UNSAFE AND UNEDUCATED:
INDIFFERENCE TO DANGERS IN PENNSYLVANIA’S RESIDENTIAL CHILD WELFARE FACILITIES

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Children in Residential Facilities in Pennsylvania are in Danger

Child A\(^1\) was placed at a residential facility in eastern Pennsylvania where she thought, at the very least, she would be safe. Instead, Child A was subjected to sexual abuse in her own bedroom by her roommate and another child on two separate occasions. Child A was threatened with bodily harm if she didn’t comply. One of the children urinated in Child A’s mouth and Child A was penetrated at least twice. Following these terrible incidents of sexual assault, Child A, along with six other residents of the facility, was allowed to physically assault the two perpetrating children in the same shared bedroom. Although a staff member at the facility was aware that the assault on the perpetrating children was going to occur, he did nothing to stop it, and instead told the children “you know what needs to be done...you know what needs to happen.”\(^2\)

While Pennsylvania is a county-based system, the Pennsylvania Department of Human Services (“PA-DHS”) has the ultimate responsibility for the health, safety, and well-being of children in its custody. However, due to its deficient oversight of residential facilities, children are harmed in the very facilities meant to protect them and help them heal from the trauma they have experienced. There is very little in life that is scarier for a child than when a state removes her from her family and the only home, school, and community that she has ever known, and places her in a foster home or residential facility with strangers. When this happens, it is the responsibility of the state to ensure that these placements are safe, loving, and caring places. However, in Pennsylvania, frequently these children are placed in facilities that are more dangerous than the homes that they were removed from and forced to attend residential “on-grounds” schools (schools physically located at or nearby residential facilities) which fail to provide any sort of meaningful education due in large measure to lack of oversight by the Pennsylvania Department of Education (“PDE”).

Following the death of a child at a residential facility in Philadelphia County in 2016, we conducted a large-scale analysis of PA-DHS’s licensing inspections and violation reports of residential facilities overseen by Pennsylvania’s Office of Children, Youth and Families (“OCYF”). The review revealed that dangers within Pennsylvania’s residential facilities run far deeper than a single, tragic incident. Additionally, during this review, we analyzed the educational experiences of children placed in these residential facilities. In this paper, we summarize our findings and make recommendations to improve the oversight of Pennsylvania’s residential facilities and to ensure that children placed there receive a quality education.

This report is divided into two parts. Part A focuses on the dangers that occur at these facilities when PA-DHS fails to provide meaningful oversight. This section provides an overview of the current residential facility landscape in Pennsylvania and PA-DHS’s oversight structure for these facilities. It details the methodology that the reviewers used to analyze the oversight mechanisms for a sample of residential facilities in Pennsylvania and focuses on the dangers that children encounter in these facilities due to a dearth of oversight. Part A also provides recommendations to improve the oversight structure in Pennsylvania and better ensure children’s safety at these residential facilities. Part B provides background on child residents’ educational rights, details the inferior education that children at these residential facilities receive, especially those children with disabilities, and the devastating consequences. Most importantly, this section offers recommendations to ensure that child residents at these facilities receive the quality education to which they are legally entitled.
A. Dangerous Residential Facilities in Pennsylvania

I. Introduction

In October 2016, three staff members fatally restrained David Hess, a 17-year-old child, over an allegation involving an iPod at the Wordsworth Academy in Philadelphia, a residential facility that houses children in foster care. One adult held David by his legs while the other violently punched him in the ribs. Other children in the facility could hear David desperately yelling “get off me, I can’t breathe.” David died later that night from injuries sustained during the restraint. This tragedy was not a stand-alone incident. The Philadelphia Inquirer detailed a history of violations and abuses at Wordsworth Academy, going back ten years. “Police were summoned to Wordsworth more than 800 times in the past 10 years” and an investigation by staff writers “revealed at least 49 sex crimes had been reported at Wordsworth in the last decade, including a dozen rapes and 23 accounts of sexual abuse.” PA-DHS was aware that Wordsworth Academy was not a safe place for the state’s most vulnerable children, and yet, PA-DHS continued to allow child welfare placements at this facility.

Children who enter foster care are typically suffering from multiple forms of trauma: first, trauma from whatever maltreatment the child experienced that precipitated his entry into foster care and second, the trauma from being removed from his family and entering foster care thus losing connections to his family, friends, school, and community. In order to ensure that children are physically and emotionally safe in their new environment, caregivers must be trained in how the child’s past experiences affect the child’s current behavior and how to use that understanding to engage with the child appropriately.

Instead of applying this critical trauma-informed approach, many facilities in Pennsylvania, like Wordsworth Academy, allow undertrained staff to employ violence to control children’s behavior. For example, at Kidspace’s King House a staff member entered a child’s bedroom, pushed the child against the wall, and choked the child. At a Woods Services facility, a staff member punched a child in the stomach and chest during a manual restraint.

In 2017, there were 25,381 children
in foster care in Pennsylvania. More than 3,700 of these children lived in one of the approximately 541 residential facilities run by 138 legal entities. These residential facilities can range in size from four-bed group homes to over 170-bed institutions and can take the form of cottages, dorms, floors of buildings, or large scale institutional settings. Many of these facilities house both children who were placed in the facilities through the child welfare system and children who were placed through the juvenile justice system.

Pennsylvania places a higher percentage of its teens and young adults in facilities than the rest of the country: 47% of Pennsylvania’s children in foster care placed in 144 facilities and placed in a facility compared to 34% nationwide. Disproportionately, children placed in residential settings are children of color: although 44.7% of children in foster care in Pennsylvania are African American, 50.5% of children placed in residential settings are African American. Lesbian, gay, bisexual, transgender, queer (“LGBTQ”) and gender expansive youth are similarly over-represented, according to national data and surveys. For example, studies have estimated that although LGBTQ youth make up only five to seven percent of the general youth population, they make up roughly 25% of the child welfare population. Another study found that 25.7% of LGBTQ youth lived in a group home, compared with only 10.1% of non-LGBTQ youth. Although some children in foster care are placed at residential facilities because they have specific needs that cannot be met through community-based services, one national study found that 41% of children placed in these facilities had no documented clinical or behavioral need that might warrant such a placement. Even when children have clinical or behavioral health needs, many of these children are placed in residential facilities not because they require such restrictive placements, but rather because there are not enough family-based placements and services in their home communities. This is also common for LGBTQ youth who often find themselves confined to residential facilities due to a dearth of accepting family-based homes for them. Similarly, children in foster care are rarely placed in these settings in order to meet their individualized special education needs.

Instead, education is an afterthought. Children are routinely deprived of their legal entitlement to attend the local public school where the facility is located and instead the vast majority of children are educated at on-grounds schools where their educational needs are often ignored. Although this report does not focus on the physical conditions at these facilities, facilities such as Wordsworth were described as having unsafe and unsanitary conditions. At Wordsworth, the heating and air conditioning often did not work, bathrooms had standing water, hallway lights were broken, electrical wires were exposed, and walls were filled with holes. These types of conditions are not unique to Wordsworth. Child residents at Catholic Social Services lived in facilities with clogged urinals; walls with holes and chipped/chipping dry-wall; shower stalls and ceilings with missing tiles; and bedframes with no mattresses, sheets, or pillows. Similarly, child residents at Glen Mills lived in facilities that had stained and ripped carpets, cracked and stained ceiling tiles, and torn mattresses.

