



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

DATE OF ISSUE

January 4, 2010

EFFECTIVE
DATE

January 4, 2010

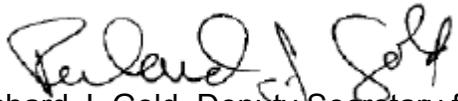
NUMBER

OMHSAS-10-02

SUBJECT

Educational Portions of "Non-Educational"
Residential Placement

BY:


Richard J. Gold, Deputy Secretary for
Children, Youth and Families


Joan L. Erney, J.D., Deputy Secretary
for Mental Health and Substance
Abuse Services


Kevin Casey, Deputy Secretary for
Developmental Programs

SCOPE:

County Mental Health and Mental Retardation Administrators
County Children and Youth Administrators
Base Service Units
Community Residential Rehabilitation Directors
Children and Adolescent Service System Program Coordinators
Child Residential and Day Treatment Providers
Non-State Intermediate Care Facilities for People with Mental Retardation (ICF/MR)
Community Homes for Individuals with Mental Retardation
Supports Coordination Organization Directors
Juvenile Court Judges
Chief Juvenile Probation Officers

PURPOSE:

The purpose of this bulletin is to set forth the common policy of the Department of Public Welfare and the Department of Education regarding educational services for students who receive non-educational placements.

BACKGROUND:

School age children are sometimes placed in residential programs for reasons not primarily related to their educational needs. This may occur, for example, under the auspices of a County Mental Health and Mental Retardation program, Children and Youth agency, Juvenile Probation Offices, or through a local court. To distinguish these placements from those that are made by school districts primarily for educational reasons, we call these placements "non-educational" placements.

Because many of the individuals receiving these non-educational placements are of school age, they also need educational services. Some of the private providers are licensed both as non-education (for example, mental health) providers and as private schools (for example, approved private schools, schools within private residential rehabilitative institutions, and other licensed private schools). This creates the possibility of a single institution providing both the educational and non-educational services a child needs. In some cases, this is desirable.

However, this arrangement will not always be appropriate. When a non-educational placement is made, there should be no assumption by either the referring public agency or the private provider that the child will be included in the private provider's educational program. Rather, the decision regarding the educational portion of the child's day is to be made on an individualized basis, with input from all knowledgeable sources – parents and local public education officials. This type of individualized decision making is consistent with Department policy supporting individualized services for the child through family support, and further enhanced by County Mental Health and Mental Retardation Program services that can assist in supporting a child in a regular school setting.

The policy articulated in this bulletin is the product of a concern of the Pennsylvania Department of Education and the Pennsylvania Department of Public Welfare that the educational portions of agencies' arrangements for these children are often in more restrictive, less integrated settings than is necessary. This policy is also the product of a joint concern that a unilateral inclination to "bundle", or forcibly tie various services together, in some cases delays the onset of services to the child, as arrangements for one type of service are delayed while agencies debate the merits of another part of the bundle. This violates children's rights under education laws.

DISCUSSION:

The procedures that are followed and the systems involved in placements of school age Pennsylvanians are so diverse that we do not attempt in this bulletin to articulate the legal requirements that would apply to each situation. However, a number of state agencies have considered the issue, and our collective policy is clear. That policy, in brief, is that, when a school age child is placed by a public agency in a residential setting for non-educational reasons, the child is to be educated in a regular public school unless there is a legitimate reason making such educational placement unwise for the child or otherwise improper.

This means that, when a "non-educational" placement is made, such placement is presumed to determine where the child lives, and where the child receives non-educational services, but his residential placement is not presumed to determine where the child will be educated. Rather, unless there is a court order that specifically dictates another result, the presumption is that the child will receive his or her education in a regular public school unless appropriate public officials together with parents have made a different determination (consistent with the provisions of the Pennsylvania Department of Education Basic Education Circular (BEC) entitled *Educational Portions of "Non-Educational" Placements*, Attached). In the case of children with a disability, this determination is made through the special education system's individualized education program (IEP) process or a 504/Chapter 15 Service Agreement process. In order to ensure access to appropriate educational services, a residential facility cannot schedule its therapeutic program in a manner that precludes youth's attendance at a regular public school.

There are, of course, legitimate reasons that would overcome the presumption of education in a regular school. Many placements made through the juvenile justice system, for example, require separate schooling for community protection reasons that are an inherent part of a court order. Security and safety of the child are also important parts of some placements made by other systems. This is not to say, however, that all court-ordered or other non-educational placements are incompatible with education in regular school buildings. Therefore, this determination should be made not by presumption, but on an individualized basis. Also, the treatment needs of some children placed by Children and Youth agencies, Juvenile Probation Offices, County Mental Health and Mental Retardation agencies may be incompatible with educating the child at any site other than at the therapeutic treatment site.

