



# FACT SHEET

## EDUCATIONAL RIGHTS OF STUDENTS IN THE JUVENILE JUSTICE SYSTEM

August 2023

Children involved in the juvenile justice system (“justice-involved students”) have the right to a free public education, like all other public school students. These rights are not lost because of system involvement, and additional legal protections are in place to ensure access to a quality public education.

Justice-involved students need strong advocates because they are among the most educationally underserved of all student populations. They are more likely to change schools, be placed in inappropriate classes, and fail to receive the special education and remedial services they need.<sup>1</sup> Youth in the juvenile justice system are more likely to have unmet special education needs and a history of truancy.<sup>2</sup> As a result of multiple school changes and placement in on-grounds schools, students who are justice-involved often fall through the cracks. They are more likely to earn credits that won’t transfer back to their community schools or even count toward graduation. As a result, these students experience higher dropout rates than their peers.<sup>3</sup> This fact sheet highlights important protections and addresses ways to support students to be successful.

### **DOES RACE PLAY A ROLE IN REFERRALS AND PLACEMENT INTO THE JUVENILE JUSTICE SYSTEM?**

Yes. Due to individual and systemic racism, youth of color are disproportionately placed in the juvenile justice system and under more restrictive conditions. As the bipartisan Pennsylvania Juvenile Justice Task Force concluded, “Serious racial disparities pervade Pennsylvania’s juvenile justice system.”<sup>4</sup> While Black non-Hispanic youth make up 14% of the statewide youth population, they represent 38% of written allegations referred to the system and are far more likely than their white peers to be removed from home, held in detention, and prosecuted in adult court. Black youth represent 62% of youth held in detention prior to adjudication, 47% of youth sent to residential placement, 62% of youth charged as adults directly filed in adult court, and 55% of youth charged in adult court at the discretion of a juvenile court judge.<sup>5</sup>

In response to these findings, the bipartisan Pennsylvania Juvenile Justice Task Force recommended in its 2021 report and recommendations that “racial impact analyses” be conducted before enacting any new legislation or policies and that the commonwealth appoint a “race equity task force” to research disparities and identify solutions. This practice comports with the federal Juvenile Justice and Delinquency Prevention Act (JJDP), which requires states to identify and establish a plan to address racial and ethnic disparities in their justice system.<sup>6</sup>

## RIGHT TO SCHOOL STABILITY FOR CHILDREN IN THE JUSTICE SYSTEM

Juvenile Court Rule 148 requires judges to address school stability and access to public schools for all children and youth who are removed from home. This rule emphasizes that a student should attend the local public school while in residential placement, unless certain exceptions apply.<sup>7</sup> As a result, courts may issue orders directing county children and youth agencies to collaborate with schools to ensure school stability and immediate enrollment for youth in the juvenile justice system. Rule 148 applies whenever a child or youth is removed from their home and at any point in a delinquency proceeding, including pre-dispositional detention placement, post-dispositional modification, and all stages in between.<sup>8</sup>

## SCHOOL STABILITY DECISION-MAKING PROCESS

The decision concerning whether a child will stay in the same school may be made through a collaborative “best interest determination” or “BID” conference, which should include representatives from the child’s prior school and/or district, representatives from the new or transfer school district, agencies that interact with the youth, the biological parent, foster parent if applicable, and others who know the child. The decision should be based on all factors relating to the child’s best interest, including consideration of the appropriateness of the current educational setting and the needs of the youth. Transportation to support school stability may be determined by agreement between the local education agency and the child welfare agency. The rules further specify that the costs of transportation are not factors to consider when making a best interest determination. The best interest determination form may be [accessed here](#).

## POINTS OF CONTACT FOR STUDENTS IN THE JUSTICE SYSTEM ARE REQUIRED UNDER ACT 1

In January 2022, the first bill signed into law was SB 324, now known as Act 1 (24 P.S. 13-1331.1). For students in the justice system, Act 1 ensures that they can continue to make progress by taking proactive measures against educational disruptions. For example, for young people who experienced “education instability” due to homelessness, foster care, involvement in the juvenile justice system, or court-ordered placements, Act 1 works to remove otherwise existing educational and graduation-related barriers. All students who fall under Act 1 eligibility must have a point of contact designated by their school district. Points of contact are responsible for facilitating smooth transitions between schools and timely graduation by ensuring the student’s records are transferred and credits are successfully applied. They also help to connect the student to appropriate education services.

You can learn more about Act 1 in ELC’s fact sheet [here](#).

