third written notice of a child's unlawful absence, if the child is unlawfully absent from school on any subsequent days.

Possible sentences for parents found to be in violation of compulsory attendance law:

- Paying a fine up to \$300 for each offense and court costs, or
- Completing a parenting education program, or
- Completing in lieu of, or in addition to the previous penalties, community service within the school district for a period of no more than six months and
- In cases where the party being sentenced fails to complete the terms of their sentence, a subsequent sentencing to the county jail for no more than five days.

(Magisterial district judges may suspend all or portions of the sentence, if the child is no longer habitually truant.)

The board of school directors may bring a student before the court. Possible sentences for children found in violation of compulsory attendance law:

If the parent/guardian is not convicted by the magisterial district judge and the child has attained the age of 13, the child may be:

- subject to a fine of no more than \$300 for each offense, or
- assigned to an adjudication alternative program pursuant to 42 Pa.C.S. § 1520, or
- referred by the school district for services or possible disposition as a dependent child as defined under 42 Pa.C.S. § 6302 or
- alleged to be dependent under 42 Pa.C.S. § 6303(a)(1) by the magisterial district judge, if the child fails to comply with the adjudication.

(Magisterial district judges may suspend all or portions of the sentence, if the child is no longer habitually truant.)

TOP

Tool 13:

Overview of the Special Education Process (ELC fact sheet)



Education Law Center

*Making sure that all of Pennsylvania's children
have access to quality public schools*

OVERVIEW OF THE SPECIAL EDUCATION PROCESS

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

THE INITIAL EVALUATION

If you think your child needs special education help, write to your principal and request an evaluation. If the School District thinks an evaluation is not needed, it must tell you in writing, give you a reason, and explain how you can challenge the decision. The evaluation should decide whether your child has a disability and requires special supports to learn, and what kind of programs and supports are needed. The District must finish the evaluation, and give you a written report, within **60 calendar days (minus the summer) of the date you sign the Permission To Evaluate (PTE) - Consent Form**. The School District must make the PTE - Consent Form "readily available." These rules also apply to students in public charter schools. Keep a copy of all papers you send or sign!

TEAM EVALUATION AND REPORT

A Team (which includes you, usually a certified school psychologist, the child's regular teacher, and other IEP Team members) must use a variety of tests or strategies to evaluate your child. The child should be tested in the language most likely to give accurate information. All evaluations must be free to the family. The evaluation must determine whether the child is eligible for special services and decide what program needs the child's program has. Parents must get a copy of the Evaluation Report at least **10 school days** before the IEP Team

meeting (unless the family waives the **10-day period**). Even if the parent has not put the request in writing, if she asks a professional or administrator at the school to evaluate the child, within **10 calendar days** the person must give the parent a form, called a **Permission To Evaluate - Evaluation Request Form**, on which she can make a written evaluation request. These rules also apply to children who attend public charter schools.

REEVALUATIONS

You can ask for a reevaluation at any time, but the School District is not required to do more than one reevaluation during a school year. The reevaluation must be finished, and the report given to you, within **60 calendar days (minus the summer) of the date the School District (or public charter school) gets your written permission**. The School District or the school must give the reevaluation report to the family at least **10 school days** before the IEP Team meeting. A child must be reevaluated every **3 years** (every **2 years** for children with mental retardation). Unless the student has mental retardation, the parents can agree to waive the 3-year reevaluation. The reevaluation should decide whether the child still has a disability and the child's educational needs. This should include a review of whether the child has been making progress in the IEP goals, and which activities and strategies worked - and which didn't.

INDEPENDENT EVALUATIONS

Results of private evaluations from the parents must be "considered" by the IEP Team (although the Team doesn't have to agree with the independent evaluator). If you believe the School District's or school's evaluation was badly flawed (for example, that more or different tests or evaluations are necessary, or that the evaluation did not provide enough information to develop a good IEP), you can ask the District or the public charter school to pay for an independent educational evaluation. If the School District or school refuses this request, it must ask that a special education hearing be scheduled to determine whether its refusal should be overruled.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Within **30 calendar days** of when the Evaluation Report is finished, a meeting must be held to write the IEP. The IEP Team must meet at least **once**

each year while the child continues to receive special education services. The **IEP Team** must include the parents, the student, if appropriate (especially if transition planning is being discussed), a current special education teacher (and a regular education teacher if the child is or may be participating in a regular education program), a representative of the School District who is qualified to provide or supervise the provision of special instruction, knows about the general education curriculum and knows what resources are available, and someone who can explain what the evaluation tells the group about how the child should be taught. More people can be invited by the parents or the school or School District.