PA-DHS has the ultimate responsibility for ensuring the safety and well-being of the children entrusted to the state’s custody. When facilities that house children in foster care inflict additional trauma and violence on the children they are supposed to care for, PA-DHS has an obligation to correct the misconduct. Although PA-DHS documents some violations of its regulations, such as staff maltreatment of child residents, it fails to ensure that the facilities appropriately address the incidents of violence and maltreatment. PA-DHS fails to properly approve and oversee plans of correction and fails to penalize facilities that do not adequately address violations. Consequently, PA-DHS allows the facilities to endanger Pennsylvania’s most vulnerable children over and over again. Similarly, lack of oversight by PDE of residential on-grounds schools violates their rights to an education and endangers their futures.
II. Background on the Oversight Structure: Pennsylvania Child Welfare System’s Licensing and Oversight of Residential Facilities

Although Pennsylvania counties administer their own child welfare systems, PA-DHS retains oversight responsibility. PA-DHS is responsible for ensuring the health, safety, and well-being of children in foster care; establishing and enforcing policies and regulations that support the achievement of child welfare goals; licensure of public and private child welfare agencies and facilities; and the investigation of complaints received regarding these facilities. PA-DHS uses licensing as the mechanism to supervise residential facilities and enforce safety standards.24

Professional standards and Pennsylvania state law require PA-DHS to license, oversee, and ensure compliance with certain minimum standards for children’s health, safety, and well-being. Each residential facility must be inspected at least once a year;25 and if the facility is in compliance with applicable statutes and regulations, it receives a certificate of compliance.26 According to Pennsylvania regulations, the following practices are prohibited under any circumstances: corporal punishment;27 verbal abuse, threatening, or harassment;28 other impingements on the basic rights of children to fairness, dignity, and respect;29 and using restrictive procedures such as chemical, mechanical, or manual restraints, in a punitive or otherwise inappropriate manner, for the convenience of staff, or as a replacement for active treatment.30

According to state law, noncompliance with licensing requirements, mistreatment or abuse of clients, and failure to submit or comply with an acceptable plan of correction may result in the denial or revocation of a certificate of compliance.31 PA-DHS licensing staff “can demand improvements, impose fines, and shut facilities down when violations of the standards occur.”32 Any violations discovered during inspections are summarized in a violation report that PA-DHS publishes on its organizational website.33 When conditions or maltreatment at a facility are “likely to constitute an immediate and serious danger to the life or health of” children at the facility, then PA-DHS must take immediate action to remove the children and place them in a safe environment.34

It is common for PA-DHS licensing staff to discover violations during licensing inspections. In most cases, the facility, not the licensing staff, develops a plan of correction to remedy the circumstances that brought about the licensing violation(s). The plan of correction typically outlines what the facility needs to do and when the action steps must be completed in order to be in compliance with licensing standards. The PA-DHS licensing staff then has the option to approve the facility’s plan of correction. Although the licensing staff is also required to document the plan of correction’s implementation status and ensure that all action steps are completed and all goals are met, based on public record, it seems this only occurs in the initial licensing violation report, without any publicly recorded follow-up or oversight. As documented in the report, the lack of public follow-up and enforcement is coupled with repeated violations leaving children in danger.
III. Methodology

a. Sample

Children’s Rights reviewed licensing violation reports that are published on PA-DHS’s organizational website for a sample of residential facilities that house youth involved in the child welfare system. Pennsylvania has 138 legal entities that run 541 residential facilities. The sample includes 36 legal entities that are made up of 259 separate residential facilities, with a total bed capacity of 4,858 children. The review focused primarily on facilities that house children from Philadelphia County because it has the largest population of children in foster care in the state (33.5%).

The number of violations for the facilities reviewed is likely significantly higher than documented. Many incidents of maltreatment by staff or other children are reported by the child-victim, requiring the child-victim to discuss uncomfortable and traumatic experiences with staff members or other authority figures who are in control of their living situation. If children do not feel comfortable coming forward after an incident of maltreatment, which is often extremely difficult for them, the incident will not be documented unless raised by other witnesses, and therefore will not be included in a violation report.

b. Data Collection

This study collected all licensing violation reports for the sample’s legal entities from 2009 to 2018 that are published on PA-DHS’s organizational website. The reviewers collected data that fell within 16 categories: license revocation; provisional license granted; child death; physical maltreatment by staff; verbal maltreatment by staff; sexual assault by staff; child-on-child physical assault; child-on-child sexual assault; staff inaction despite knowledge of a child-on-child incident; use of restraints that results in broken bones; use of restraints that results in injuries requiring hospitalization; use of restraint that results in an injury not requiring hospitalization; inappropriate use of restraint; failure to document the use of restraint; exclusion using an isolation room; and exclusion from activities or routines. These categories were not mutually exclusive as incidents documented in the violation reports could fall within and be documented in multiple categories.

Three reviewers conducted this data collection. A preliminary review of the violation reports found that 18 of the 36 legal entities had a violation that fell within the 16 categories. From there, two reviewers read all of the licensing violation reports that were collected for those 18 legal entities and documented their findings. One separate reviewer read licensing violation reports from 25% of the facilities that were reviewed and documented her findings. The degree of agreement in findings between the three separate reviews was 95%.

Philadelphia County has the largest population of children in foster care in the state.
IV. Children are at Serious Risk of Harm at Pennsylvania’s Residential Facilities

Children in foster care in Pennsylvania are at serious risk of harm because PA-DHS fails to adequately license and monitor residential placements in Pennsylvania. PA-DHS has many licensing standards and policies to ensure the safety and well-being of children placed in residential facilities. However, it does not ensure compliance with those standards. As a result, there are statewide patterns of physical, verbal, and sexual abuse of children by staff at facilities; lack of supervision by staff leading to child-on-child physical and sexual assaults; and inappropriate use of restraints, all of which place children at grave risk of harm.

a. The Dangers at a Glance

Children are maltreated at these residential facilities.
Incidents from May 2010 – May 2018:

<table>
<thead>
<tr>
<th>CHILDREN WERE PHYSICALLY MALTREATED</th>
<th>CHILDREN WERE EXPOSED TO INAPPROPRIATE SEXUAL CONTACT</th>
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<tr>
<td>156 TIMES</td>
<td>73 TIMES</td>
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<td>114 TIMES BY STAFF AND</td>
<td>39 TIMES BY STAFF AND</td>
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<tr>
<td>42 TIMES BY OTHER CHILDREN</td>
<td>34 TIMES BY OTHER CHILDREN</td>
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44% of reviewed legal entities had repeat violations for physical or sexual maltreatment of children (by staff or other children).

Children are subjected to inappropriate use of restraints at these residential facilities:

- Although restraints should only be administered by trained staff and as a last resort utilized after all other de-escalation techniques have been employed, there were 92 incidents of inappropriate restraints. This study defines “inappropriate use of restraints” as any restraint that was: administered incorrectly; administered in a punitive manner, for the convenience of staff, or as a substitution for treatment; administered before all other de-escalation and less intrusive techniques were attempted; administered without allowing the child resident to adjust every ten minutes; or continued even after the child regained self-control.

- Although restraints should never harm the child, there were 28 incidents of restraint that resulted in a documented injury to the child.
b. Examples of Facilities that Continued to Care for Children with Little Meaningful Oversight

One of the most dangerous results was the large percentage of reviewed legal entities (44%) that had repeat violations for physical maltreatment (by staff or other children) or sexual maltreatment (by staff or other children). This indicates that although violations were documented, the plans of correction to address these violations did not correct the underlying causes for these dangerous violations. In addition, PA-DHS penalized very few facilities for this disturbing behavior. Despite 501 licensing violations that put children’s health, safety, and well-being in jeopardy, only nine of these legal entities (18 facilities) were given provisional licenses in place of their regular annual licenses and only two legal entities (three facilities) had their licenses revoked.

i. Deficient Response to Plans of Correction

PA-DHS typically approved the plans of correction, regardless of their quality. Facilities with repeat violations included similar action steps in each subsequent plan of correction, even though the previous plans of correction obviously did not keep the violation from recurring. Consequently, similar violations were repeated over and over again. Of the over 4,200 violation reports that were reviewed, few, if any, violation reports referenced an earlier plan of correction or its implementation status. PA-DHS continued approving these cookie-cutter plans of correction without edits, amendments, or penalization if the plans did not bring about positive change.

Below are some examples, although not an exhaustive list, of violations found in the reviewed reports and PA-DHS’s inadequate responses. The violations fall within three categories: staff physical maltreatment, staff verbal maltreatment, and staff sexual maltreatment of children; child-on-child physical or sexual maltreatment; and inappropriate use of restraints.