## HOW COURTS CAN SUPPORT STUDENTS IN THE JUVENILE JUSTICE SYSTEM

As discussed above, the Pennsylvania Rules of Juvenile Court Procedure **require** judges to ask about a youth’s education status, school placement, and appropriateness of the child’s education – including school stability and access to special education and remedial education services – at all stages of the juvenile adjudicatory process.<sup>9</sup>

Courts are also required to ensure that every youth in the juvenile justice system has an active, involved Educational Decision Maker (EDM). This means a juvenile court judge is authorized to appoint an EDM for a student who is system-involved and lacks a parent, guardian, or other person to serve in this role.<sup>10</sup> This order appointing an EDM holds up against all others and remains in place until someone else is appointed or an EDM is no longer needed. See our [EDM fact sheet](#).

## RIGHT TO A SURROGATE PARENT FOR STUDENTS WITH DISABILITIES

School districts are also required to appoint surrogate parents for all students with disabilities who do not have either a birth parent, adoptive parent, or other individual authorized by the IDEA to act on a child's behalf in special education or early intervention matters. The IDEA requires school districts to ensure that children who have been identified as needing special education or early intervention services, or who should be evaluated to determine eligibility, have an active, engaged parent or other authorized adult to participate in the special education proceedings and to make special education decisions.<sup>11</sup>

## RIGHT OF STUDENTS IN RESIDENTIAL PLACEMENTS TO ATTEND THE LOCAL PUBLIC SCHOOL

Unless a court order states otherwise, students in the juvenile justice system have a legal right to attend the local public school where their residential placement is located.<sup>12</sup> This important right is often overlooked, and too often, children and youth in residential settings are directed to attend on-grounds schools by default. While their peers attend public schools that must meet specific state standards, children attending separate on-grounds schools typically receive a subpar education, which undermines their ability to graduate from high school.<sup>13</sup> Placing students with a history of truancy in such settings often increases their risk of dropping out of school because residential placements with on-grounds schools generally provide only limited curricula and fewer hours of instruction — causing students to fall further behind in their coursework.<sup>14</sup> Accordingly, the Pennsylvania Delinquency Benchbook instructs judges that a youth in congregate care should attend a public school unless the court finds a public school not to be in the youth's best interest.<sup>15</sup>

## YOUNG PEOPLE IN ADULT FACILITIES MAINTAIN THEIR EDUCATIONAL RIGHTS

The law is clear: Even if a young person becomes incarcerated or is charged as an adult — the right to an education is never lost. Youth continue to be eligible to receive an education, and students in adult facilities retain most but not all rights under federal education laws.

For example, youth in adult prisons who are disabled and identified as in need of special education or related services **must** receive such services, including when placed in a restricted housing unit. However, an IEP may be modified in accordance with federal and state disability laws if consistent with legitimate penal objectives. Such modifications should be the least restrictive necessary to accommodate the security needs of the jail.<sup>16</sup> Importantly, incarcerated youth with disabilities generally have a right to a “free appropriate public education.” However, there are certain limited exceptions.<sup>17</sup> If you are aware of a juvenile or adult facility that is systematically denying youth

with disabilities access to an appropriate education, you should alert ELC and the local education agency where the facility is located.

## STUDENTS IN THE JUVENILE JUSTICE SYSTEM CAN RECEIVE EXPEDITED EVALUATIONS OR REEVALUATIONS TO DETERMINE THEIR ELIGIBILITY FOR SPECIAL EDUCATION SERVICES

Under the Individuals with Disabilities Education Act (IDEA), a key special education law, all students who are suspected of having disabilities that would make them eligible for special education must be evaluated or reevaluated within 60 days after receiving a signed Permission to Evaluate (PTE) or Permission to Reevaluate (PTRE). Students who are considered to be “highly mobile,” which includes students involved in the juvenile justice systems or child welfare systems, as well as students experiencing homelessness, can receive expedited evaluations and reevaluations. These assessments are to be completed within **30 days rather than within 60 days**, in accordance with [guidance](#) from the U.S. Department of Education’s Office of Special Education and Rehabilitative Services.<sup>18</sup> It is best practice to evaluate all “highly mobile” students on an expedited basis to ensure they can receive needed evaluations and appropriate services, which are often disrupted due to frequent moves.<sup>19</sup> To learn more about students’ rights to timely evaluations, see ELC’s fact sheet on [Special Education Evaluations](#), and to learn more about students’ rights in the special education context, see ELC’s guide for parents and advocates, [The Right to Special Education in Pennsylvania](#).

