



**Testimony of Education Law Center  
Public Hearing of State Board of Education On Chapter 11: Immunizations**

**Proposed Revisions to Chapter 11 Pertaining to Section 11.20**

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I am a Senior Attorney at the **Education Law Center (“ELC”)**, a statewide non-profit legal advocacy organization dedicated to ensuring that all of Pennsylvania’s students have access to quality public schools. Every day, ELC advocates on behalf of educationally at-risk children, including children who are poor, children of color, children with disabilities, English Language Learners, students experiencing homeless and children in the child welfare system. Over its almost forty-year history, ELC has been committed to improving educational outcomes for children in foster care and those experiencing homelessness through legislative and policy initiatives at the state and national level and through litigation strategies.<sup>1</sup> Along with the Juvenile Law Center and the ABA Center on Children and the Law, ELC co-founded the *Legal Center for Foster Care and Education*<sup>2</sup> and is a founding member of the *National Working Group on Foster Care and Education*.<sup>3</sup> In addition, ELC has long advocated on behalf of students experiencing homelessness. We have filed several cases to ensure school stability or

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<sup>1</sup> For example, ELC initiated a class action lawsuit that struck down a state statute that had permitted school districts to refuse to educate a non-resident, dependent child living in a foster home. See *Nancy M v. Scanlon*, 666 F.Supp. 723 (E.D. Pa 1987).

<sup>2</sup> See Legal Center for Foster Care and Education website at <http://www.fostercareandeducation.org/>

<sup>3</sup> See National Working Group on Foster Care and Education website at <http://fostercareandeducation.org/OurWork/NationalWorkingGroup.aspx>

immediate enrollment for students experiencing homelessness, including lawsuits that resulted in revised guidance issued by the Pennsylvania Department of Education. ELC has also served on several statewide and national workgroups to improve educational outcomes for students experiencing homelessness, including the Statewide Educational Success and Truancy Prevention Workgroup<sup>4</sup> created by the Pennsylvania State Roundtable of the Office of Children and Families in the Administrative Office of Pennsylvania Courts (AOPC).<sup>5</sup>

We submit this testimony today on behalf of highly mobile and vulnerable students in foster care and those experiencing homelessness in order to ensure their continuing right to immediately enroll in school, even without immunization records and other documentation normally required for enrollment. In order to safeguard these federally protected rights, we recommend that the proposed regulation be amended as follows:

*§ 11.20. Nonimmunized children. (a) A child may not be admitted to or permitted to attend a public, private, nonpublic, special education or vocational school [in a district] unless the immunization, exemption, temporary waiver or provisional admission requirements of the Department of Health, at 28 Pa. Code Chapter 23, Subchapter C (relating to immunization), have been met. However, even in the absence of such documentation, if a child is homeless or in foster care, the child is entitled to enroll immediately in school, with immunization records to be provided following enrollment.*

### **Why Immediate Enrollment Is Important**

There are currently almost than 23,000 children in foster care in Pennsylvania.<sup>6</sup> In addition, the number of school children experiencing homelessness continues to increase each year. Nationally, approximately 1.3 million students enrolled in U.S. public preschools, elementary schools, middle and high schools experienced homelessness during the 2012-13 school year. In Pennsylvania, there has been a 94% increase in the number of homeless students across the Commonwealth since the 2007-2008 school year. While most states saw an 8-10%

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<sup>4</sup> See e.g., 2015 ESTP Statewide Report, available at [http://www.ocfpcourts.us/assets/upload/2015%20Final%20Truancy%20Report\(1\).pdf](http://www.ocfpcourts.us/assets/upload/2015%20Final%20Truancy%20Report(1).pdf).

<sup>5</sup> See ESTP Workgroup website at <http://www.ocfpcourts.us/childrens-roundtable-initiative/state-roundtable-workgroupscommittees/educational-success-and-truancy-prevention>.