Staff Physical, Verbal, and Sexual Maltreatment of Children

Between January 30, 2013 and December 7, 2016 Alternative Rehabilitation Communities had 22 incidents where staff physically or verbally maltreated child residents. This equates to staff maltreating a child once every other month for four years. Despite the large number of incidents, most of the plans of correction focused primarily on the staff member who perpetrated the maltreatment, rather than changing the culture of violence at the facility as a whole. With these types of maltreatment-related violations, an adequate plan of correction should address: the specific types of training that staff will receive; the staff members who will be receiving the training; the timeline for when the facility will initiate the training and the date by which all staff will be trained; and plans to provide continuing training. Such trainings could include strategies like the Council on Accreditation’s (“COA”)42 behavior support and management practices, which promotes positive behavior and protects the safety of both child residents and staff, or the Therapeutic Crisis Intervention (often referred to as TCI) training program for child and youth care staff, which teaches staff how to respond effectively to children and young people in crisis situations.

For this facility, the last time a plan of correction mentioned training all staff to encourage positive behavior with child residents rather than focusing solely on the perpetrator was April 8, 2015. The other seven plans of correction simply mentioned that staff-wide trainings would occur in the future, with no follow-up documented in these reports regarding whether those trainings did, in fact, occur.

In addition, maltreatment of child residents at Kidspace is a rampant problem and has been since at least February 2013. And yet, the plans of correction rarely focus on the facilities’ implementation of major staff retraining or changing the culture of violence among the staff. Of the thirteen plans of correction for these violations that included any semblance of staff-wide retraining related to behavior with child residents, only four of the plans indicate that the trainings actually occurred. Despite the inadequacy of these plans of correction and their ineffective implementation,
PA-DHS has not amended the plans of correction documented in the violation reports nor has PA-DHS revoked a single certificate of compliance for a Kidspace facility.52 Our review found 18 incidents of staff physical maltreatment of children,53 11 incidents of staff verbal maltreatment of children,54 and seven incidents of staff sexual assault of children between February 19, 2013 and May 1, 2018.55 Examples of staff maltreatment at this facility include:

- A staff member entered a child’s bedroom, pushed the child against the wall, and choked the child. (May 19, 2015 report)56
- A staff member kicked a child. (December 9, 2015 report)57
- A staff member was verbally and physically aggressive with a child. (July 8, 2016 report)58
- A staff member used a restraint as a form of punishment by pushing his leg into the child’s back while pulling the child’s arms causing pain in the child’s shoulder. (August 2, 2016 report)59
- A staff member grabbed a child by the shirt collar and dragged the child into the child’s room. (October 19, 2016 report)60
- A staff member picked a child up by the child’s arm and shoved the child into the child’s room. (October 19, 2016 report)61
- A staff member verbally threatened and attempted to physically harm a child. Other staff had to prevent the staff member from assaulting the child. (October 19, 2016 report)62
- A staff member threw children’s food on the floor during meal time to prevent the children from eating seconds. (January 30, 2017 report)63
- A staff member attempted to start a physical altercation with a child. (January 30, 2017 report)64
- A staff member hit a child twice. (April 10, 2017 report)65
- A staff member pulled a chair out from underneath a child while the child was sitting, causing the child to fall to the ground. (June 22, 2017 report)66
- A staff member threatened to break a child’s arm during a restraint. (July 18, 2017 report)67

Another facility, Woods Services, had 18 incidents of staff physical maltreatment documented between September 2013 and November 2017.68 This equates to staff maltreating a child at this facility once every three months. One facility, 12 Pinebrook Drive, had three incidents where staff physically maltreated children in less than six months.69 Despite the frequency of these physical maltreatment violations, the plans of correction are severely deficient. PA-DHS’s instructions for the facility’s plan of correction state that the facility must “[i]nclude steps to correct the violation...and steps to prevent a similar violation from occurring again.”70 However, at least 12 of the plans of correction simply state that the staff at the facility have already received training or that staff will receive de-escalation reminders at staff meetings. Woods Services uses identical plans of correction incident after incident. PA-DHS approves these plans of correction even though with each new incident, it becomes increasingly evident that the plans of correction are failing to prevent subsequent incidents of maltreatment. Despite the numerous violations related to physical maltreatment and the lack of adequate plans of correction, PA-DHS did not revoke a single certificate of compliance for a Woods Services facility or replace any facility’s certificate of compliance with a provisional certificate. Examples of physical maltreatment at Woods Services include:

- Five violations regarding staff members slapping, hitting, or punching children in the face. (Reports from September 3, 2013, February 1, 2014, June 27, 2016, October 12, 2016, and March 16, 2017)71
- A staff member grabbed a child by the hair and pulled the child back and forth. (September 6, 2016 report)72
- A staff member choked a child during a restraint. (December 19, 2016 report)73
- A staff member struck a child three times in the head and legs with a mop. (February 8, 2017 report)74
- A staff member punched a child in the stomach and chest during a manual restraint. (March 1, 2017 report)75
**Glen Mills Schools**, which houses youth who are dually adjudicated in the dependency and delinquency systems, not only has a large number of incidents of staff physical maltreatment, but they also have previously refused access to PA-DHS staff and state police and, as PA-DHS’s violation report noted, were “belligerent” and “aggressive” with PA-DHS staff and state police who were investigating 13 allegations of child abuse in 2000.²⁶ Despite the numerous violations related to physical maltreatment, PA-DHS did not revoke a single certificate of compliance for a Glen Mills School facility or replace any facility’s certificate of compliance with a provisional certificate. The reviewers documented 16 incidents of staff physical maltreatment at Glen Mills from March 2014 to January 2017, which equates to one incident of child maltreatment by staff every other month.²⁷ Examples of physical maltreatment at this facility include:

- During a restraint a staff member used his elbow to strike a child in the face. (June 2, 2014 report)²⁹
- A staff member slapped a child in the face when he/she felt the child was disrespectful. Another staff member intervened, but when the child refused to move, the intervening staff member grabbed the child and pushed the child onto the counter-top and slammed the child’s head against the counter two times. (July 3, 2014 report)³⁰
- A staff member grabbed a child’s face and pushed it, causing the child’s head to hit the corner of a fire extinguisher cabinet. (December 10, 2014 report)³¹
- A staff member struck a child in the torso twice. When the child ran from the staff member, the staff member pursued the child and hit the child in the head with a pillow and then pushed him to the ground. (September 20, 2016 report)³²
- A staff member grabbed a child by the shirt and shoved the child through a chair. (December 5, 2016 report)³³
- During a restraint a staff member punched the child in the ribs. (January 12, 2017 report)³⁴

**Child-on-Child Physical or Sexual Maltreatment**

In addition to the staff maltreatment incidents listed above, Kidspace fails to adequately oversee and supervise its child residents. Child-on-child sexual assaults are rampant at Kidspace and have been since at least September 17, 2015. During a fourteen-month period (February 2016 to April 2017), there were nine incidents of child-on-child sexual maltreatment documented in the violation reports (twelve total incidents in less than two years).³⁵ Despite all of these incidents, only four plans of correction ever mentioned any sort of specific staff-wide training or strategy to improve staff supervision and oversight of the children.³⁶ The plans of correction should address the staffing patterns, shift planning, designated shift supervisors, staff-to-child ratios (one staff member for every four children according to the Child Welfare League of America (“CWLa”)), and additional training for staff to adequately supervise child residents with varying levels of need.³⁷ Instead of including all of these critical components, Kidspace’s plans of correction focus on having a monthly group work with the children to remind them about boundaries and updating and executing children’s safety plans.³⁸ As stated earlier, despite these inadequate plans of correction, PA-DHS has not revoked a single certificate of compliance for a Kidspace facility³⁹ or replaced any facility’s certificates of compliance with a provisional certificate. Examples of child-on-child sexual maltreatment at Kidspace facilities include:

- A child was allowed to use the bathroom twice without supervision, even though their safety plan indicated that the child needed to be monitored from the doorway at all times. The first time the child touched another child’s penis. The second time the child touched another child’s penis and buttocks, then proceeded to perform oral sex and anally penetrated them. (June 9, 2015 report)⁴⁰
- A child engaged in non-consensual sexual contact with another child on at least one occasion. (November 16, 2016 report)⁴¹
- A child forced his/her hands into another child’s pants and touched the child in a sexual manner. (December 29, 2016 report)⁴²

Despite inadequate plans of correction, PA-DHS has not revoked a single certificate of compliance or replaced it with a provisional certificate.
Between April 2013 and October 2016 Child First, which operates 19 group homes in multiple counties in Pennsylvania, also struggled to provide sufficient oversight and supervision. As a result, this entity had at least 21 incidents of child-on-child physical maltreatment or sexual maltreatment inside this three-and-a-half year period. This equates to an incident of child-on-child assault once every other month.