Again, such incompatibility with education in a regular school should never be assumed; education in a regular school, with appropriate support services, must be presumed, with the presumption overcome only by the individualized determination of a court, or a public education agency (for example, through the IEP process or 504 Service

Agreement), in consultation with the parents.

A significant element of this policy is that the educational system must be prepared to work with families and County Mental Health and Mental Retardation, Children and Youth agencies, and Juvenile Probation Offices, as well as the private providers in order to arrive promptly at a sound educational decision. The ability of the education system to do this was enhanced in 1993 when legislation known as Act 16 clarified the respective duties of the home school district and the districts in which the private provider is located.

This legislation amended Section 1306 of the Public School Code, and is the subject of BECs (Attached). Conversely, when public non-education agencies are contemplating a placement, they must be prepared to identify and notify the responsible school district before the placement is made, or in the case of an emergency non-education placement, promptly after the placement is made.¹

When school districts and those involved in non-educational placements work together to understand the range of needs of the child without a preconception that all services must be provided by the same provider, an appropriate decision as to services, providers, and sites emerges. The intent is to foster and support this kind of local multi-system decision-making without trying to dictate the result at the state level.

Although the main responsibility for carrying out this policy is with public agencies, there is one important implication for private agencies as well. Private agencies should not insist on "bundling" educational and non-educational services together so as to create a presumption that the provider of therapeutic or residential services will also be the provider of education services. Our policy precludes that. We will avoid the use of private providers that insist on "bundling" educational and non-educational services. The Pennsylvania Department of Education and the Department of Public Welfare will exclude a private provider from the approved provider pool of a specific program, including the Medical Assistance Program, if that private provider has a general policy or practice of insisting that each child placed under that program must also receive services of the private provider that fall outside of the program, unless a court order

¹ As described in these BECs, the statute makes the district in which the residential treatment facility is located responsible for designing and delivering an appropriate education program, unless other arrangements are made. Thus, school districts in which residential facilities are located may be called on to anticipate the arrival of students as mental health and other agencies develop residential plans for children. Districts directly involved in these situations should familiarize themselves with the BECs and, ultimately, the Public School Code as well.

explicitly prescribes how educational services are to be provided. Similarly, the Pennsylvania Department of Education and the Department of Public Welfare will not participate financially in placements that are contrary to this policy. The Department of Public Welfare will implement this policy with regard to its programs the Pennsylvania Department of Education will implement the policy with regards to their programs.

RESPONSIBILITY OF RESIDENTIAL FACILITY

The first step in the process is to ensure that the school district in which a facility is located (known as the “host” school district) knows when a child is admitted to the facility and enrolls the student in the district. The residential facility should do so by sending the attached enrollment form to the host school district as soon as a school-aged child or youth is admitted to the facility. The form will provide school districts with necessary information regarding the placement.

If the child does not already have an IEP or a Chapter 15 Service Agreement, the facility should notify the parent or educational decision-maker of the right to request an evaluation from the host school district. One indication that a child should be evaluated would be that the host or resident school district, a parent or a professional is of the opinion that the child’s educational needs cannot be met in a regular public school setting.

It is also urgently important that, when students are discharged from a residential facility, the transition to the new school setting is smooth and that there is no gap in the child’s education or special education program. Therefore, the residential facility should notify the host and the resident school district at least two (2) weeks prior to the anticipated discharge date for the child. The residential facility also needs to communicate and cooperate on an on-going basis with the host and resident school districts to facilitate the education of the students, the provision of a free appropriate public education for students eligible or thought-to-be eligible under IDEA or 504, and discharge planning. Such cooperation includes providing staff from a host or resident school district or another education entity access to the facility to view the child’s program and to participate in the planning process.

RESPONSIBILITY OF PLACING AGENCIES

Any public agency, such as the County Mental Health and Mental Retardation program, Children and Youth agency, or Juvenile Probation Office, that plays a role in placing a child or adolescent in a residential facility has the responsibility to notify both the resident school district (where the child’s parent/guardian lives) and the host school district (where the facility is located) of the child’s change in placement. This notification should occur before the date of placement if at all possible, but in no event later than

one business day after the child is admitted.

This policy is an important part of our adherence to applicable law and – no less important – to serving children and families effectively in as natural a setting as is consistent with the individual child's needs.

OBSOLETE BULLETIN: Mental Health Bulletin OMH-95-07 issued April 3, 1995; Children, Youth and Families Bulletin 00-95-02 issued January 3, 1995.

Questions specific to this bulletin may be directed to:

Bureau of Children's Behavioral Health Services, Office of Mental Health and Substance Abuse Services, (717) 705-8289; Office of Developmental Programs, (717) 783-5771; Office of Children, Youth and Families, (717) 787-3984.