

Placement Options for Special Education

22 Pa. Code §14.102

22 Pa. Code Chapter 711.2

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PURPOSE

The purpose of this Basic Education Circular (BEC) is to review a variety of special education service and placement options available to school districts and charter schools through arrangement with other public agencies or private organizations.

This BEC will outline the responsibilities of school districts and charter schools when they choose to utilize other public or private agencies for the provision of special education and related services. This BEC does not apply to children who are placed by a county agency, such as mental retardation program, mental health program, children and youth agency, or through a local court in a residential facility for non-educational reasons.

BACKGROUND

The Individuals with Disabilities Education Act (IDEA) requires each Local Education Agency (LEA), including charter schools to make available a free appropriate public education (FAPE) in the least restrictive environment (LRE) and provide a continuum of placement alternatives for students with disabilities. As part of the Individual Educational Program (IEP) meeting, the IEP team must consider where the special education services will be delivered. Like FAPE, LRE is a determination that must be made on an individual basis.

To accomplish the delivery of special education services and program in the LRE, LEAs are required to ensure

- (1) that the placement be determined by the student's IEP team;
- (2) that a continuum of placement alternatives be discussed; and
- (3) that a student with a disability be provided with instruction in a setting different from that of non-disabled peers ONLY when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

In addition to regular and special education classrooms, the continuum of placement alternatives the IEP team can consider public or private institutions or other care facilities.

The Pennsylvania special education regulations contained in Chapter 14 and Chapter 711 of Title 22 of the Pennsylvania Code describe a wide variety of special education service and placement options, which as determined by the IEP team, may be pursued by school districts and charter schools. The special education programs and services that are specified in Chapters 14 and 711 may be provided directly by the district, charter school, or through arrangement with another public agency-or private organization. Under 22 Pa. Code

§14.102 and §711.2, school districts and charter schools may enter into agreements regarding the provision of services for students with disabilities.

If other public agencies or private organizations are to be utilized, this must be incorporated into the school district's special education plan described in 22 Pa. Code §14.104(b), or the annual report for charter schools described in 22 Pa. Code §711.6(a)(3). When the school district or charter school chooses to utilize public agencies or private organizations for the provision of special education services or programs, there are several limiting factors that must be reviewed and addressed prior to this arrangement.

Contracting with Agencies, Private Organizations and Private Schools

If a school district or charter school elects to utilize another public or private agency, organization, or school to provide all or part of the special education program on behalf of the school district's or charter school, under 22 Pa. Code §§14.102 and 711.2, the school district or charter school remains responsible for provision of FAPE consistent with IDEA and Chapter 14 or Chapter 711 of Pennsylvania's Special Education Regulations.

The special education program or service provided through arrangement with a public or private agency or organization must be implemented in accordance with the child's IEP and consistent with the requirements of IDEA and Chapter 14, or Chapter 711. The school district or charter school remains responsible for ensuring the implementation of the special education service or program that are provided by the private or public agency, organization or school meets the requirements of Chapter 14 or Chapter 711, and IDEA.

1. Private Academic Schools

Private Academic Schools are licensed by the Board of Private Academic Schools under 22 Pa. Code, Chapters 51--63. Licensure as a private academic school does not ensure compliance with IDEA and Chapter 14 or Chapter 711. It is the responsibility of a school district or charter school that chooses to place a child with a disability in a private academic school as a means of providing FAPE to determine, prior to placement, whether that service or program will meet Chapter 14 or Chapter 711, and IDEA requirements.

The LEAs have an obligation to ensure the child receives FAPE to the same extent the child would if placed in a public school. FAPE includes not just the special education and related services that a child with a disability receives, but also includes an appropriate preschool, elementary, and secondary school education. Since private academic school licensure does not ensure that the school's program, service or personnel meet the IDEA, Chapter 14 or Chapter 711 requirements, the school district or charter school cannot rely on licensure alone. The minimum individual personnel qualifications required for private academic school licensure are different from and not equivalent to those required for public schools. Therefore, before placement, the school district or charter school that chooses to place children with disabilities in private academic schools for the implementation of IEPs, are responsible for determining whether the private academic school will provide the special education and related services in accordance with the IEP including the maintenance of pendency, at no cost to the parent, and to determine if the special education program will meet the state standards that apply to private academic schools.

