SCOPE:

County Mental Health/Mental Retardation Administrators
Base Service Units
Community Home Directors
Community Residential Rehabilitation Directors
Children and Adolescent Service System Program Coordinators

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 the child's educational needs. This may occur, for example, under the auspices of a county mental retardation program, mental health program, children and youth agency, 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-educational (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 will be desirable.
However, this will not always be appropriate. When a non-educational placement is made, there should be no assumption on the part of 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, by local public education officials. This type of individualized decision making is consistent with Department policy supporting individualized services for the child, and family support, and further enhanced by County Mental Health/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 normal 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.

POLICY:

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. Under the auspices of the Children's Cabinet created by Governor Casey, however, a number of state agencies have considered the issue, and our collective policy is clear. That policy, in brief, is this:

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 this residential placement is not presumed to determine where the child will be educated. Rather, the presumption is that the child will receive his or her education in a regular public school unless appropriate public officials determine that such an educational placement is unwise for the child or improper. In the case of children with a disability, this determination is made through
the special education system's individualized education program (IEP) process unless a court order explicitly prescribes how educational services are to be provided.

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 security 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 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, mental health, or 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 must be presumed, with the presumption overcome only by the individualized determination of a public education agency for example, through the IEP process, that is equipped (through consultation with all knowledgeable sources) with a knowledge of the various needs of the child.

A significant element of this policy is that the educational system must be prepared to work with county mental health, mental retardation, and children and youth agencies, 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 a Pennsylvania Department of Education Basic Education Circular (BEC) (#19-93) a copy of which is 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. (See Office of Mental Health memorandum dated May 20, 1992, a copy of which attached.)

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1 As described in BEC 19-93, 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 BEC and, ultimately, the statute.
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 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 and the Pennsylvania Department of Education will implement the policy with regards to their programs.

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.

Attachments

TO: Pennsylvania School Administrators

FROM: Joseph F. Bard
Commissioner for Elementary and Secondary Education

In Act 16 of 1993, the General Assembly made amendments to the School Code concerning students from one district who are placed in another district. These amendments supplement the long-standing language of Sections 1306, 1308, 1309, and 2561 of the School Code. Sections 1306-1309 are chiefly relevant when a student is placed for residential purposes by an agency other than an education agency (such as a child welfare agency) outside of the student’s home school district. The School Code refers to these students as “nonresident inmates of children’s institutions.”

In this memorandum, we refer to the district in which the student’s family resides as the home district, and we refer to the district in which the student is placed for residential or other purposes as the host district.

Program and Planning Responsibility (§1306)
Section 1306(a) has for some time required districts to permit certain children whose parents live in other districts to attend host district schools. New provisions in §1306(c)-(e) deal with special education students whose situations may raise questions that were not answered by earlier School Code provisions. Here is the text of the new statutory language:

(c) Except as provided in subsection (d), whenever a student described in this section is a suspected or identified eligible student as defined in 22 Pa. Code Chs. 14 (relating to special education services and programs) and 342 (relating to special education services and programs), the school district in which the institution is located is responsible for:

(1) providing the student with an appropriate program of special education and training consistent with this act and 22 Pa. Code Chs. 14 and 342; and
(2) maintaining contact with the school district of residence of the student for the purpose of keeping the school district of residence informed of its plans for educating the student and seeking the advice of that district with respect to the student.

(d) The student’s school district of residence and the school district in which the institution is located may agree to an arrangement of educational and procedural responsibilities other than as contained in subsection (c), provided that the agreement is in writing and is approved by the Department of Education after notice to and an opportunity to comment by the parents of the student.1

(e) Nothing in this section is intended to supersede section 914.1-A of this act or any other provision of law applicable to a particular type of placement.

We understand this legislation to mean that:

⇒ For special education students who are within the scope of §1306, the home district and the host district can divide up the educational responsibilities and the procedural responsibilities however they agree to do so, provided that the division of responsibilities is approved by the Department after notice to the parents. A written request for approval may be submitted to the PDE Special Education Adviser for Policy. Such a request should include assurance of input by the parents and an outline of how the host and home district propose to handle educational and procedural responsibilities in ways which differ from subsection (c).

⇒ In the absence of a specific agreement, the host district is responsible for fulfilling all of the special education responsibilities under Chapters 14 and 342 (Special Education Regulations and Standards), with respect to that student. The host district is also responsible for keeping in contact with the home district, so that the home district can be an active participant in the planning process.

⇒ For any specific situation that is already addressed elsewhere in the School Code—such as placements in Private Residential Rehabilitative Institutions (PRRIs)—those existing School Code provisions are controlling and are not negated by these new amendments.