The IEP is the written "contract" between the parents and the school. It describes the special program and the type and amount of related services your child needs. The IEP must include annual goals that can be measured, short-term objectives for children with significant disabilities whose program is geared to different academic standards than other children, the type of special help your child will receive in the classroom, how your child's progress will be measured, the extent to which your child can participate in the general school curriculum, and whether the child can participate in state or district-wide academic achievement tests, with supports if needed, or whether the child will take a different test (called the PASA). The IEP must also list the school at which the services will be delivered.

When you approve the IEP, your child must start receiving the services in the IEP within **10 school days**. You can ask for an IEP meeting at any time - you do not have to wait until the next yearly meeting.

PLACEMENT

Your child should receive special education services in regular education classes unless your child cannot make reasonable progress even with supports. Even if the child cannot attend regular classes full-time, the child can be assigned to special classes only for students with disabilities only if it is necessary for the child to succeed. So, if the child can succeed with help in a part-time resource room, the School District should not assign the child to a full-time pullout program. The same rules apply to public charter schools. Unless the student's needs require another school, the child should attend the same school he or she would have attended if the student did not need special services.

NOTICE AND THE RIGHT TO CHALLENGE A SCHOOL DISTRICT DECISION

Whenever the School District or public charter school proposes or refuses to evaluate or reevaluate your child; decides your child is eligible for special education (or refuses to agree that your child needs special services); offers an IEP to your child (or refuses to include services that you think are necessary); or offers or refuses to offer a placement you think is necessary (including a regular classroom), the School District or public charter school should give you written notice (called a Notice of Recommended Educational Placement/Prior Written Notice or NOREP/PWN). The NOREP/PWN explains what the School District or school is proposing or which of your requests the district or the school is refusing to grant. The NOREP/PWN also gives you a place to agree or to disagree with the proposal or refusal and to ask for mediation or a hearing. If you think the School District or the school is not following the law, you can file a complaint with the State. For more information about the rights of children with disabilities, see ELC's website at the address listed below, or contact the Disability Rights Network at 800-692-7443.

Funding for this brochure was provided by:

Disability Rights Network of Pennsylvania (DRN), pursuant to the Developmentally Disabled Assistance and Bill of Rights Act, P.L. 101-496, and the P&A for Mentally Ill Individuals Act, P.L. 99-319. DRN is located at 1414 N. Cameron Street, Suite C, Harrisburg, PA 17103. Telephone: 800-692-7443 or 717-236-8110. Website: www.drnpa.org.

Pennsylvania Interest on Lawyers Trust Account Board (PA IOLTA)

*Prepared by: Education Law Center (Rev. 9/08A)
(215) 238-6970 (Philadelphia)
(412) 258-2120 (Pittsburgh)
www.elc-pa.org*

Tool 14:
How Can You Use NCLB to
Help Your Own Children
Do Better in School
(ELC fact sheet)

How can you use NCLB to help your own children do better in school?

Rules of the No Child Left Behind Act (NCLB).



Why is it important for children to do well in school?

Research shows that failing to get a high school diploma often leads to unemployment and low wages. But a diploma by itself is not enough. The diploma must represent a high quality public education. No child should be left behind by our public schools. All students need to learn more knowledge and skills than ever before. To get a good job, most young people must continue their education by attending some kind of technical college or university.

Can NCLB really help your children?

Yes. NCLB is a controversial law. But NCLB provides new tools that parents can use to help their children do better in school.

What are the 10 best ways that you can use NCLB to improve your children's education?

Other fact sheets from the Education Law Center explain the following items in more detail. This flyer gives a basic list of the most important tools that can help your children.

1. Classroom Involvement. Parents have a right to communicate with teachers, principals, and other school officials. The communication should be regular, two-way, and meaningful. Parents may communicate about education issues such as the curriculum, classroom instruction, student progress, and student support services. Parents also have the right to meet with teachers, receive frequent student progress reports, and observe the classroom. *Students do better when their parents are more involved in school.*
2. High Expectations. Teachers must challenge all students with high expectations. They must teach students the knowledge and skills listed in state guidelines for each subject and grade. *Look at the books and assignments given to your children. Compare these materials to the state academic guidelines for each class. Ask teachers to challenge your children, instead of giving them a "watered down" education. See www.pde.state.pa.us/stateboard_ed.*
3. Standardized Tests. Teachers must use PSSA score reports to help individual students. *Talk with your children's teachers about the PSSA score reports. Ask the teachers to make a written plan to address the academic strengths and weaknesses of your children.*
4. Quality Teachers. All teachers and paraprofessionals must be "highly qualified". *Ask the principal for the qualifications of your children's teachers. For teachers who are not highly qualified, ask the principal to give them extra training, support, and supervision.*

See the other side for more information.

