Assisting Students Experiencing Education Instability

24 P.S. § 13-1331.1

Date of Issue: August 1, 2022

Purpose
Act 1 of 2022 (Act 1) promotes timely high school graduation and facilitates equal access to academics and extracurricular activities and the removal of systemic barriers for students who experience education instability as defined by the legislation.

Additionally, Act 1 confers specific duties on all school entities, including school districts, charter schools, regional charter schools, cyber charter schools, intermediate units, and career and technical schools. Act 1 does not in any way alter or undermine the rights of students with disabilities or abridge other state or federal laws that protect eligible students.

Background
Act 1 was signed into law on January 26, 2022, and was amended through Act 55 of 2022 (Act 55). Act 1 became effective beginning with the 2021-2022 school year. School entities are required to fulfill the mandates of Act 1 to ensure that, beginning with the 2021-2022 school year and continuing in all subsequent years, eligible students are able to access a diploma at their current school entity, secure a diploma from their prior school entity, or obtain a Keystone Diploma. Accordingly, school entities must identify students who were eligible in 2021-2022 but did not receive the benefits of Act 1, as well as eligible students in subsequent years, and must fulfill Act 1 obligations.

Identification
School entities must identify eligible students who experience "education instability."
A student experiencing "educational instability" is a student who has one or more changes in school entity enrollment during a single school year as a result of any of the following:

- Homelessness, as defined in the McKinney-Vento Homeless Assistance Act and as determined by the school entity;
- An adjudication of dependency under 23 Pa.C.S. Ch. 63 (relating to child protective services) and 42 Pa.C.S. Ch. 63 (relating to juvenile matters);
- An adjudication of delinquency under 23 Pa.C.S. Ch. 63 and 42 Pa.C.S. Ch. 63 as disclosed at the discretion of the parent or guardian of the student; or
- An adjudication as part of court-ordered services under a voluntary placement or custody agreement.

Eligibility
School entities must provide support for all eligible students. Act 1 applies to students who meet the criteria above, regardless of whether they have returned to their former school, started at a new school, or re-engaged in school after an extended absence.

School entities must be flexible in determining eligibility based on minimal documentation. Shelter providers, outreach workers, case managers, juvenile probation officers, and others may confirm eligibility in a myriad of ways including but not limited to by letter, email, verbal confirmation, or other documentation. Parents/guardians and students maintain the choice regarding what information to share with the school entity. School entities must keep eligibility information confidential, including ensuring that an assigned Point of Contact or other administrative staff does not disclose the basis of a student's eligibility to other school staff without permission from the student, while allowing the student to access all services, supports and protections of the law.

School Entity Responsibilities
Act 1 imposes specific obligations on school entities. It does not abridge or undermine other important education civil rights laws such as Individuals with Disabilities Education Act (IDEA), Americans with Disabilities Act (ADA), McKinney-Vento Homeless Assistance Act or Every Student Succeeds Act (ESSA). School entities must develop clear policies and procedures to ensure equal access to educational activities, extra-curricular activities, and school-sponsored events, even if deadlines have passed and a student arrives mid-year. In addition, school entities must adopt policies regarding credit assessments.

Establish Point of Contact
School entitles must assign a Point of Contact to all eligible students. The Point of Contact has the responsibility to ensure timely completion of all tasks required by Act 1. If a Point of Contact is unfamiliar with a student being served, then they should seek out the knowledge and expertise of school personnel who know the student. The Point of Contact's name and contact information must be added to the student's education record and given to the student's education decision makers.

A Point of Contact must work with school staff to:
- Facilitate a student's expedited consultation with the school counselor or mental health professionals, as appropriate;
- Facilitate the prompt placement of a student in the appropriate courses;
- Connect the student with educational services that meet the student's specific needs;
- Immediately request that the prior school entity, county agency, and the student's educational decision maker provide the student's complete education record, including an IEP or 504 service agreement, if applicable. The prior school entity, if located within this Commonwealth, must provide the requested student records to ensure a smooth transfer of course credits, grades, and IEP, if applicable.
- For students in grades 9-12, develop and execute a graduation plan in collaboration with the student to support the student's on-time graduation. Said graduation plan needs to be included in the student's education records.

Ensure Equal Access
A key purpose of Act 1 is to eliminate barriers to equal participation. If a school entity requirement precludes a student who is otherwise eligible from participating, it must be lifted to allow participation. Students must be allowed to participate in any school-sponsored or extracurricular activities, including but not limited to clubs, athletics, performing arts, class trips, social events, career and technical education, internships, and specialized classes if they meet placement and qualification requirements. School entities must allow students to participate in school events even if students could not meet the registration deadline due to attending a prior school. School entities also cannot penalize a student for delays in obtaining school uniforms.