Examples of child-on-child maltreatment at Child First include:

- A child struck another child with an umbrella causing a cut that needed 13 stitches. (July 10, 2015 report)  
- A child assaulted another child by pouring hot water on the child causing burns to the child’s head, torso, and arms. (December 2, 2015 report)  
- A physical altercation between two children which resulted in one of the children who was 24 weeks pregnant requiring emergency room care for abdominal trauma. (October 17, 2016 report)  
- Three children left their program and entered another program at the facility where they participated with other children in physically assaulting two children at the second program. (April 4, 2016 report)  
- Two children sexually abused another child twice, including urinating in the child’s mouth and forcefully penetrating the child at least twice. (April 4, 2016 report)  

Inappropriate Use of Restraints

Abraxas is a residential facility with 326 beds. Since 2009, it has been responsible for 45% of the total incidents of “inappropriate use of restraint” among the reviewed facilities. Between May 2010 and May 2014, PA-DHS documented ten inappropriate restraints at one dorm alone. On April 11, 2011 the licensing inspection report at Abraxas stated that inappropriate use of restraints “appears to be systemic and campus wide.”  After this observation Abraxas was cited for inappropriate use of restraints eleven more times between September 19, 2013 and November 3, 2016. Each subsequent “inappropriate use of restraint” incident confirms that the problem at Abraxas’s facilities is not connected to one individual staff member going rogue, but rather, is due to a staff-wide lack of training. Despite the frequency of these violations, their plans of correction were typically written as if the “inappropriate use of restraint” incident was the first of its kind at an Abraxas facility. As such, most plans after April 2011 focused on the individual staff members who administered the inappropriate restraint rather than acknowledging the rampant use of inappropriate restraints among the restraints focusing on retraining staff facility-wide, as is common in a well-functioning child welfare system. As previously mentioned, staff should be retrained with programs and practices like COA’s behavior support and management or Therapeutic Crisis Intervention to combat the culture of violence, but that was not done here. Despite the numerous subsequent violations without adequate plans of correction, PA-DHS did not revoke a single certificate of compliance for Abraxas, nor did it issue a provisional certificate of compliance for the facility.

George Junior houses youth who are dually adjudicated in the dependency and delinquency systems. In less than two years at George Junior (spanning September 18, 2014 to July 15, 2016), violation reports documented 12 incidents of inappropriate use of restraints including 3 incidents where the use of a restraint resulted in an injury to the child. Despite the frequency and severity of these restraint-related violations, the plans of correction documented in the violation reports are deficient and both PA-DHS and George Junior’s response to these incidents is inadequate. For example, the plans of correction are typically one or two sentences long and state that the video footage of the restraint was reviewed, the staff member who performed the restraint was terminated, suspended, or retrained, and “[t]he director will implement procedures to ensure compliance with [the regulation].” However, the procedures and action steps are never specifically identified, so there is no way to evaluate whether or not they are sufficient to address the grave issue.
Additionally, due to the vagueness, there is no way for PA-DHS to confirm that the plan of correction was completed. Without specific action steps or goals there is nothing for PA-DHS to oversee, no definite task or assignment that PA-DHS can check to make sure the facility implemented. There is also no mention of addressing the obvious cultural issues present at George Junior through professional child welfare trainings like those offered by the COA and TCI. Despite the numerous restraint-related issues and the unsatisfactory responses, PA-DHS did not revoke a single certificate of compliance for a George Junior facility or replace any facility’s certificates of compliance with a provisional certificate.11 Each year PA-DHS continues to issue annual certificates of compliance.12 Examples of incidents at George Junior facilities include:

- A staff member manually restrained a child by slamming the child’s face onto the floor. (February 19, 2015 report)13
- A staff member manually restrained a child by slamming the child’s face onto the floor. (February 19, 2015 report)13
- A child was sleeping and two staff members initiated a manual restraint of the child in the bed for refusing to wake up. (February 19, 2015 report)13
- Staff used a spit mask15 on a child’s face during an over hour-long restraint. (February 19, 2015 report)16
- A staff member manually restrained a child to the floor and struck the child against the bed and floor causing abrasions to the child’s head, neck, and shoulder. (December 22, 2015 report)17

ii. Inadequate Follow-Up and Oversight

Even when PA-DHS revokes facilities’ certificates of compliance, PA-DHS does not ensure that the child residents are safe.18 Child First has two group homes (Glenn Clark House and Williams House) whose certificates of compliance were revoked, but the facilities continued to house children for 20 months.19 PA-DHS revoked Glenn Clark House’s certificate of compliance on April 4, 2016 due to “gross incompetence, negligence or misconduct in operating the facility or agency” when a staff member failed to supervise children, allowing two of them to walk out of the facility and assault two children in an adjacent facility.20 Despite this revocation, children continued to reside at the facility until December 2017, when a provisional certificate was granted for the period of December 26, 2017 to June 26, 2018.21 As of September 2018, there have been no further public documentation of licensing for Glenn Clark House since June 26, 2018 but there are still children placed there.22 Similarly, PA-DHS revoked Williams House’s certificate of compliance on April 14, 2016 due to “mishandled or abuse of clients cared for in the facility or receiving services from the agency” when staff members failed to supervise children, resulting in a retaliatory physical assault against two of the children.23 Despite this revocation, children continued to reside at the facility until December 2017 when a provisional certificate was granted for the period of December 26, 2017 to June 26, 2018.24 Furthermore, as of September 2018, PA-DHS has issued no further public documentation of certificates of compliance for Williams House since June 26, 2018, but children are still placed there.25

Children’s Home of Easton’s Cordina Cottage had fourteen incidents of staff-on-child maltreatment in a little over a year and a half’s time,26 including thirteen incidents of sexual maltreatment.27 Despite the frequency of incidents at this facility in such a short period of time, the facility’s certificate of compliance was never revoked, and instead, at least two new licenses have since been issued for this facility.28

Staff used a spit mask on a child’s face during an over hour-long restraint.
V. Recommendations

Children in Pennsylvania’s residential care are being harmed by the very system created to protect them because of a shocking lack of oversight and accountability. Facilities write perfunctory plans of correction that do not address the inherent problems that cause the violations to occur, do not stop the violations from recurring, and do not seek to improve the quality or training of the staff who work at these facilities. In order to truly reform these facilities, PA-DHS must ensure that the plans of correction are robust and address the inherent causes of the violations. In addition, PA-DHS must continuously monitor the plans of correction to ensure that facilities are implementing and completing the plans in an appropriate and timely manner. Finally, PA-DHS must be willing to penalize facilities that do not implement appropriate plans of correction and put the children entrusted to their care at risk.

a. PA-DHS Must Ensure that Plans of Correction Address and Remedy Violations in a Timely Manner

The Child Welfare League of America is a leading network of public and private child welfare agencies advancing policies and best practices in the field of child welfare. According to CWLA’s “Standards of Excellence for Abused or Neglected Children and Their Families,” public licensing agencies must:

• “Assure that their programs ‘meet the care and treatment needs of the children...and are competently staffed’”;

• “Take prompt and aggressive action when concerns are raised related to the care of the children for whom they are responsible”;

• “Employ a sufficient number of staff members to assure appropriate supervision...”;

• “[A]ssure that agencies requesting licensure meet all licensing requirements”; and

• “[A]ssure that deficiencies are corrected in a timely manner.”