Education Law Center/Penna. School Reform Network – ELC/PSRN

Offices in Philadelphia and Pittsburgh

215-238-6970 www.elc-pa.org 412-391-5225

ELC/PSRN works with many parents and groups. Please call us for assistance with individual school problems or more general problems with the education system. We look forward to speaking with your group. If your child's rights are violated under any law, ask for legal assistance. ELC operates a HelpLine at the numbers above. The ELC website (www.elc-pa.org) contains fact sheets and information about other organizations and sources of help.

5. Student Support. Teachers must identify children most in need of extra assistance. Schools must give the extra help without delay and design a support plan for each individual student. *If your children are struggling in school, ask for parent conferences, remedial or make-up work, tutoring services, adult mentoring, career guidance, or behavior counseling.*
6. Tutoring Programs. Students can get tutoring through several programs. Some programs are available for everyone. Other programs are only in schools with low PSSA scores. The NCLB tutoring program is called “supplemental educational services”. *If your children are struggling, ask the school to enroll them in a tutoring program.* www.pde.state.pa.us/tutoring
7. Remedial Programs. School districts can use NCLB funds to support remedial programs for students before school, after school, and during the summer. These programs should focus on academic achievement.
Ask the school district how your children can participate in these remedial programs.
8. English Language Learners. Schools must identify students who are English language learners (ELL). Schools may offer separate programs for ELL students. Schools should notify parents before placing students into an ELL program. Parents have the right to decide whether or not their children will participate. If the ELL program is not effectively teaching students, then the state must help the school district to make improvements. In addition, ELL students can receive accommodations when taking standardized tests like the PSSA.
Contact the school if you want changes for your children’s ELL program. The school should also work with you to determine accommodations for standardized tests like the PSSA.
9. Students with Disabilities. Children with disabilities may receive special education through the Individuals with Disabilities Education Act (IDEA). Other state and federal laws also protect the rights of children with disabilities. The school must ask for parental permission before evaluating a child for disabilities. The school must also ask for parental permission before giving special education classes or other services to a child. Most children with disabilities should be mainstreamed – taught in the “least restrictive environment”. Children can receive accommodations when taking standardized tests like the PSSA. Parents have strong legal rights to file appeals and complaints about problems with special education.
For more information, see ELC/PSRN publications on various special education topics.
10. Student Transfers. After the state puts a school on the “Improvement List” for the second year and any later year, the school district must allow parents to transfer their children out of that school. Students can transfer into a school making adequate yearly progress (AYP). The district must provide transportation for students who transfer. Priority is given to low achieving, low income students. Schools on the “Dangerous List” must also allow transfers.
If you want your children to transfer to a better school, ask the principal for a transfer application form. Also ask for a copy of the transfer rules.
For AYP results, see www.paayp.com. For “Dangerous Schools”, see www.pde.state.pa.us/svcs_students/cwp/view.asp?a=175&O=95273&svcs_studentsNav=|6148|&svcs_studentsNav=|

GET INVOLVED TODAY. YOU CAN MAKE A DIFFERENCE!

How can you get more information?

- See other ELC fact sheets about NCLB and many other education issues. Visit our website or call our offices. *Contact information is on the front of this page.*
- Call ELC for help with individual school problems for your children.
- Ask ELC to come speak with your community group or church.

Tool 15: School Discipline in Pennsylvania (ELC fact sheet)



SCHOOL DISCIPLINE IN PENNSYLVANIA

This fact sheet applies to all public schools, including charter schools, in Pennsylvania – except for schools operated by the Philadelphia School District. A separate fact sheet, entitled “School Discipline in the Philadelphia School District, is available from the Education Law Center.

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SOME GENERAL TIPS

- Read all papers that the school sends you. Make sure you know about any meetings or hearings that are scheduled concerning your child. Don’t agree to anything you don’t understand.
- Talk with your child, and anyone else who might know about what happened.
- Learn what the law says about school discipline (that’s what this pamphlet is about). If school staff don’t seem to be following legal requirements, point that out. Show school officials this pamphlet if necessary.
- Consider contacting a lawyer, especially if the school wants to expel your child. Your local bar association may be able to refer you to an attorney. The Education Law Center (see our number at the end of this pamphlet) may also be able to offer suggestions or advice.
- Attend all meetings and hearings. Make sure that school officials hear your child’s side of the story. If you think that the school is not following the law, point that out. Take notes.
- Talk with a lawyer about the possibility of an appeal if you disagree with the school’s decision.