## HOW SCHOOLS CAN SUPPORT STUDENTS RETURNING FROM PLACEMENT

Many children in the juvenile justice system have been in several different schools and may have attended an on-grounds school while they were in a residential placement. These students often struggle when transitioning back to a neighborhood school due to difficulties locating prior records, confusion about how many credits they earned towards graduation, and what courses they need to graduate. Schools can support returning students to be successful by promptly receiving records and talking to the prior school placement, carefully reviewing and revising a student’s IEP if applicable, developing a graduation plan, and assisting youth with transition planning.

In addition, school districts must ensure that students returning from juvenile justice placements and/or students who have been adjudicated delinquent are not automatically restricted from returning to the regular classroom environment, such as being required to participate virtually or forced into alternative schools.<sup>20</sup> A student who is returning from placement and referred to an alternative school setting has the right to request a meeting or hearing to challenge the proposed placement. Students with disabilities returning from placement have additional rights and protections, including the right to receive special education services quickly after reenrollment.<sup>21</sup> No student can be placed in an alternative education program due to truancy/attendance issues. Multilingual learners – also referred to as English learners – have special protections as well. See our fact sheets regarding [alternative education placements of students with disabilities](#) and [multilingual learners](#).

## SPECIAL CONSIDERATIONS FOR YOUTH CONVICTED OF SEXUAL ASSAULT

If a youth has been convicted or adjudicated delinquent of sexual assault, the school may opt to place the student in an AEDY program. See our [fact sheet](#) concerning this law enacted in 2020 that restricts the school placement of students who have been convicted or adjudicated delinquent of sexual assault of another student in the same school.<sup>22</sup>

## FEDERAL LAW PROVIDES ADDITIONAL SUPPORT FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM

The federal Every Student Succeeds Act (ESSA) helps ensure and advance the educational rights of youth in the juvenile justice system. ESSA provides in part that federal funds may be allocated to state educational agencies to establish or improve educational programs for youth in both juvenile and adult correctional institutions.<sup>23</sup> To receive this funding, state agencies must develop a specific plan for serving this population, with priority given to youth who are likely to be released from incarceration within two years.<sup>24</sup>

Known as Title I, Part D of ESSA, the “Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk” was most recently amended in 2016 with the goal of enabling recipients of funding to support youth to meet the same student performance standards that all children in the state are expected to meet.<sup>25</sup>

One way this is achieved is by requiring increased coordination between facilities and home school districts to ensure smooth transitions both when youth exit juvenile justice facilities **and** when they enter facilities. The specific protections include:

- **Educational assessment:** State agencies **must** establish procedures for youth to be assessed to identify educational needs when they enter a juvenile justice facility, when practicable.
- **Records transfer:** Correctional facilities **must** work with the youth’s family and the local educational agency to make sure relevant academic records transfer with the youth to the facility.
- **Credit transfer:** State and local agencies **must** ensure credits earned in juvenile justice placements are recognized and transferred to the school in the community.
- **Reentry planning:** Correctional facilities **must** work with local education agencies so the youth’s education is not interrupted when they exit the facility.
- **Timely and appropriate reenrollment:** State educational agencies **must** establish procedures to ensure students leaving juvenile justice facilities are timely reenrolled in a program that best meets their needs, and local educational agencies **must** offer programs to facilitate the transition of reentering youth.
- **Education opportunities upon reentry:** Local agencies seeking funding **must** partner with higher education institutions or local businesses to promote postsecondary and workforce

success for reentering students. This may include opportunities for youth exiting facilities to enroll in secondary coursework eligible for academic credits, postsecondary education, and career/technical training in the community.

- **High school diplomas:** State and local agencies, as well as correctional facilities, **must** assist youth in the juvenile justice system in attaining traditional high school diplomas. Moreover, one accountability standard for local education agencies is devoted to increasing the number of youth attaining high school diplomas, and states and local jurisdictions must collect program evaluation data on the number of youth served who graduate on time.

Many of these ESSA provisions are echoed by Act 1, the Pennsylvania-specific state law that also protects justice-involved students from the barriers associated with educational disruptions.

### ACT 1 PROVIDES SUPPORT TO JUSTICE-INVOLVED YOUTH TO ENSURE TIMELY GRADUATION

In January 2022, Pennsylvania adopted Act 1, which seeks to remove educational and graduation barriers for students who experience education instability (school disruptions) due to homelessness, foster care, involvement in the juvenile justice system, or court-ordered placements. Act 1 addresses barriers to school participation and timely graduation by ensuring that each eligible student has a school-assigned point of contact, that records transfer in a timely manner, and that students are able to participate in extracurricular activities. For youth in high school, full and partial credits earned must be recognized, and each student must have a graduation plan that considers different methods of earning missing credits and alternative pathways to graduation. Act 1 became effective and applied to students who attended school during the 2021-2022 school year, or thereafter, as well as those returning to a formerly attended school, starting at a new school, or reengaging in school after an extended absence.