CWLA goes on to state, “[F]ollowing the completion of an investigation into allegations of child abuse or neglect, the licensing agency should establish a definitive plan with the [facility] to correct any deficiencies in the setting that were identified.” Following this identification, “the licensing agency should monitor the implementation of this plan and should notify the [facility] when the plan has been completed to its satisfaction.”

In addition, COA states that the contracting of services does not relieve the public child welfare agency of their responsibility to ensure that individuals and families are receiving high quality, effective services. Instead, “Contract monitoring practices ensure contracted providers are in compliance with applicable law and regulation, providing high quality services, and are achieving desired outcomes.” The public child welfare agency must ensure that:

[s]ystems are in place to collect and respond to contractor performance concerns and, when areas of concern are identified, the [child welfare] agency: (a) develops an improvement plan in conjunction with the contractor; (b) ensures contractor follow-up and remediation; and (c) terminates contracts if contractors do not comply with improvement action/remediation plans.

PA-DHS fails to ensure that identified and documented violations or deficiencies are corrected in a timely manner, if at all. Rather, PA-DHS allows facilities to maintain their certificates of compliance while repeatedly violating the same standards and without requiring plans of correction that address raised concerns promptly.

The recommended process following the completion of a maltreatment in care investigation is absent in Pennsylvania. Following each of the 277 occurrences of physical, verbal, or sexual maltreatment that PA-DHS documented in the violation reports, the facilities noted a plan of correction. However, in each plan of correction following each subsequent
occurrence of maltreatment, the previous plan of correction was never referenced. There is no way for PA-DHS to ensure that the children in its care are being kept safe or that meaningful and lasting reform is taking place without this necessary monitoring and oversight of the plans of correction.

1. PA-DHS must critically evaluate, and revise if necessary, every plan of correction to ensure that it has the best likelihood of quickly and appropriately resolving the issues that brought about the violation.

2. PA-DHS must require that the plans of correction include specific steps to not only correct the violation but also to make sure that similar violations do not occur in the future.

3. PA-DHS must require that the plans of correction address staff-wide problems if they are present and include specific trainings to address those staff-wide issues.

4. PA-DHS must require that the plans of correction related to child-on-child incidents focus not only on the children involved but also on flaws in the facility’s staffing patterns and plans, supervision, and staff-to-child ratios.

5. PA-DHS must monitor the plans of correction to ensure that they are being properly implemented and provide feedback or penalties when necessary and appropriate.

b. PA-DHS Must Ensure that Staff at Residential Facilities are Trained to Work with the Child Welfare Population

Our review found that staff who work at Pennsylvania’s residential facilities do not receive adequate training to work with children who have experienced multiple forms of trauma or have higher levels of need. According to CWLA, “Staff should be trained to provide the supervision and attention required by the children served.” In addition, “Child care workers should have sufficient experience in working with children. Other required specialized training may be provided during new employee orientation.”

Similarly requires that staff at residential facilities must “demonstrate experience or receive training and education on:... engagement with residents, including building trust and establishing rapport;... recognizing trauma and coping mechanisms, and providing trauma-informed care;...interventions for addressing the acute needs of victims of trauma.”

Due to their insufficient training, many staff members resort to violence, verbal abuse, and physical restraint, rather than trauma-informed interventions, to obtain order or compliance from the children in their care. In addition, the facilities do not appear to have appropriate training for the staff to provide necessary oversight and supervision of the child residents, which results in child-on-child physical and sexual maltreatment, and they do not conduct adequate staff-wide re-trainings when recurrent maltreatment occurs. Without the necessary workforce of well-trained staff, these facilities will continue to experience incident after incident of staff maltreatment, child-on-child maltreatment, and inappropriate restraints, putting every child who walks through their doors at risk.

1. PA-DHS must require, both in their contracts with residential facilities and in their plans of correction, that staff at these residential facilities are trained to work with children in the child welfare system and to provide necessary oversight and supervision of those children.

2. PA-DHS must require that staff be trained in, at a minimum, trauma-informed care, behavior management, and crisis intervention.

3. If it is apparent that staff at residential facilities are not appropriately trained, it is up to PA-DHS to require, both in future contracts and in current plans of correction, that staff at the facilities be trained or retrained to appropriately interact with the children in their care.
c. PA-DHS Must Ensure that Children are Only Placed at Residential Facilities When They Have a Level of Need that Cannot be Met within Community-Based Services

Finally, PA-DHS must ensure that only the children who require placement in these residential facilities are placed in them. Studies have shown that children are best served in family settings. Children need parental figures to help them develop mentally, physically, and socially. Children placed in residential facilities may have limited access to language and cognitive stimulation; have insufficient caregiving; have reduced interaction with adults; lack normal relationships with caregivers due to shift work; and have deficits in motor skills, sensory processing, language production, and language comprehension development. When residential placements are unnecessary, such placements can cause physical and non-physical harm to children in foster care. However, residential facilities have an important place in a foster care system. They are meant only for children whose specific needs cannot be met within community-based services and instead are best met in a highly structured non-family environment for a limited period of time. Placement in these residential facilities must be high-quality, customized to the child, time-limited, and focused on the goal of returning the children to their communities. To that end, PA-DHS must ensure that there are enough high-quality community-based services to enable children to receive the services that they require while remaining in family foster homes.

Reducing Referrals to Residential Facilities

Allegeny County, in Pennsylvania, is an example of a child welfare system that has been working toward increasing its use of community-based services and homes and using residential facilities only for children whose needs require such restrictive placements. "From 2012 to 2017, the number of children in residential placements declined by 60%. Currently, only five percent of children in foster care in Allegheny County are placed in residential facilities. Allegheny County took the following steps to reduce the number of children it places in residential facilities:

1. Clearly defining when congregate care is appropriate.
2. Engaging families when a child is placed in residential facilities.
3. Increasing the number children placed with relatives.
4. Visiting residential facilities to evaluate them firsthand.
5. Talking to children in residential facilities to learn what works.
6. Routinely monitoring children’s placements in residential facilities.

A similar effort is also underway in Philadelphia County. The Philadelphia Department of Human Services reduced the number of dependent youth in congregate care from 22% in 2013 to 12% in 2018. A similar improvement was made in the juvenile justice system with a 36% reduction in congregate care placements since 2015. Stakeholders are collaborating to further address this issue through a newly-formed Youth Residential Placement Taskforce.

In addition, Philadelphia DHS and other counties have periodically "closed intake" (refused to place additional children) at certain facilities in response to safety incidents and concerns.
VI. Summary of the Dangers for Children in Residential Facilities in Pennsylvania

Despite frequent and perpetual violations, including violations related to maltreatment and the use of restraints, PA-DHS continues to rubber stamp facilities’ plans of correction, provides little to no oversight over their implementation, and penalizes very few facilities that endanger their child residents. The tragedy that occurred at Wordsworth should have been a wakeup call for PA-DHS to change the way they oversee residential facilities. Unfortunately, our review has confirmed that with PA-DHS’s current level of oversight and monitoring and the general lack of training of staff at these facilities, the 25,381 vulnerable children entrusted to PA-DHS instead continue to be at risk every day. Our exploration into the on-grounds schools at these facilities painted a similarly grim picture for children placed at Pennsylvania’s residential facilities.
B. Education Disrupted: How Residential Placements Impact the Education & Life Outcomes of Pennsylvania’s Children & Youth

I. Introduction

Nationwide, it is well documented that youth in the dependency system are among the most educationally at risk of all student populations. They graduate at lower rates, score lower on standardized tests, have higher rates of special education eligibility, and are more likely to repeat a grade than their non-system involved peers.12 In some jurisdictions in Pennsylvania more than half of youth in foster care, and 64% of youth involved in the juvenile justice system do not graduate from high school.13 This often leads to a lifetime of unemployment, under-employment, and homelessness.14

Case managers and advocates report that children and youth placed in residential placements are at even greater risk of school failure and more likely than other system-involved youth to drop out due to a variety of barriers described below. However, in Pennsylvania and nationally there is little data and no accountability system for assessing the quality of education children receive while in residential placement. The lack of basic information regarding the academic progress, disaggregated achievement data, and educational programming provided to children in residential care who attend on-grounds schools makes it virtually impossible to trace the impact of such placements on the children’s academic trajectory and life outcomes. This is because on-grounds schools (also referred to as “on-site schools”) — schools physically located at or nearby the residential facility which the vast majority of children in residential facilities attend — operate under various types of private academic school licenses and lack any accountability structure or mandated data collection.

