

Alternative Education Programs – Act 48

Many of our clients have asked for our advice concerning alternative education programs for disruptive youth. Questions that arise in this area primarily concern student eligibility for such programs and the requirements placed on districts that either operate their own alternative education programs or contract with private institutions that operate such programs.

Pursuant to Section 1902 E of the Pennsylvania School Code, school entities (school districts, joint schools, charter schools, vocational schools and intermediate units) may contract with private alternative education institutions for the purpose of placing disruptive youth.

First, the contract between the school and private institution must specify the policies established by the school entity to identify those students who are eligible for assignment to the institution. Students eligible for assignment to the institution are those students who meet the definition of a “disruptive student” as set forth in Section 1902 C of the School Code. According to the School Code, a disruptive student is a student who poses a clear threat to the safety and welfare of other students or school staff, who creates an unsafe environment or whose behavior interferes with the learning of other students or disrupts the overall educational process. A disruptive student must therefore exhibit to a marked degree any or all of the following conditions:

- (i) disregard for school authority;
- (ii) display or use of controlled substances on school property;
- (iii) violent or threatening behavior on school property;
- (iv) possession of a weapon on school property;
- (v) commission of a criminal act on school property;
- (vi) misconduct that would merit school suspension or expulsion; and/or
- (vii) habitual truancy.

Second, the contract between the school entity and private institution must assure that the placement of the student will comply with the informal hearing procedures set forth in Chapter 12 of the Pennsylvania Code (Student Rights and Responsibilities). However, unlike the ordinary procedures under Chapter 12, a student may be placed in a alternative education program prior to notice of the informal hearing if the student’s presence poses a continuing danger to persons or property or ongoing threat of disruption to the academic process. In such situations notice and a hearing may follow placement in the program as soon as practicable.

School districts that establish or contract with private alternative programs must also adopt a policy for periodic review of each student to determine his or her readiness to return to the regular school curriculum. At a minimum, this review must occur at the end of each semester that the student participates in the program.

Before a school entity can contract with a private alternative educational institution or operate its own alternative program, an application must be submitted by

the school entity to the Department of Education and they must approve the program. All applications to PDE must, at a minimum, document that the program was developed in consultation with faculty and administration of the school entity and members of the community; identify criteria for placement eligibility; ensure Level I or Level II certification for all school personnel assigned to the program; provide participating students with a course of instruction which recognizes their special needs and prepares them for successful return to the regular school curriculum; is used only when other established methods of discipline have been utilized and have failed unless the seriousness of the students behavior warrants immediate placement; and provide a description of the educational program to be provided.

Alternative education programs must also offer either twenty (20) hours of instruction per week or fewer hours of instruction per week if the program covers at least four of the following areas: language arts, math, science, social studies, health, or life skills. In addition, programs that provide fewer than twenty (20) hours per week must demonstrate how normal academic progress will be achieved. Moreover, the program must comply with all federal and state laws and constitutional provisions prohibiting discrimination and be nonsectarian in all operations.

Finally, Private Alternative Education Institutions are exempt from all School Code requirements and from regulations of the State Board of Education and standards of the Secretary of Education **except**:

- 1-111 background check of employees,
- 3-325 offering bribes
- 3-326 receiving bribes
- 3-327 demanding gratuities from teachers or supervisors
- 4-431 bond for secretary of school board
- 4-436 bond for treasurer of school district
- 4-437 audit of accounts
- 4-443 penalty for embezzlement
- 5-518 retention of financial records
- 5-527 drug law convictions
- 7-736 heating stoves to be shielded
- 7-737 ventilation
- 7-738 fireproof construction
- 7-740 water-closets
- 7-741 substrata evaluation
- 7-753 stipulation for minimum wages
- 7-755 contracts to prohibit discrimination against race, creed or color
- 7-771 display of U.S. flag
- 8-809 giving or offering bribes
- 8-810 seeking or receiving bribes
- 11-1112(a) teacher wearing insignia indicating religious order, sect or denomination

- 13-1303(a) Immunization
- 13-1317 authority of teachers, vice principals, and principals
- 13-1317.1 possession of telephone pages prohibited
- 13-1327 compulsory school attendance
- 13-1332 reports of enrollments, attendance, withdrawals
- 13-1361 transportation
- 13-1366 computation of distance
- 15-1501 minimum number of school days
- 15-1517 fire and emergency evacuation drills
- 15-1518 text books and instruction on fire dangers
- 15-1546 release of pupils for religious instruction
- 15-1547 alcohol, chemical, tobacco abuse program
- Article XIII-A of the School Code Safe Schools Act
- Article XIV of the School Code - School Health Services
- 22 Pa. Code Ch. 4 (relating to academic standards and assessment)
- 22 Pa. Code Ch. 11 (relating to pupil attendance)
- 22 Pa. Code Ch. 14 (relating to special education services and programs)
- Act of July 17, 1961 Pennsylvania Fair Educational Opportunities Act and regulations promulgated pursuant to this article.

There are two additional areas of importance regarding alternative education programs not specifically addressed by Act 48. First, no student eligible for special education under the Individuals with Disabilities Education Act (IDEA) shall be deemed a disruptive student for purposes of Act 48 except as provided in Section 14.35 of the Pennsylvania Code (relating to discipline of eligible students). 24 P.S. 1901-C(5)(vi). Students eligible under the IDEA and Chapter 14 are afforded in most circumstances certain procedural safeguards prior to initiating a change in the student's educational program and placement. The exclusion of an eligible student from his or her program for disciplinary reasons for more than 10 consecutive days is considered a change in placement. Unless the student's behavior falls under the 45-day alternative placement rule (relating weapons and drugs), certain procedures must be followed prior to changing his placement. Therefore, prior to placing an eligible student in an alternative education program for more than ten consecutive days, the parent must approve the program or the IEP team must conduct a manifestation determination and conclude that the student's disruptive behavior is not a result of his or her disability. If the parent does not approve the program or disagrees with the determination, the district must secure a hearing officer's decision approving the alternative placement prior to placing the student in the program. In addition, any special education student who is placed in a alternative education program must be allowed to make "normal educational" progress (meaningful educational benefit) in accord with his or her IEP.

Second, caution should be used when deciding whether to place a "thought-to-be-exceptional student" in an alternative education program. There is a great deal of similarity between alternative educational programs and special education programs as both typically involve a high degree of structure, low-student-to-teacher ratios, behavior modification, adapted instruction, some form of counseling or therapy, and a commitment

to individualization based upon student needs. The problem with this resemblance is that alternative education accomplishes this through the segregation of students in an alternative location without regard to the least restrictive environment or IDEA procedural safeguards. We therefore always suggest that districts, prior to referring a student to an alternative program, apply their child find procedures to ascertain whether a multidisciplinary evaluation of the student is advised.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.