SCHOOL RULES

Each school district and charter school must publish a code of student conduct, and give copies to students and their families. The rules must be reasonably clear, so that students know what is expected of them. Schools can punish students if they break rules listed in the code of conduct.

School rules can cover student behavior at school and on the way to and from school. The law is not clear about how far schools can go in punishing students for behavior off school grounds and/or outside of school hours. (If your case is of this type, you may wish to seek further advice from a private attorney or the Education Law Center.)

Students have certain rights to express themselves and practice their religion, as long as they do so without disrupting school activities. If you think that school officials are trying to punish your child for exercising these rights, you should seek further advice.

SUSPENSION: IN-SCHOOL AND OUT-OF-SCHOOL

In-school suspension. Before any in-school suspension or detention, the student must be informed of the reasons and given a chance to tell his or her side of the story. Parents must also be notified. The student's education must continue during the in-school suspension. If the in-school suspension lasts for more than 10 days, the student must be offered an "informal hearing" (see below for information on informal hearings).

Out-of-school suspension. Before any out-of-school suspension, the student must be informed of the reasons and given a chance to respond. Parents must be notified in writing. An out-of-school suspension can be for no more than 10 school days.

If the suspension is for three days or more, the family must be offered an "informal hearing" no later than the fifth day. The family can question anyone present at the hearing, and can also bring people to speak on the student's behalf.

Note that school staff cannot simply "send the child home" without following these rules. The suspension rules apply whenever a child is kept out of school for any period of time (up to 10 days).

Regardless of whether the parent attends the informal hearing, the student has the right to return to school once the suspension is over, and to complete assignments missed.

TRANSFER TO AN ALTERNATIVE PROGRAM

Transfer to an alternative school means that the student is assigned to a special program for "disruptive" students. Only middle and high school students can be assigned to these programs.

School officials must hold an "informal hearing" before placing a student in an alternative school. The school must notify the family in writing of the time and place of the

hearing. The procedures at the hearing are the same as for an out-of-school suspension (see above).

Districts must review each student transferred to an alternative school at the end of each semester to see if the student is ready to return to regular school. Ask your district what your child must do to be ready to return to regular school. School districts have considerable freedom in deciding what criteria a student must meet in order to return to regular school. However, if you believe that the criteria chosen by your district are unreasonable, you may wish to discuss the matter with us.

EXPULSION

Any removal from school for more than 10 days is called an expulsion. Expulsions can be for a fixed period (such as a semester or a year) or may be permanent.

The school must hold a “formal hearing” before any expulsion. The hearing must be held before the school board or (at a charter school) the board of trustees; or the hearing can be held before a committee or hearing officer appointed by the board. If a committee or hearing officer hears the case, the full board must vote on the committee’s or hearing officer’s recommendation.

The family has the right to get, before the hearing, the names of any witnesses against the student and copies of their statements, and the right to request that any of these witnesses and any school officials involved in the incident be present at the hearing. The family also has the right to bring a lawyer to the hearing; present witnesses and evidence; and question the school witnesses. The hearing must be recorded, and the family has a right to get a copy of the written record (which will be needed if the family appeals to court) at the family’s expense.

Once an expulsion decision is approved by the school board, it can be appealed to the local Court of Common Pleas. It’s best to consult a lawyer about filing an appeal – and to do so quickly, since the appeal must be filed within 30 days. There may also be other legal options; consult a lawyer about these as well.

An expelled student under age 17 must continue to receive an education. The parents must make arrangements for this, either by finding another school or by arranging a program of home schooling. However, if the parents are unable to do so, they should promptly contact the school district or charter school, which must then make arrangements for the child’s education.

STUDENTS WITH DISABILITIES

The rules are somewhat different for students with disabilities. **See our fact sheet on “School Discipline and Special Education” for more complete information.**

A student with disabilities who receives special education services cannot be *suspended* for more than 15 *total* days in a school year, unless the parent agrees or a special

education hearing officer (appointed by the state, not the school system) or judge approves the suspension. A child with mental retardation cannot be suspended without the parent's agreement, the agreement of the state Department of Education, or an order from a hearing officer or judge.