In 2011, the Education Law Center, supported by the Stoneleigh Foundation, published one of the very few qualitative reports in the nation addressing this important topic with regard to children
and youth in Pennsylvania placed in residential facilities. That report, which is based on almost four hundred surveys, multiple youth focus groups, and twenty-five in-depth interviews, discloses that children and youth in residential placements in Pennsylvania between 2009 and 2010 often languished in on-grounds schools which deprived them of grade-appropriate instruction and special education services. Its findings are consistent with peer-reviewed research on this topic in the juvenile justice context. Regional studies of educational programs provided to youth in juvenile justice residential facilities disclose that the quality of education available at those on-grounds schools is inferior to that provided by public schools. For example, a 2014 study conducted by the Southern Education Foundation opined that youth attending on-grounds schools in these juvenile justice facilities across the nation received an inferior and inadequate education as reflected in records of low academic progress. The study found that less than half of youth earned high school credits while in placement, only nine percent between 16 and 21-years-old earned a GED or high school diploma, and just two percent enrolled in post-secondary education. In contrast, the national public high school graduation rate was 82% in the 2013-14 school year and 84% in the 2015-16 school year. Moreover, the percentage of recent U.S. high school graduates enrolled in college in 2015 was 69.2%. There was little evidence of any improvement in reading or math levels for students educated in juvenile justice facilities — 44% of whom were below grade level. Although over one-third of youth were recognized as students with learning disabilities, fewer than 25% of these youth received special education services while in placement.

Against this backdrop, this policy report highlights the need for further oversight and consistent and meaningful standards to support students to graduate. It also underscores the urgent need for effective enforcement of the educational rights and legal entitlements of dependent children and youth placed in residential facilities across Pennsylvania, including ensuring their access to public school. Finally, the report reinforces the need to reduce referrals to residential placements and invest in school-based behavioral and mental health services to support children to remain in their community. Placing children in separate on-grounds schools is inherently disruptive to their education and denies them access to the wide range of academic opportunities, supports, and services available in public schools.

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<td>OF YOUTH EARNED HIGH SCHOOL CREDITS WHILE IN PLACEMENT</td>
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THERE WAS LITTLE EVIDENCE OF ANY IMPROVEMENT IN READING OR MATH LEVELS FOR STUDENTS EDUCATED IN JUVENILE JUSTICE FACILITIES. 44% OF WHOM WERE BELOW GRADE LEVEL. ALTHOUGH OVER ONE-THIRD OF YOUTH WERE RECOGNIZED AS STUDENTS WITH LEARNING DISABILITIES FEWER THAN 25% OF THESE YOUTH RECEIVED SPECIAL EDUCATION SERVICES WHILE IN PLACEMENT.
All children in residential facilities have a clear legal entitlement to attend the local public school where the residential placement is located. Regulations promulgated to implement this entitlement further require all non-resident children living in facilities to be treated "equally" to resident students with respect to enrollment. Pursuant to guidance issued by PDE, the determination as to where a child will attend school must be made on an individual basis and cannot be determined by the referring public agency or private provider’s interest in having the child attend the provider’s on-site educational program.

Joint state guidance issued by PDE and PA-DHS also explicitly prohibits a practice known as “bundling” whereby “DHS-licensed facilities shall not require students to attend school at the residential facility unless it is a court imposed condition of their placement.” Accordingly, providers are prohibited from requiring students in residential placements to attend on-grounds schools unless a court, as part of its legally authorized placement decision, directs a delinquent child to attend the on-grounds school for the protection of the community.

In addition, under federal and state law, a child placed in a residential facility should attend the local public school unless: (1) the child’s Individualized Education Program (“IEP”) Team determines that the student should be placed in an approved private school or other school placement in accordance with the current IEP; or (2) the child is currently expelled for a weapons offense, in which case the student may be placed in an alternative education for disruptive youth program in a regular public school district. The child’s parent, guardian, or other legally authorized educational decision maker must make each school placement decision. For a student with disabilities under the Individuals with Disabilities Education Act (“IDEA”), this decision maker cannot be a caseworker or other person involved in the care and education of the child.

Thus, placing children in regular education programs in regular public schools should — both legally and educationally — be the default position with respect to where these students are educated. Full commitment to and enforcement of this right is the first priority.

Even if a child attends the residential on-grounds school, the school district or other local educational agency (“LEA”) where the placement is located continues to be responsible for providing a free, appropriate, public education (“FAPE”) in compliance with all applicable special education laws. This includes providing all services and specially designed instruction identified in the child’s IEP, providing comparable services, including related services until a new IEP is developed, honoring a child’s placement and services from the child’s prior IEP, ensuring parent participation and legally compliant notification, providing progress monitoring, and ensuring that each child is educated in the least restrictive environment (i.e., to the greatest extent possible, the child is educated with non-disabled peers). To provide a FAPE, an LEA must implement an IEP that affords the student the necessary and requisite services to enable the student to make progress and maximize access to the general education curriculum. A child must make meaningful progress in light of the child’s potential.

In addition to the right to attend a local public school, children in foster care — including those placed in residential facilities — also retain the legal entitlement under the Every Student Succeeds Act to remain in the same school they currently attend unless a change in placement is in their best interest. This is an important legal entitlement because children in such settings typically experience multiple placement changes, undermining academic progress with each school change. It is estimated that children lose six to eight months of academic progress with each school move. This significant disruption undermines their ability to stay on track and graduate: youth who remain in the same school are twice as likely to graduate. Even one fewer school change makes a high school student 1.8 times more likely to obtain a diploma.

Despite these critical protections, these laws are often ignored for children in residential placements in Pennsylvania.
III. The Educational Reality for Children in Residential Placements

Notwithstanding these legal entitlements, children in institutional placements rarely remain in the same school and most commonly attend inferior “on-grounds” schools rather than local public schools where the facility is located.\(^{38}\) Seventy-one percent of youth in residential placements surveyed for the 2011 report stated that they attended on-site schools.\(^ {31}\) Fifty-six percent of providers reported that “none” or “less than 10 percent” attended public school.\(^ {32}\) Over 62% of child welfare professionals reported that their clients were “refused” enrollment by public schools.\(^ {33}\) At the time of the survey, there were over 6,200 children in residential placements across Pennsylvania.\(^ {34}\) According to a 2015 Report to the Pennsylvania State Roundtable issued by the Educational Success and Truancy Prevention Taskforce, of the 42 county teams that responded to a statewide survey, 78.6% reported that children in residential placements “sometimes” or “rarely” accessed local public schools. 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.\(^ {35}\)

On-grounds schools in Pennsylvania are predominantly licensed and regulated by the Pennsylvania School Board as “private academic schools.” These schools exist largely in the shadows, with little oversight by local education agencies or the state.\(^ {36}\) Pursuant to state policy, these programs are subject to on-site cyclical monitoring only once every six years and then only with regard to students with disabilities.\(^ {37}\) Licensed by the State Board of Private Academic Schools, these schools have wide discretion in creating educational programs and are not required to follow the same rigorous state curriculum requirements and academic standards as public schools.\(^ {38}\)

Accordingly, while their peers attend public schools, which must meet state educational standards,\(^ {39}\) children attending on-grounds schools receive an education that is frequently inferior and undermines their ability to graduate from high school. Students are often taught in multi-grade classrooms, sometimes by uncertified or improperly certified teachers, and very often receive below-grade-level course work.\(^ {40}\) This prevents them from developing critical skills, building knowledge, and staying on track to graduate. In qualitative surveys, child welfare professionals reported that the curriculum at on-grounds schools is far below grade level, limited in instruction hours, relies heavily on worksheets, and fails to advance basic skills let alone provide access to AP classes for more advanced students.\(^ {41}\) Such inferior programs make it virtually impossible for students to stay on track to graduate. Coursework may be non-transferable and partial credits often are not recognized. Approximately 50% of youth surveyed reported that they were taught in a classroom with children of varying ages and abilities.\(^ {42}\) Thirty-seven percent reported that they were taught in a classroom with students “around” their own age; and some reported that that school program consisted “solely” of independent worksheets.\(^ {43}\)