You can learn more about Act 1 in ELC's fact sheet [here](#).

For more information on what schools can do to support students who are system-involved, see the attached [Model School Policies and Practices to Support Students in Foster Care and in the Juvenile Justice System](#).

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The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice — visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) — or contact another attorney of your choice.



<sup>1</sup> See Peter Leone and Lois Weinberg, “Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems” (Washington, DC: The Center for Juvenile Justice Reform, May 2010), 10-11; Research studies collected by Legal Center for Youth Justice and Education (2017) available at [https://jjeducationblueprint.org/sites/default/files/YouthJusticeBlueprintGoals\\_6-27-17.pdf](https://jjeducationblueprint.org/sites/default/files/YouthJusticeBlueprintGoals_6-27-17.pdf); Sophia Hwang, Heather Griffis, Lihai Song, David Rubin, *Supporting the Needs of Students Involved with the Child Welfare and Juvenile Justice System in the School District of Philadelphia*, The Children’s Hospital of Philadelphia PolicyLab 9-19 (2014), available at [https://policylab.chop.edu/sites/default/files/pdf/publications/PolicyLab\\_Report\\_Supporting\\_Students\\_Involved\\_with\\_Child\\_Welfare\\_June\\_2014.pdf](https://policylab.chop.edu/sites/default/files/pdf/publications/PolicyLab_Report_Supporting_Students_Involved_with_Child_Welfare_June_2014.pdf) (Philadelphia youth with a history of child welfare or juvenile justice involvement score substantially lower on standardized tests, have lower promotion rates, higher rates of absenteeism and special education eligibility and accumulate fewer credits compared to their peers).

<sup>2</sup> SOUTHERN EDUCATION FOUNDATION, JUST LEARNING: THE IMPERATIVE TO TRANSFORM JUVENILE JUSTICE SYSTEMS INTO EFFECTIVE EDUCATIONAL SYSTEMS—A STUDY OF JUVENILE JUSTICE SCHOOLS IN THE SOUTH AND THE NATION 14 (2014), available at <https://southerneducation.org/wp-content/uploads/documents/just-learning-final.pdf> (two-thirds of juveniles entering state institutions were below grade level in math and reading and 44% entering local juvenile justice facilities were below grade level in math and reading); Peter E. Leone, Sheri M. Meisel and Will Drakeford, *Special Education Programs for Youth with Disabilities in Juvenile Corrections*, 53 JOURNAL OF CORRECTIONAL EDUCATION 46-50 (June 2002), available at <https://www.jstor.org/stable/41971066> ([special education] services were available only after litigation and protracted struggle between advocates for youth and agency operating the correctional institution.)

<sup>3</sup> Ruth Curran Neild and Robert Balfanz, UNFULFILLED PROMISE: THE DIMENSIONS AND CHARACTERISTICS OF PHILADELPHIA’S DROPOUT CRISIS, 2005-2005 5 (2006), available at <https://files.eric.ed.gov/fulltext/ED538341.pdf> (noting that in Philadelphia during the period under study, “fully 90% of the students who had a juvenile justice placement during their high school years ultimately dropped out”); Robert Balfanz et al., *High-Poverty Secondary Schools and the Juvenile Justice System: How Neither Helps the Other and How That Could Change*. NEW DIRECTIONS FOR YOUTH DEVELOPMENT, Fall 2003, at 71-89, available at <https://onlinelibrary.wiley.com/toc/15375781/2003/2003/99>.

<sup>4</sup> Report and Recommendations of the Pennsylvania Juvenile Justice Task Force, PA General Assembly, (June 2021) at p. 26, [https://www.senatorbaker.com/wp-content/uploads/sites/28/2021/06/PA-Juvenile-Justice-Task-Force-Report-and-Recommendations\\_FINAL.pdf](https://www.senatorbaker.com/wp-content/uploads/sites/28/2021/06/PA-Juvenile-Justice-Task-Force-Report-and-Recommendations_FINAL.pdf).

<sup>5</sup> Id.

<sup>6</sup> Id. at p. 43.

<sup>7</sup> PA R.J.C.P. 148

<sup>8</sup> PA R.J.C.P. 148 (see comment).

<sup>9</sup> See, e.g., PA R.J.C.P. 1242(e)(5) (requiring court to make findings and issue orders addressing educational needs of child at shelter care hearing).