A special education student can be *transferred to an alternative school* for up to 45 days, if the student brings a gun, a pocket knife with a blade longer than 2 ½", or another weapon to school; or uses, buys, or sells illegal drugs at school. Any decision to transfer the child must be made by the child's IEP ("Individualized Education Program") team. The parent can ask for a special education hearing if he or she believes the transfer is inappropriate, but the transfer can be made in the meantime.

In cases *not* involving a weapon or drugs, the student's IEP team can recommend a transfer to an alternative school. If the parent disagrees and requests a hearing, the transfer cannot be made unless a hearing is held and the hearing officer or a judge decides that the student is dangerous.

In all of these cases, the IEP team must also decide whether the child's behavior was a "manifestation" of his or her disability. If the parent disagrees with the team's decision, he or she has the right to a special education hearing.

If the school district or charter school is considering *expulsion* of a special education student, the IEP team must decide whether the misbehavior was a "manifestation" of the disability. If it was, the child cannot be expelled. The parent has the right to a special education hearing if he or she disagrees with any other aspect of the expulsion recommendation. And even if a special education student is expelled, the school district or charter school must still arrange for him or her to receive an appropriate educational program.

Students with disabilities who do not need special education (sometimes called "protected handicapped students" or "Chapter 15" students) may also have certain rights in the disciplinary process. Seek further advice if this is your situation.

FAMILIES WHOSE NATIVE LANGUAGE IS NOT ENGLISH

Non-English-speaking parents and students have the right to information concerning disciplinary matters in their native language. This includes the code of student conduct, and notices concerning disciplinary hearings and decisions. Also, a translator must be made available at meetings and hearings if the family requests.

Funding for this brochure was provided, in part, by the Disability Rights Network of Pennsylvania (DRN), pursuant to the Developmentally Disabled Assistance and Bill of Rights Act, P.L. 101-496, and the P&A for Mentally Ill Individuals Act, P.L. 99-319. DRN is located at 1414 N. Cameron Street, Suite C, Harrisburg, PA 17103. Telephone: 800-692-7443 or 717-236-8110. Website: www.drnpa.org.

Prepared by: Education Law Center (8/07)
(215) 238-6970 (Philadelphia)
(412) 391-5225 (Pittsburgh)
www.elc-pa.org

Tool 16:

Expulsions in Pennsylvania: Information for Parents and Guardians (ELC fact sheet)



Education Law Center

Making sure that all of Pennsylvania's children
have access to quality public schools

Expulsions in Pennsylvania: Information for Parents and Guardians

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us or an attorney of your choice.

If a School District or charter school wants to expel your child, here are some things you should know.¹

When Can A Student Be Expelled? While public schools have wide latitude to create rules, they must follow their own rules. Thus, a school can only expel a student for a violation of a school rule if the school has officially adopted and distributed the rule. School rules should be listed in a published Code of Student Conduct that should be given to all students and parents. If your child is being expelled for having a weapon at school, see ELC's fact sheet, "*When Can Your Child Be Expelled for Bringing Weapons to School?*" at www.elc-pa.org.

What Is An Expulsion? An expulsion is any removal from school for more than 10 days in a row. Expulsions can be for a fixed period (such as a semester or a year) or may be permanent.

Can A School Keep A Child Out For More Than 10 Days Without an Expulsion Hearing? No. Sometimes, without holding an expulsion hearing, school officials

¹ Note: for students who have an **Individualized Education Program (IEP)** and receive *special education*, and for children who have **504 Plans/Chapter 15 Service Agreements**, the district must follow a different process not described here. Contact the Disability Rights Network (DRN) at 1-800-692-7443 for more information, or see ELC's fact sheet, *School Discipline and Students with Disabilities* at www.elc-pa.org.

will simply tell a family to keep their child home until s/he gets a psychiatric evaluation, or meets some other condition. **This is illegal** if the exclusion lasts for more than 10 school days. (Even if the exclusion is for *fewer* than 10 days, it is illegal unless the school has held a proper suspension hearing.)

Must a School Do Anything Before A Student Can Be Expelled? The school must hold a **"formal hearing"** before any expulsion. The school must give you at least three (3) days' notice of the time and place of the hearing. You may request a rescheduling of this hearing if you can show a good reason why you need an extension. The hearing must be held before the school board or before a committee or hearing officer appointed by the board. If a committee or hearing officer hears the case, the full board must then vote on the committee's or hearing officer's recommendation.

Does the Student Have Any Rights at an Expulsion Hearing? Yes. Before the hearing, the family has the right to get the **names of any witnesses** against the student and **copies of their statements**, and the right to request that any of these witnesses and any school officials involved in the incident be present at the hearing. You should ask the School District for this information in writing and orally as soon as possible so that you can prepare for your hearing.

