



# MENTAL HEALTH BULLETIN

COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF PUBLIC WELFARE

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SUBJECT

EDUCATIONAL PORTIONS OF "NON-EDUCATIONAL" RESIDENTIAL PLACEMENTS

BY

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BY

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## 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-educations (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.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

**School Based Mental Health Coordinator-Office of Mental Health**

**(717) 787-2831 OR**

**Office of Mental Retardation - (717)783-5764**

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 his 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 is attached.)<sup>3</sup>

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<sup>3</sup>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 district 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 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