Eliminate Fees and Fines
Fees can be harmful to students and families and may create barriers to full participation in school. To that end, Act 1 requires that school entities "waive fees that would otherwise be assessed against a student." Some examples of fees to be waived for students experiencing educational instability include, but are not limited to: School ID fees, uniform fees, participation fees for athletics, extra-curricular activities, school-sponsored trips, or clubs, course fees, materials fees, fees assessed for lost or damaged materials, athletic physical exam fees, parking or driving fees, school lunch fees, library fees, locker or padlock rental or replacement fees, summer school and credit recovery fees, technology fees, and graduation regalia fees.

Assess Graduation Progress
Another key purpose of Act 1 is to ensure timely graduation of students who have experienced education instability. Accomplishing this goal requires school entities to adopt policies and practices regarding course credits in addition to developing student-specific graduation plans.

Under Act 1, school entities must ensure that students are awarded full or partial credits for work satisfactorily completed at prior school entities, including those issued from a school associated with a residential placement. School entities must clearly define how full and partial credits will be assessed to remove barriers to graduation caused by education instability. It is particularly important for school entities to define how a school awards partial credits earned in a prior school placement so that these credits "count" towards graduation.

In assessing credits, the receiving school entity's Point of Contact must investigate whether a student has, at a prior school, already completed a course that meets a requirement. It is important to keep in mind that prior schools may use many different names for the same or similar course. For example, a course called Mythology in one school entity could fulfill the credit requirements for English 9 in another school entity.

In addition, under Act 1, a school entity may waive any course needed for graduation if the student has 1) completed similar course work at another school entity or 2) demonstrates competence in the content area. Demonstrating competence in a content area may take different forms such as testing a student by requiring submission of an essay, presentation, or project, or through recognizing that a student has already successfully completed a higher-level course, experiential learning opportunity, or internship that demonstrates the student has competence in the content area. Importantly, if a course cannot be waived, a school entity must provide an

"alternative or modified course" that will assist a student with acquiring the required work or competency requirements by the student's anticipated graduation date.

Graduation Planning
Eligible students in grades 9-12 must be provided with an individualized and student specific Graduation Plan. The Graduation Plan must specify the courses necessary for a student to graduate and transition to postsecondary education or the workforce.

After considering all full and partial credits and whether the school entity has waived required courses or offered alternative or modified courses, a school entity must determine if a student has met graduation requirements. If so, the student will graduate with their peers and must be allowed to participate in the graduation ceremony. It is best practice to have a student graduate with their peers from their current school, if that is the preference of the student. Students relying on Act 1 must be treated in the same manner as other students with regard to graduation and the weight accorded to their diploma.

Alternative Pathways to Graduation
All school entities should work with current students who experience education instability to help facilitate on-time graduation. If a student is unable to graduate from their current school after all credits are verified, all required courses are waived, and all alternative courses have been offered, then the receiving school may solicit a diploma from the student's prior school, if the student meets the graduation requirements of the prior school entity.

If a student is not able to graduate from their current school or a prior school entity, the student's current school entity must facilitate and work with the Department of Education (PDE) to determine whether the student is eligible to receive a Keystone Diploma. A student shall be eligible for a Keystone Diploma if the student meets statewide graduation requirements set forth in section 121 of the School Code, 24 P.S. § 1-121.

Act 55 allows Keystone Diplomas to be retroactively awarded to students who would have been eligible for graduation through this process in the 2021-2022 school year. Keystone Diplomas have the full force of a school district issued diploma and are not considered a diploma of general equivalency. The Keystone Diploma shall be recognized as a valid diploma by institutions of higher education and vocational programs and for purposes of industry certificates. Keystone Diplomas must be placed in students' permanent records and maintained by the last school entity the student attended. Additionally, students who are eligible for the protections of Act 1 must not be penalized if they were unable to take the 2020 Keystone Exams due to COVID-19. Specifically, Section 121.2 of the School Code (added through Act 136 of 2020 and amended through Act 55) applies to students eligible for the protections of Act 1 in the same manner that it applies to all students.

Act 1 and Special Education
If the mandates of Act 1 conflict in any way with the rights a student has under an IEP or 504 Plan, a school entity must implement the requirements specific to the student with a disability under applicable disability laws. Act 1 does not abridge a student's right to special education or the right to graduate either through credit acquisition or through the completion IEP goals.

Importantly, students who have IEPs may still elect to remain in school until age 21, even if Act 1 offers an earlier pathway to graduation. These students also continue to have the right to participate in the graduation ceremony with their peers in the current graduating class, even if they are electing to stay in school until age 21.

References

PDE Dear Colleague Letter
Act 1 of 2022
Act 55 of 2022
22 Pa Code Chapter 14
22 Pa Code Chapter 15
22 Pa Code § 4.24(g)
24 P.S.§ 13-1306
20 U.S.C. §§ 1400 et seq.

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