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

2. Other private and public agencies and organizations

Individuals in a nontraditional site who provide special education services as required by the student's IEP must have whatever credentials or other personnel qualifications would be required if they were providing the service as a public school employee. Since personnel requirements for private agencies or other public agencies and organizations do not necessarily ensure this, it is important to recognize that this requirement relating to individual personnel qualifications is the responsibility of the school district and charter school in ensuring FAPE for each student receiving special education in other settings prior to placement.

Significantly, the IDEA does not require private school teachers hired by private elementary schools and secondary schools - including private school teachers hired or contracted by LEAs - to meet the requirements of "highly qualified special education teachers." *See* 34 CFR § 300.18(h).

3. Teacher Caseload and Supervision of Teachers

The appropriate education and supervision must be provided to support FAPE for each student. Caseload requirements of Chapter 14 apply to educational placements for which a school district makes arrangement with a public or private agency, organization, or school, except Approved Private Schools (APS). Caseload requirements for APSs are specified in Chapter 171 Regulations for Approved Private Schools. Caseload requirements do not apply to charter school students placed in other public or private agencies or organizations.

4. Relationship to special education rules governing the placement of individual students

The above discussion relates to the issue of what placement options are available for use by a school district or charter school when making an individual special education placement decision. This discussion does not replace or alter the applicability of the rules relating to individual placement decisions. For example, there is an obligation to place a student in the least restrictive environment (LRE) in which the student's IEP can be implemented; and, there is a corresponding prohibition against placing children based solely on factors of administrative convenience. These rules apply regardless of the type of placement being considered. Moreover, students placed by the IEP team in a nontraditional placement are entitled to all of the same procedural requirements that would apply if they attended a public school, including but not limited to the timelines for reevaluation and revising the IEP, mandatory IEP team membership and limitations on disciplinary exclusion from school.

The School Code provides for an intermediate unit operated or "nontraditional" placement only when "such additional classes or schools...are necessary or to otherwise provide for the proper education and training for all exceptional children who are not enrolled in classes or schools maintained and operated by school districts..." 24 P.S. §13-1372(4). The district or charter school bear the responsibility to ensure the provision of FAPE in the LRE. Thus, the use of nontraditional sites, particularly if they are segregated and are not based on an individual placement decision, will result in the disapproval of the school district's special education plan by the Bureau of Special Education, or PDE's disapproval of the charter schools' annual report. A PDE disapproval of a charter's school's annual report could result in the non-renewal of the charter by the chartering entity.

5. Pendency

Administrative proceedings as referenced in IDEA, Chapter 14 and 711 require, in cases where stay-put is at issue, that pendency be maintained until the conclusion of the due process hearing or mediation process. The child who is the subject of the mediation or due process shall remain in the current education placement until the mediation process or due process hearing is concluded.

If the school district or charter school has placed a child in another setting, such as public or private agency or organization for the provision of FAPE, and this child becomes involved in mediation or due process hearing, the child shall remain in the current educational placement until mediation process or due process hearing has concluded, unless if the parent and school district or charter school agree otherwise. The public or private agency or organization must continue to implement the current educational program for the child who is the subject of an administrative proceeding.

REFERENCES:

Purdon's Statues

24 P.S. §13-1372(3) and (4)
24 P.S. §§1715-A—1716-A

State Board of Education Regulations

[22 Pa Code Chapter 14](#)

[22 Pa. Code § 14.102](#)

Department of Education Regulations

[22 Pa. Code Chapter 711](#)

[22 Pa. Code § 711.2](#)

Code of Federal Regulations

34 C.F.R. §§ 300. 114--115

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