The family also has the **right to bring a lawyer** to the hearing; **present its own witnesses** and evidence; and **question the school's witnesses**. A lawyer may be helpful to you at the hearing, though it may cost money to hire a lawyer. Some legal aid organizations may be able to assist you for free if you are income-eligible. You may contact us for more information or for a referral. The hearing **must be recorded**, and the family has a right to get a **copy of the written record** (which will be needed if the family appeals the decision to court) at the family's expense.

Advice for the Hearing. At the hearing, you and your child should explain the circumstances surrounding the misbehavior, and why you believe the school should not expel your child. The hearing usually has **two parts** to it: the first part focuses on the misconduct and whether the child did or did not violate a school rule (known as the "guilt" phase of the hearing), and the second part focuses on what the punishment, if any, should be (known as the "penalty" phase). This second part could include issues such as attendance, grades, previous discipline actions against the student, and the student as a member of the community. During this second phase, you may want to focus on the child's age, if the child is young. You

may also want to suggest alternatives to expulsion such as community service or Saturday School. And you may want to state on the record at the hearing that you cannot afford private school and cannot home school your child should the child be expelled.

At the hearing, you may also want to ask what educational services the School District would provide your child if he or she is expelled. (As noted below, the District has the responsibility to educate your child, even if expelled, if he or she is under 17 and if you cannot arrange an alternative program.) If you are dissatisfied with the answer -- for example, if you're told that the district would provide only a few hours of tutoring per week -- you should describe the services that you think your child would need if expelled (for example, placement in some other school setting). Be sure to point out that you're not agreeing with the proposal to expel your child, but simply talking about the services that you believe he or she would need if the expulsion were to take place.

Helpful information to bring to the expulsion hearing may include:

- A letter from a teacher in the school stating his or her opinion that the student is a positive member of the school community. (Of course, if the teacher is willing to come as a witness and testify on behalf of the child, this will also be helpful!)
- Bring someone from the community with you who knows the student (a neighbor, a minister, an employer, etc.) and can serve as a witness in support of the student. A letter from such a person may also be a good idea if the person cannot physically come with you.
- If the student sees a therapist outside of school, either bring the therapist as a witness or bring a letter from the therapist expressing his or her opinion about the right school placement for the student.
- Bring any information that could explain the misbehavior or explain why the student should not be expelled. For example, if the school is wrongly accusing your son of fighting, you could bring letters from classmates who write that your son was not in the fight. If the school is accusing your daughter of "repeated school violations" but never notified you of previous incidents, say so at the hearing. Or, if you have asked to meet with the principal to discuss your child and been ignored, tell the school board this. Bring any written proof you might have (such as a copy of the e-mail you sent to the principal).

Please note that these are only suggestions. You do not need to have all of this information, nor does providing all of this information guarantee a decision in your favor.

Your Child's Placement While Awaiting the Decision. Sometimes your child can stay in his or her regular school while awaiting the expulsion decision. If the school determines that the student is a threat to school safety, the student may be kept out of school for more than 10 days in a row before the hearing is held. However, the school must provide the student with alternative education (which can include home study) while the student waits for the hearing to occur. A school *may not* keep a student out of school for longer than 15 school days in any case without a formal hearing unless both the parents and the school district agree otherwise.

If the Child is Expelled. If the full school board approves an expulsion decision, you can appeal the decision to the local county Court of Common Pleas. Consult a lawyer about this - and do so quickly, since the appeal must be filed within 30 calendar days. Your lawyer may also be able to get a court order returning the child to school while the appeal goes forward.

An Expelled Student Under Age 17 Must Continue to Receive an Education. The parents must arrange for this, either by finding another school (like a private school) or by arranging a program of homeschooling. However, if you are unable to do so, promptly notify the school district or charter school in writing. Then the district or charter school must provide for the child's education.

If You Move to Another School District After Your Child Has Been Expelled. If you move to another School District in Pennsylvania, your child should be allowed to enroll in a regular public school. The new School District cannot refuse to put your child in a regular school unless your child was expelled for having a weapon in a public school, in which case the new School District may put the child in an alternative education program for the duration of the expulsion.