<sup>6</sup> See Pennsylvania Partnerships for Children, *2016 State of Child Welfare Report*, available at [http://www.papartnerships.org/reports/2016\\_socw/source\\_files/Pennsylvania%202016%20SOCW.pdf](http://www.papartnerships.org/reports/2016_socw/source_files/Pennsylvania%202016%20SOCW.pdf).

increase in the number of students experiencing homelessness between the 2011-12 school year to 2013-14 school year, Pennsylvania's population increased by 18%. Translated into real numbers, there were 11,756 homeless students identified in Pennsylvania's public schools in 2007-08 which more than doubled, to 24,504, by 2013-14.<sup>7</sup>

Students experiencing homelessness and those in foster care face unique and often overwhelming barriers to school success, including high rates of mobility causing multiple school moves and educational disruptions that undermine learning. For example, almost one-third of children in foster care for 12-23 months experience three or more living placements—often changing schools with each new placement. Many older youth experience five or more placement changes. Similarly, children experiencing homelessness often change shelters or may live with different families “doubled up” on a temporary basis, and repeatedly change locations. Families experiencing homelessness are also often in crisis which results in a loss of home and belongings. Unaccompanied homeless youth living on their own or estranged from their homes are often unable to produce school records. When the transfer of records is delayed, it often results in barriers for these students entering new schools.

It is estimated that students lose between 4-6 months of academic progress with each school move, causing them to fall behind their peers and to be placed in inappropriate classrooms.<sup>8</sup> They also often lose credits and tragically, many give up and drop out. These students often score lower on standardized tests, have higher rates of grade retention and are at greater risk of dropping out of school, reinforcing the cycle of poverty, homelessness and life-long instability. For example, it is well documented that children and youth in foster care and those experiencing homelessness are in educational crisis. Approximately 25 percent of Pennsylvania students identified as experiencing homelessness and enrolled in school were designated as having a disability requiring special education services. Additionally, students

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<sup>7</sup> See Pennsylvania Department of Education's Education of Children & Youth Experiencing Homelessness Report, 2013 at <http://www.education.pa.gov/Documents/K-12/Homeless%20Education/2013-14%20ECYEH%20Counts%20by%20Reporting%20Entity.pdf>

<sup>8</sup> National Working Group on Foster Care and Education Factsheet at p. 4.

experiencing homelessness are more likely to lag behind their peers academically, are less likely to graduate from high school in four years and have a higher risk of repeating a grade.<sup>9</sup>

Students in foster care also experience lower academic achievement, lower standardized test scores, higher rates of grade retention and higher dropout rates than their peers who are not in foster care.<sup>10</sup> Based on a review of studies conducted between 1995 and 2005, one report estimated that about half of foster youth complete high school by age 18 compared to 70% of youth in the general population.<sup>11</sup> Other studies show that 75% of children in foster care are working below grade level, 35% are in special education, and as few as 11% attend college.<sup>12</sup> According to a 2003 study by the Vera Institute of Justice, youth in care are twice as likely to drop out of school as their peers.<sup>13</sup> As dropouts, these youth are far more likely than their peers to be unemployed, live in poverty, receive public assistance and become homeless or incarcerated.<sup>14</sup>

It was in response to such poor educational outcomes that the U.S. Congress adopted federal laws to ensure both school stability – the right of students to remain in their prior or current school -- and immediate enrollment for both at-risk populations.

### **Legal Entitlement to Immediate Enrollment**

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<sup>9</sup> See e.g., Meeting the Educational Needs of Pennsylvania's Homeless Children and Youth Commonwealth of Pennsylvania Task Force on Homeless Children's Education Report to the Governor and General Assembly of Pennsylvania available at <http://www.education.pa.gov/Documents/K-12/Homeless%20Education/Homeless%20Task%20Force%202014%20Report.pdf>

<sup>10</sup> Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care, National Working Group on Foster Care and Education (2014) at p.6. Available at [http://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=1279&Command=Core\\_Download&method=inline&PortalId=0&TabId=124](http://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=1279&Command=Core_Download&method=inline&PortalId=0&TabId=124)

<sup>11</sup> Wolanin, T. R. (2005). *Higher education opportunities for foster youth: A primer for policymakers*. Washington, DC: The Institute for Higher Education Policy.