On-grounds schools also often lack essential resources and services required to educate these children and youth.\(^ {44}\) In some cases, youth spend their days completing worksheets or engaging exclusively in online credit programs with minimal or no live instruction.\(^ {45}\) Parents or education decision makers are never apprised of a child’s legal right to attend a public school under the Pennsylvania School Code.\(^ {46}\) In some cases, judges order youth to attend such schools in a misguided attempt to solve a child’s truancy problem. Instead, because of the poor quality of the on-grounds schools, children with a history of absenteeism often find themselves further behind their peers upon returning to their neighborhood schools. The result is that they are then more likely to be truant and ultimately give up and drop out of school altogether.\(^ {47}\)
CASE EXAMPLE

Sarah, a 14-year-old youth with a reading disability, was only days away from completing her second semester of 9th grade when she was placed in a residential facility two hours from her home. When she arrived, her caseworker was given a new IEP by a member of the facility’s staff which did not include any of the services and supports she previously received, such as 1:1 tutoring. Instead, she received an IEP for a child with emotional disturbance — a disability she did not have — which only addressed behaviors in the classroom.

Although her caseworker was not legally permitted to do so, she signed the IEP. There was no discussion of Sarah’s right to attend the local public school. When she began attending the on-grounds school the next day, Sarah learned that “school” consisted of sitting in a classroom completing online worksheets which were far below her grade level.

There was no certified special education teacher to modify instruction, no speech-language services to improve her communication, and her course roster was completely changed. She could not take biology because it wasn’t offered at the on-grounds schools and “Basic Math Skills” replaced her geometry class. Sarah remained at the on-grounds school until her discharge the following October.

Upon her return to her home school district, she learned that she would have to repeat 9th grade entirely and that she had earned no credits towards graduation while in residential placement. She was devastated and disengaged from school. There seemed to be no way to make up what she had lost due to being placed in a residential facility.

IV. Failing to Meet the Needs of Students with Disabilities

Disproportionately, children in foster care are students with disabilities: studies show that they are between 2.5 and 3.5 times more likely to receive special education services than their non-system involved peers. Moreover, students with disabilities are more likely to be placed in residential facilities and are particularly harmed when educated online or through a one-size-fits-all on-grounds school, both of which fail to differentiate instruction.

The problems are myriad: from delays in obtaining the child’s specialized plan, known as an IEP, to failing to conduct timely evaluations to determine the child’s educational needs, to the failure of school staff to modify instruction, to a lack of rigorous progress monitoring. Most egregious, these educational programs commonly fail to follow a child’s IEP or provide related services. Inevitably, these failures result in a lack of student progress.

Many children and youth are not properly evaluated upon entering on-grounds schools and may be placed in an inappropriate grade or program. This occurs despite federal requirements under the IDEA which specifically mandate that LEAs identify, evaluate, and provide services to children who are wards of the state. In sum, children with disabilities in residential placements often are denied the free, appropriate, public education to which they are legally entitled. Moreover, as the majority of children in residential facilities are students with disabilities, they are also denied the opportunity to be educated in the least restrictive environment and instead are segregated from their non-disabled peers while attending an on-grounds school rather than a regular public school.

PDE’s Bureau of Special Education engages in cyclical monitoring of all school districts and charter schools across the state to ensure legal compliance with federal and state special education laws and to improve performance outcomes for students with disabilities. During this monitoring, PDE does investigate programming and services for students with disabilities attending on-grounds...
schools. However, these residential programs are generally monitored only once every six years, which is too infrequent to address endemic deficiencies. Moreover, while such monitoring has resulted in positive corrective action directed to individual on-grounds schools, it has not resulted in significant reform. This is due in part to the fact that such on-site reviews rely too heavily on self-assessments, surveys, and file reviews which are largely directed at whether legally required documents are maintained in student files. Monitoring should instead focus on: more in-depth reviews and data collection directed at whether students are educated in public schools where the placement is located; whether students with disabilities are actually receiving the services they need in compliance with updated IEPs; the extent to which instruction is differentiated for students, particularly when programs rely on cyber programming; whether parents meaningfully participate in decision-making; and whether students with disabilities are making meaningful progress. The Bureau should require LEAs to document, on an annual basis: what percentage of students with disabilities in residential programs attend local public schools and are educated in less restrictive educational environments; what percentage of students received timely re-evaluations; and data regarding the use of restraints in classrooms disaggregated for on-grounds schools.

Notably, in addition to a lack of oversight and monitoring by DOE, PA-DHS provides no oversight of educational programs or on-grounds schools at all.

V. Failing to Heed the Alarm

A study commissioned by the School District of Philadelphia (“SDP”) in May 2012 highlighted significant and glaring deficiencies in the educational programs at institutional placements. This assessment was undertaken with a goal of ensuring that “the $64 million that SDP spends for the education of the 5,000 public school students placed in institutional settings and day programs is being spent efficiently and appropriately on programs that improve learning opportunities and outcomes, consistent with legal standards and requirements.” The May 2013 Report entitled Review of Outside Educational Institutions (directed to the then-governing School Reform Commission) evaluated representative educational programs at the three largest institutions: Devereux Foundation’s approved private schools and residential treatment programs in Chester County, PA; VisionQuest’s residential institutions for adjudicated youth in Waynesboro and Franklin, PA; and Horsham Clinic, a partial hospital for children with acute needs. The Report identified “major concerns,” which should have sounded an alarm bell for the need for systemic reform. Findings included that the programs demonstrated a “[lack of academic rigor and linkage to academic standards... in most settings” and “students do not make the expected academic strides. It is a missed opportunity.” (Emphasis in original). The Report cited lack of regulatory compliance with special education laws and underscored the “lack of involvement” of host school districts in educational placement decisions. Specifically, the evaluation found that none of the host school districts reviewed for the report had educated Philadelphia students in regular school district classrooms. Two school districts merely “pass[ed]-through invoices from providers” and only one Intermediate Unit actively participated in the special education process. The Report emphasized that students in residential schools invariably suffer from a lack of educational continuity as students enter and exit placements within a single school year and SDP lacked coordinated reintegration services to support students re-entering the District. The Report also disclosed the high financial costs per student per day of educating students in residential settings, ranging from $216 for a student at VisionQuest to $464 for a student with disabilities at Devereux’s residential facility.
The Report concluded:

The reviews of three of the largest institutions serving SDP students show: complex organizational and communications issues, weak academic programs, and terribly high costs associated with placements in outside educational institutions. From the perspective of the student, removal from his/her home, community, and school is personally and educationally disruptive. Therefore, when justifying an out-of-home or out-of-district placement, the bar must be set high.276

The Report recommended significant positive changes including:

(1) a coordinated effort among the School District of Philadelphia, the Department of Human Service, Community Behavioral Health and the court system to provide “cost-effective, school-based supports that would serve as alternatives to placement for as many students as possible”;

(2) maintaining ongoing connection with students from the moment placement is considered to successful reintegration in the District;

(3) ensuring that both SDP and PDE provide effective programs and financial oversight of the educational services provided in institutional settings on an ongoing basis;

(4) undertaking changes in SDP organizational structure, policies, and procedures, including additional staffing, and upgrading the District’s data systems to track the progress of students through their placements, participate with PA-DHS and CBH in educational placement meetings with facility providers and host school districts and IUs; and

(5) ensuring the complete and timely transfer of records and that grades, credits, and test scores are properly recorded.277

Unfortunately, while some gains have been made with regard to reintegrating into the District, the important findings from this Report and its recommendations were largely ignored to the great detriment of children and youth in the dependency system. Importantly, the findings in the District’s Report are representative of what comparably situated students throughout the Commonwealth are experiencing and the Report’s recommendations for reform should be considered for universal application across the state.