<sup>10</sup> PA R.J.C.P. 147.

<sup>11</sup> See 20 U.S.C. §1415.

<sup>12</sup> See 24 Pa. STAT. ANN. § 13-1306(a) (“The board of school directors of any school district in which there is located any orphan asylum, home for the friendless, children’s home, or other institution for the care or training of orphans or other children, shall permit any children who are inmates of such homes, but not legal residents in such district, to attend the public schools in said district....”).

<sup>13</sup> EDUCATIONAL SUCCESS AND TRUANCY PREVENTION WORKGROUP, 2013 REPORT TO THE PENNSYLVANIA STATE ROUNDTABLE 6 (2013) (noting that 54.8% of Pennsylvania counties “sometimes” or “rarely” receive full credit for work done in on-site schools and stay on track to graduate); CHILDREN’S RIGHTS, INC. & EDUCATION LAW CENTER, UNSAFE AND UNEDUCATED: INDIFFERENCE TO DANGERS IN PENNSYLVANIA CHILD WELFARE FACILITIES 9 (2018), available at [https://www.elc-pa.org/wp-content/uploads/2018/12/2018\\_Pennsylvania-Residential-Facilities\\_Childrens-Rights\\_Education-Law-Center.pdf](https://www.elc-pa.org/wp-content/uploads/2018/12/2018_Pennsylvania-Residential-Facilities_Childrens-Rights_Education-Law-Center.pdf).

<sup>14</sup> See, e.g., EDUCATIONAL SUCCESS AND TRUANCY PREVENTION WORKGROUP, *supra* note 9, at 5-6 (reporting that only 2.4% of respondents indicated that children attending on-grounds schools “always” received educational services and opportunities equal to that provided in the local public schools).

<sup>15</sup> OFFICE OF CHILDREN AND FAMILIES IN THE COURTS ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS, PENNSYLVANIA DEPENDENCY BENCHBOOK § 20.7.1 (2019), available at <http://ocfcpacourts.us/wp-content/uploads/2020/05/2019-Pennsylvania-Dependency-Benchbook-3rd-Edition-Interactive-002427.pdf> (“These reasons should be placed on the record. If public school is not in the youth’s best interest and will attend an on-grounds school, will the youth receive academic credits that transfer to the youth’s home school upon discharge, and will the youth be able to advance to the next grade level? Will the youth’s instruction come from teachers or a computer?”); *id.* at § 13.6.13 (“If attending a residential facility’s on-grounds school, the court should ascertain whether the credits a child earns at a residential placement are transferable toward graduation at a public school.”); see also PA R.J.C.P. 1148(C).

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<sup>16</sup> 34 C.F.R. § 300.324.

<sup>17</sup> See, e.g., 20 U.S.C. § 1412(a)(1)(B)(i) (2004) (allowing states to limit the provision of special education if it would be inconsistent with state law or practice); 20 U.S.C. § 1412(a)(1)(B)(ii) (exempting adult correctional facilities from the child find obligation in limited circumstances); 20 U.S.C. § 1414(d)(7)(B) (2012) (allowing modifications of an incarcerated individual's IEP in certain circumstances); 20 U.S.C. § 1416(h) (limiting the withholding power of the Secretary of Education in the context of adult penal institutions).

<sup>18</sup> Letter from Office of Special Education and Rehabilitative Services to State Director of Special Education (Nov. 10, 2022), <https://sites.ed.gov/idea/files/Letter-to-State-Directors-of-Special-Education-on-Ensuring-a-High-Quality-Education-for-Highly-Mobile-Children-11-10-2022.pdf>.

<sup>19</sup> Id.

<sup>20</sup> *In D.C. v. Sch. Dist. Of Philadelphia* 879 A.2d 408 (2005), the Commonwealth Court held that students in the School District of Philadelphia were entitled to a due process hearing on the ground that a “the inflexible prohibition against a return to the regular classroom for students adjudicated delinquent or convicted of specified underlying offenses represents an unconstitutional irrebuttable presumption and violates procedural due process.”

<sup>21</sup> See, e.g., *M.D. v. Colonial School District*, E.D.Pa.2021, 2021 WL 1924083 (finding school district's obligation to provide an individualized education program (IEP) to a student previously enrolled in the district was triggered immediately when parents re-enrolled student.)

<sup>22</sup> 24 PA. STAT. ANN. § 13-1318.1.

<sup>23</sup> 20 U.S.C. § 6431.

<sup>24</sup> 20 U.S.C. § 6434(c)(2).

<sup>25</sup> See 20 U.S.C. 6421(a)(1).