<sup>12</sup> Only 11% of the youth in foster care in Washington State who were in the high school classes of 2006 and 2007 were enrolled in college during both the first and second year after expected high school graduation. By comparison, 42% of Washington State high school students in the class of 2006 enrolled in college during the first year after they were expected to graduate from high school and 35% were enrolled in college during both the first and second year after graduating from high school (Burley, 2009).

<sup>13</sup> See e.g., [http://www.vera.org/publication\\_pdf/apprchs\\_school\\_safety.pdf](http://www.vera.org/publication_pdf/apprchs_school_safety.pdf).

<sup>14</sup> Harlow, C.W. (2003, January. Revised April 15, 2003). *Education and Correctional Populations*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

### *A. Children Experiencing Homelessness*

In 1987, in response to research indicating that children experiencing homelessness were languishing and failing to attend and succeed in school, Congress enacted the ***McKinney-Vento Homeless Education Assistance Improvements Act*** of 2001, 42 U.S.C. §§ 11431-11435 (amended, 2002) (“McKinney-Vento Act,” or the “Act”). This Act provides a broad range of assistance to homeless individuals and families and specifically provides that children experiencing homelessness are entitled to school stability or immediate enrollment in a new school. The Act states that children and youth who “lack a fixed, regular, and adequate nighttime residence” must be recognized as homeless and are entitled to the Act’s protections. 42 U.S.C. § 11434a(2)(A).<sup>15</sup> Under the Act, Local Education Agencies (“LEAs”) must ensure that these children and youth are immediately enrolled in their selected school. See 42 U.S.C. § 11432(e)(3)(E). Federal guidance clarifies that this means *even* without the required enrollment documents such as proof of residency, immunizations or birth certificates.<sup>16</sup> The recently enacted ***Every Student Succeeds Act*** (“ESSA”) adopted in December 2015 builds on this protection and includes important clarifications which significantly strengthen immediate enrollment protections for children and youth experiencing homelessness. It specifically states that homeless children and youth must be enrolled in school immediately, even if they have missed application or enrollment deadlines during any period of homelessness. See 42 U.S.C. 11432(g)(3)(C)(i)(II).

In order for a State to receive funds under the Act, LEAs must ensure that homeless children and youth are advised of their rights, immediately enrolled in their selected school and promptly receive necessary services. See 42 U.S.C. § 11432(e)(3)(E). Pennsylvania’s State Plan also describes how the Commonwealth ensures that LEAs comply with all requirements set forth in the Act, including ensuring immediate enrollment, promptly resolving enrollment disputes and

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<sup>15</sup> This definition expressly includes children and youth “who are sharing the housing of other persons due to loss of housing, economic hardship or a similar reason.” 42 U.S.C. § 11434a(2)(B)(i) as well as children living in emergency or transitional shelters, motels, hotels, trailer parks, and camping grounds, children abandoned in hospitals, and unaccompanied youth who lack a fixed, permanent home and are not in the physical custody of a parent or guardian.

<sup>16</sup> See EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM, TITLE VII-B OF THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT Non-regulatory Guidance at p. 16, available at <http://www2.ed.gov/programs/homeless/guidance.pdf>

ensuring that a child attends their school of choice until any enrollment dispute is resolved. 42 U.S.C. § 11432(g)(2)(A). In response to these requirements, the Pennsylvania Department of Education (“PDE”) regularly submits a State Plan<sup>17</sup> and has issued guidance to school districts and others regarding the aforementioned requirements of the McKinney-Vento Act in the form of a Basic Education Circular entitled “Education for Homeless Youth” (hereinafter “BEC”). This guidance states in part: “The selected school shall immediately enroll the child or youth in school, even if the child or youth lacks records normally required for enrollment, such as previous academic records, medical records, proof of residency or other documentation.”<sup>18</sup>