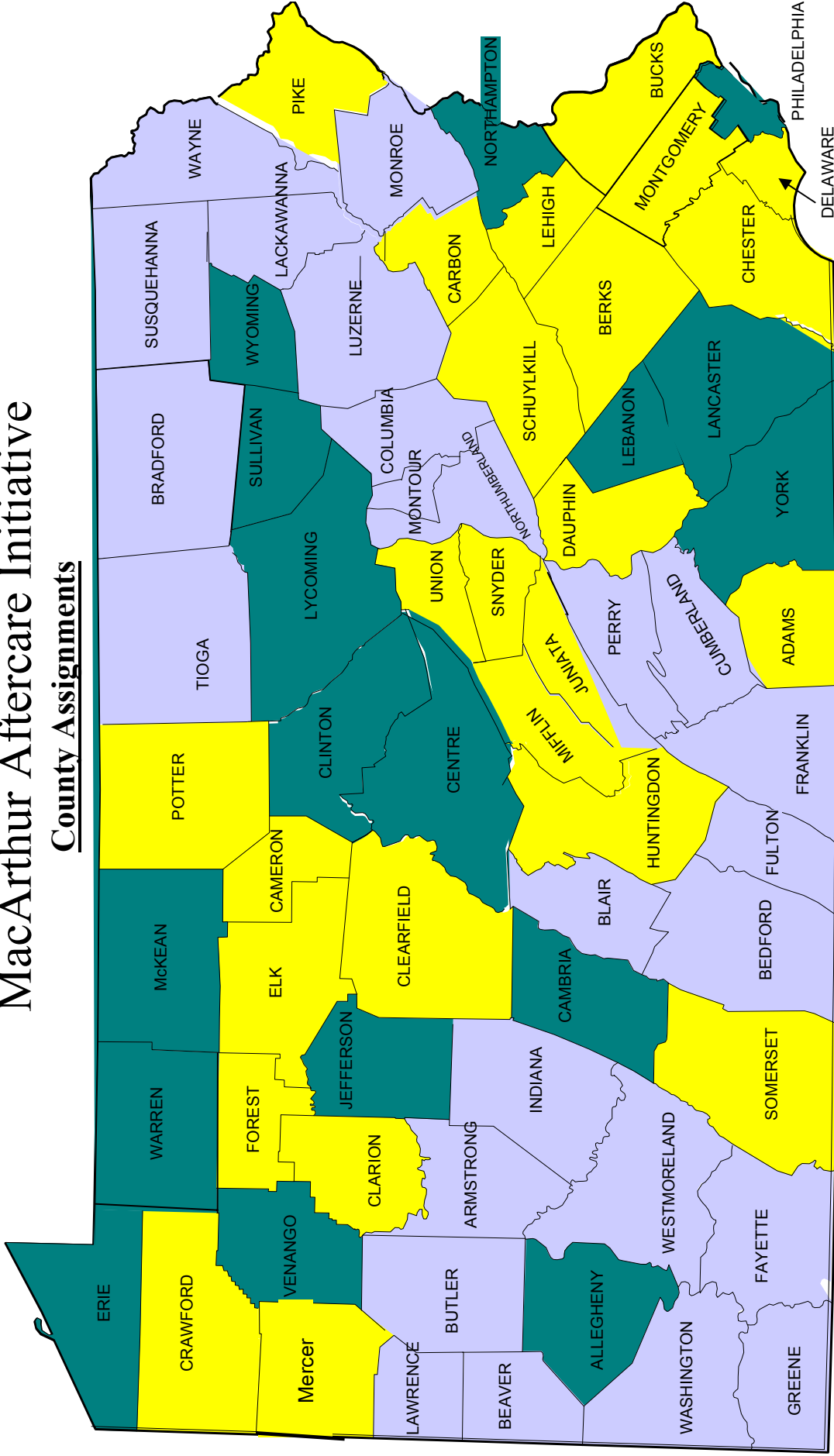
Tool 17:

Aftercare Specialist

Contact Information

MacArthur Aftercare Initiative

County Assignments



Kelly Franklin
Aftercare Specialist
PA Council of Chief Juvenile Probation Officers
Phone: 570-946-7255 Mobile: 570-447-1187
Email: kfranklin@epix.net

Rick Steele
Aftercare Specialist
Juvenile Court Judges' Commission
Phone: 717-705-5633 Mobile: 717-418-9661
Email: ricsteete@state.pa.us

Dan Rhoads
Aftercare Specialist
Center for Juvenile Justice Training and Research
Phone: 717-747-3519 Mobile: 717-262-5717
Email: c-darhoads@state.pa.us



Tool 18:

Checklist of Key Activities from Pre-Placement through Release and Reintegration

Checklist of Key Activities from Pre-Placement through Release and Reintegration

I. Pre-Placement Dispositional Hearing

1. *Determine the educational needs of the delinquent youth.*

- Talk to those familiar with the youth's educational needs (teachers, school administrators, family members, and the youth).
- Review the youth's education records (grades, disciplinary reports, attendance records, standardized test scores, special education reports and programs, etc.).