1 A written request for approval may be submitted to the PDE Special Education Adviser for Policy. Such a request should include assurance of input by the parents and an outline of how the host and home district propose to handle educational and procedural responsibilities in ways which differ from subsection (c).
Fiscal Responsibility and Computation of Amount
(§§1306 and 1309)

In general, the home district is responsible for reimbursing the host district. The amendment to §1309 states that, where the student is a special education student, the amount to be reimbursed can be up to 150% of the host district's usual tuition rate.

As we understand it, the General Assembly sought to balance two factors: (1) the legitimacy of requiring the home district to pay more than the usual tuition rate in some or all cases when the student is a special education student; and (2) the inappropriateness of allowing the host district to charge any amount it wishes. Once school districts gain experience under the new law, we will be interested in receiving comment on the 150% cap, so that we can pass those comments on to the General Assembly.

Fiscal Processing (§1308)
Amendments to §1308 provide for a direct link between the host district and the home district, consistent with recent practice in the Commonwealth.

Voluntary Interdistrict Placements (§2561)
The "§1306" situations discussed above involve placements made by someone other than the school officials of the home district. In such cases, the tuition amount is set by law, not by the mutual agreement of the home and host districts. A new §2561(7) has been enacted to address a different type of situation—where the home district itself is making a special education placement in a host district that voluntarily agrees to provide all necessary educational services. In such cases, the two districts can agree on a payment amount of their own choice, without regard to any particular formula or rule. This allows districts maximum flexibility when consensually arranging to provide special education.

REFERENCES:

SCHOOL CODE
24 P.S. §§1306, 1308, 1309, 2561

CONTACT:
Pennsylvania Department of Education
Bureau of Special Education
333 Market Street
Harrisburg, PA 17126-0333
717-783-6913

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SUBJECT: Importance of Involving the School District When Residential Treatment is Being Recommended for Children and Adolescents

TO: OMH Area Directors
OMH Children’s Specialists
County MH/MR Administrators
County CASSP Coordinators

FROM: Connie Dellmuth, Director

The purpose of this memorandum is to explain to the mental health system how the education part of residential treatment must be coordinated.

As we are working out the mechanics of adding residential treatment for medical assistance eligible “mental health only” children and adolescents as a Medicaid-reimbursed service, we have learned several important facts about how the education piece must fit. This is particularly true because of Pennsylvania’s recently adopted revised special education regulations and standards.

The programs which now are enrolled in Medicaid as residential treatment providers, or which may become enrolled, fall into several different categories for the purpose of providing an education program. Each of these “categories” require slightly different procedures. However, the bottom line is that in EVERY case of a medical assistance/mental health placement, the school district which is responsible for educating the child (i.e., the district of residence where the child’s legally responsible parent or guardian lives) MUST participate in the decision to place the child for residential treatment AND agree to be responsible for the educational costs. This applies even to children who have been residing in state mental hospitals and are being discharged to a residential treatment program.

If the residential treatment program is an Approved Private School (APS), the responsible school district must agree to request an appropriate day program at the

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APS. The Department of Education will recover some portion of the costs for the APS placement from the school district.

If the residential treatment program is not an APS, there are two options:

1. The child lives in the residential treatment program but is educated in the school district where the residential program is located. In this case, the school district of residence reimburses the receiving school district consistent with the Public School Code.

2. The child lives in and requires an education program from the residential treatment facility. In this case, the responsible school district may contract with the residential treatment facility on an individual basis for students who are exceptional and require special education.

The Department of Education does not have the authority to require a school district to purchase an educational program. However, a district which declines to participate in the educational costs of a residential treatment program may otherwise be faced with the higher costs of an APS residential placement, if no appropriate alternative can be arranged. Thus, school districts have an incentive to cooperate with mental health agencies that are prepared to pay the non-educational costs of placement. School districts are likely to be most open to cooperation if they are approached early. Therefore, it is in our interests, as well as being in the interests of the young people we serve, for us to involve school districts at the earliest possible time when residential treatment is being recommended.

Please make sure that case managers, intensive care managers, and mental health providers understand the importance of working with the appropriate school district at the beginning of developing a treatment plan, so that the education issues are successfully resolved.

cc: Mr. Thompson  
Mr. Breslin  
Mr. Chambers/Mr. Martin  
Dr. Tucker/Mr. Tommasini  
Mr. Champagne/Mr. Helling  
Ms. Leisch  
Control  
CD/gg/CD-003