### ***B. Children In Foster Care***

Educational achievement is critical to a child’s current well-being and future success. Accordingly, ensuring educational success is an important responsibility for all child welfare agencies. This is not just a theoretical obligation. Titles IV-B and IV-E of the Social Security Act include education as an important “well-being” factor, and all states are evaluated on the extent to which children in care have received appropriate education service during the Child and Family Service Reviews (CFSRs).<sup>19</sup> In 2008, Congress enacted the ***Fostering Connections to Success and Increasing Adoptions Act***,—a major child welfare law -- which, among other objectives, sought to improve educational outcomes and attendance for children in foster care.<sup>20</sup> The Act directs child welfare agencies to collaborate with local education agencies to ensure school stability and immediate enrollment for all children in foster care according to what is in the child’s best interest. The Act expressly provides that Title IV-E maintenance dollars may be used to provide “reasonable travel for the child to remain in the school in which the child is

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<sup>17</sup> See e.g., Pennsylvania’s Education for Children and Youth Experiencing Homelessness Program – State Plan (Amended October, 2013) available at <http://www.education.pa.gov/Documents/K-12/Homeless%20Education/ECYEH%20State%20Plan%202013%20FINAL.pdf>.

<sup>18</sup> BEC at p.5. available at <http://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/US%20Code/Education%20for%20Homeless%20Youth.pdf>.

<sup>19</sup> Child and Family Service Reviews (CFSRs) are conducted by the Children's Bureau of the U.S. Department of Health and Human Services Administration for Children and Families and specifically include whether each State has met the educational needs of children in care as Well-being Outcome No. 2, Item 21. To learn more about CFSRs go to <http://www.acf.hhs.gov/programs/cb/cwmonitoring/index.htm#cfsr>.

<sup>20</sup> Fostering Connections Act, §204 (a)(1)(B); 42 U.S.C. § 675(1)(G)(ii).

enrolled at the time of placement.”<sup>21</sup> If a child changes schools, the Act expressly requires child welfare agencies to collaborate with LEAs to “ensure that the child is enrolled immediately in a new school.”<sup>22</sup>

Building on these requirements in *Fostering Connections*, the newly enacted *ESSA* imposes a reciprocal mandate on state and local education agencies to ensure school stability and immediate enrollment for children in foster care. These provisions specifically require States and LEAs to ensure school stability and immediate enrollment in a new school for students in foster care who change schools while in placement. Specifically, ESSA provides in part that each State plan must describe the steps an SEA will take to ensure the educational stability of children in foster care, including assurances that “when a determination is made that it is not in such child’s best interest to remain in the school of origin, the child is immediately enrolled in a new school, *even if the child is unable to produce records normally required for enrollment.*” See 20 U.S.C. 6311(g)(1)(E)(ii) (emphasis added).

### **Protecting the Right of Students Experiencing Homelessness and Students in Foster Care to Immediate Enrollment**

In order to safeguard these protections and ensure uniform compliance with existing federal laws, we believe that amending the proposed language of Section 11.20 of the regulations is critical. In the absence of such an amendment, many LEAs and school staff will assume that the general provision applies to all students, thereby denying highly mobile students in foster care and those experiencing homelessness effective and paramount protections. Accordingly, we recommend the following revised language:

*§ 11.20. Nonimmunized children. (a) A child may not be admitted to or permitted to attend a public, private, nonpublic, special education or vocational school [in a district] unless the immunization, exemption, temporary waiver or provisional admission requirements of the Department of Health, at 28 Pa. Code Chapter 23, Subchapter C (relating to immunization), have been met. However, even in the absence of such documentation, if a child is homeless or in foster care, the child is entitled to enroll immediately in school, with immunization records to be provided following enrollment.*

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<sup>21</sup> Fostering Connections Act, 42 U.S.C. § 675(4)(A).

<sup>22</sup> Fostering Connections Act, 42 U.S.C. § 675(1)(G)(ii).

We greatly appreciate this opportunity to comment on the Board's proposed amendments to Section 11.20 of the Public School Code regulations. We believe that the proposed revision is essential to ensuring that the rights of students in foster care and those experiencing homelessness are safeguarded. We would welcome the opportunity to work with the Board and to discuss how other amendments to Chapter 11 of the regulations may be revised to effectuate this important goal.

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