2. *Make a placement recommendation to the judge.*

- Identify an appropriate placement and what educational services and supports will be needed in that setting.
- Initial placement decisions will ultimately impact upon a youth's reintegration into school and/or other community education settings, so make sure you understand the youth's needs and educational goals before recommending a delinquency placement.

II. Educational Services in Placement

1. *Facilitate the transfer of education records to the delinquency placement.*

- Prompt the juvenile placement facility to request education records from the home school district as soon as possible.

2. *Help to identify appropriate educational services for the youth pending any record transfer delays.*

- Advocate for the juvenile placement facility to conduct its own assessments and identify appropriate educational services for the youth.

3. *If the youth will return to school after placement, try to ensure that he or she is working on a curriculum aligned with the home school district and is earning credits in placement that will transfer back to the home school district.*

- Advocate that the youth work on the State academic standards appropriate for his or her age and grade level.
- Ensure that the youth's educational progress is being monitored and credit attainment is properly documented.
- Ask that the youth participate in the PSSA if he or she is in an assessment grade level.

4. *If the youth will not return to school after placement, determine if he or she will earn a high school diploma while in the juvenile justice facility.*

- Identify any potential issues about which school district (either the home district or the district in which the facility is located) will issue the diploma and attempt to resolve them as soon as possible.
-

- Youth in State-operated juvenile correctional facilities in Pennsylvania can obtain a Commonwealth Secondary School Diploma if they complete the required secondary school curriculum as specified by the Pennsylvania Department of Education.
- Decide if completion of the GED Tests is a viable option for the youth (no one under age 16 can take the GED Tests in Pennsylvania).

III. Release and Reintegration into the Community

1. **Identify, review, and consider all possible educational options available when the youth is released from the juvenile justice facility.**

- Possibilities include the youth's neighborhood school (first you must determine his or her home school district), charter school/cyber charter school, alternative education program, homeschooling, homebound instruction, a GED program, and options for expelled students, pregnant and parenting students, and exemptions from compulsory school attendance.
- Remember that school districts cannot automatically place youth returning from delinquency placements in alternative education programs.

2. **If the youth will attend school in his or her home school district, gather all the documents necessary for enrollment and begin the enrollment process as soon as possible. Public schools must enroll students within 5 business days of the district's receipt of the required documentation.**

- The **only** documents that the school district can require prior to enrollment are: 1) proof of age; 2) proof of residence; 3) proof of immunizations; and 4) a Parental Registration Statement (a/k/a "Act 26" Affidavit).

3. **Ask the juvenile justice facility to transfer the youth's education records to the post-release educational placement prior to discharge.**

- Problems or delays with transferring records (other than those required prior to enrollment as listed above) cannot be a bar to enrollment in a school district.

4. **Identify any special education issues and guide the family on how to address them.**

- Inform the family about special education eligibility criteria and the process for getting an evaluation, IEP, and appropriate placement.
- If the youth already has an IEP, see if it needs to be updated or if the youth needs a reevaluation.

5. **Determine if there are other in-school services available to the youth that would help his or her educational progress.**

- Consider drug and alcohol counseling, school-based behavioral health and/or mental health services, the use of School-Wide Positive Behavioral Supports, the availability of services under the district's Student Services Plan, tutoring programs, and school choice options.

6. **Review the school district's Code of Student Conduct with the youth to ensure that he or she understands attendance requirements and what behavior can lead to exclusions from school.**

- Youth who are under 17 are subject to the compulsory school attendance law, and they must attend school or participate in another approved education program, or face truancy charges filed by their school district.
- All students may be subjected to school discipline, including expulsion (meaning exclusion for more than 10 school days in a row) for violations of school rules set out in the Code of Student Conduct.

- If a school wants to exclude a youth for some period of time, make sure the proper procedures (which vary depending on the length of the exclusion) are followed.

7. **Contact an educational expert if you need help.**

- Resources include the Aftercare Specialists, the Education Law Center, and the Disability Rights Network.

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For more information, contact:

Jennifer Lowman, Esq.

Director of Client Services and Training

Education Law Center-PA

The Philadelphia Building

1315 Walnut Street, Suite 400

Philadelphia, PA 19107-4717

215-238-6970 ext. 312

jlowman@elc-pa.org