VI. The Aftermath of Residential Placement

Children and youth typically reside in residential placements for a considerable period of time and thus may be deprived of quality, appropriate, and less restrictive educational programs for a significant portion of their educational careers. While the average length of stay varies widely, national studies indicate that children in foster care spend 335 days in residential care, sometimes across multiple stays.278

When youth return from residential facilities, they find themselves — through no fault of their own — far below grade level, having earned few credits, and having made little progress. Because on-site private academic schools do not meet the same educational standards as public schools, the public school to which a child returns is permitted to refuse to accept the credits a child earned or refuse to count such coursework towards graduation.279 A few on-grounds schools do not even award credits, guaranteeing that students who are already falling behind academically will spiral further downward. In our qualitative survey, 85% of youth and over 50% of child welfare professionals surveyed reported difficulties transferring credits earned at on-grounds schools to public schools.280

Moreover, upon their return to a neighborhood school, many of our clients experience delays of days or weeks awaiting an appropriate school placements or referral to an Approved Private School (“APS”) for a student with significant disabilities. It is well established that children who fall behind in school are exponentially more likely to drop out, so the harm resulting from these on-grounds schools can be lifelong. For example, extensive research discloses that students who fail to complete required 9th grade credits, requisite coursework, or earn failing grades are far less likely to graduate high school.281
VII. Summary of the Harms to Children at Residential Facilities in Pennsylvania and How We Can Improve Their Educational Outcomes

In summary, we know that placing children and youth in institutional placements harms them academically, often emotionally, and sometimes physically. Institutional placements are highly restrictive, undermine academic progress, and therefore, set our most vulnerable children on a path to homelessness, unemployment, and incarceration. All of this occurs with little oversight by either PDE, which licenses the on-grounds schools, or the local educational agency where the residential school is located, which remains responsible for admitting the children in the facilities into the local public schools and for ensuring a free, appropriate public education, including education in the least restrictive environment, for children with disabilities. As a result, children in foster care placed by our courts and child welfare systems are forced to languish far from home in segregated programs in inferior schools as the hope of graduation and educational progress slips away from them. “Our” children, wards of the state, have the right to be safe, supported, and receive all services to which they are legally entitled — including education, whenever possible in regular public schools and, for children with disabilities, with non-disabled peers.

For these children and youth who continue to be placed in residential facilities the following recommendations should be considered.

First, Pennsylvania’s Department of Education must take a proactive role to ensure the education rights and legal entitlements of these children.

1. **PDE** must ensure through rigorous oversight and monitoring that all children in residential placements have access to public schools and appropriate classroom settings in accordance with state law and the guidance it previously issued regarding students’ entitlement to attend public school where their residential placements are located. This effort must include mandating that LEAs annually report the percentage of students from each residential placement who attend their schools and the legal basis for non-attendance. If necessary, PDE should also impose appropriate sanctions on LEAs and/or facilities in response to reports of low or no incidence of children being educated in regular public schools.

In addition, as the licensor of on-grounds schools, PDE must exercise greater oversight, monitoring, and control of these private academic schools to ensure they confer a quality education in accordance with proposed new standards outlined below. If indicated, PDE must refuse to renew licenses for schools which fail to comply with these requirements.

2. **The Department’s Bureau of Special Education** must ensure that children with disabilities are identified and effectively served by these host school districts through more robust oversight and monitoring including that all children with disabilities are promptly evaluated, receive adequate services; have active, involved, and informed educational decision makers; and are educated in the least restrictive environment. This should include more frequent monitoring, and, if necessary, the imposition of appropriate sanctions on LEAs which fail to comply with applicable disability laws governing the education of these students.

With regard to those on-grounds schools which remain in operation to serve children who are court-ordered to remain in placement, including attending the on-grounds school, or whose IEP Team determines that this is an appropriate placement, the State Board of Private Academic Schools must closely monitor such schools in light of the fact that they serve public-ly-placed students. The Board must impose clear and rigorous standards for instruction, including requiring a school curriculum consistent with
state standards for public schools and aligned with a child’s home school district and staff with the certifications applicable to staff in regular schools.

3. The State Board of Education should consider amendments to regulations for 22 Pa. Code Chapter 51 governing requirements for licensure of Private Academic Schools to protect the educational rights of children who are publicly placed and/or funded and ensure access to quality academic programs, including aligning these requirements to those applicable to all students in public schools.

Second, local educational agencies which serve as host school districts, must:

1. Accept legal responsibility for educating children residing in residential facilities in their schools.

2. Ensure that all children with disabilities receive a free appropriate public education in the least restrictive environment.

In addition, resident school districts to which students in foster care return must:

1. Support these students by providing records and information to ensure an appropriate school placement and rigorous curriculum on the front end.

2. Provide a smooth transition to a neighborhood school or approved private school upon their return. This includes assessing credits and creating a graduation plan for youth in high school.

Third, we must redefine the roles of juvenile court judges, child advocates, and child welfare professionals to ensure that the educational needs of children in foster care are addressed in court and considered in determining a child’s living and educational placement.

Courts and child welfare agencies which contract with private residential providers have considerable leverage to improve the quality of education provided to children and youth placed in residential settings. They must use this leverage to demand high-quality educational programs for children in residential placements.

Finally, Pennsylvania’s General Assembly should adopt legislation to ensure greater support and protection for children in foster care — including expanding access to a high school diploma for youth who are placed in residential facilities.

Legislation has previously been introduced in Pennsylvania which would ensure that academic credits earned while in placement would count towards graduation, provide students in foster care with a chance to make up missing credits or have certain local requirements waived, and designate a point of contact in school to determine appropriate classes and develop a graduation plan for a child in foster care. Pennsylvania’s General Assembly must adopt this legislation.

However, our ultimate goal must be to stop isolating these children in residential placements far from their communities and focus our collaborative attention on building community-based mental health and education services that keep all these children close to home, with the educational opportunities and stability they desperately need to graduate, thrive, and succeed in life.
Conclusion

When a state removes children from their homes and places them in foster care, it is up to the state to ensure their safety and their ability to receive a suitable education. States are required to provide appropriate oversight and monitoring of the homes and facilities where the state places these children. Additionally, states are required to provide children with the educations they are legally entitled to, in the local public schools whenever possible, and with the supports that they require.

Unfortunately, in Pennsylvania, facilities are caring for children without a robust or meaningful PA-DHS oversight and are educating children with little involvement from PDE or the local educational agencies. PA-DHS continues to approve nearly every plan of correction, does not provide any real monitoring of the plans’ implementation, and penalizes very few legal entities despite the large number of children who are harmed at these facilities.

PDE continues to turn a blind eye to the children who are prevented from enrolling in public schools and the State Board of Private Academic Schools continues to allow these on-grounds schools to function without providing a meaningful education to their students.

Pennsylvania’s children who are placed at these residential facilities deserve what every child deserves: the safety and security in their homes to grow and thrive and the educational opportunities at their schools to learn and develop. Pennsylvania owes it to its children to ensure that they are safe today and that they are educated to ensure a bright tomorrow.
Recommendations

Safety and Well-Being

a. PA-DHS Must Ensure that Plans of Correction Address and Remedy Violations in a Timely Manner

1. PA-DHS must critically evaluate, and revise if necessary, every plan of correction to ensure that it has the best likelihood of quickly and appropriately resolving the issues that brought about the violation.

2. PA-DHS must require that the plans of correction include specific steps to not only correct the violation but also to make sure that similar violations do not occur in the future.

3. PA-DHS must require that the plans of correction address staff-wide problems if they are present and include specific trainings to address those staff-wide issues.

4. PA-DHS must require that the plans of correction related to child-on-child incidents focus not only on the children involved but also on flaws in the facility’s staffing patterns and plans, supervision, and staff-to-child ratios.

5. PA-DHS must monitor the plans of correction to ensure that they are being properly implemented and provide feedback or penalties when necessary and appropriate.

b. PA-DHS Must Ensure that Staff at Residential Facilities are Trained to Work with the Child Welfare Population

1. PA-DHS must require, both in their contracts with residential facilities and in their plans of correction, that staff at these residential facilities are trained to work with children in the child welfare system and to provide necessary oversight and supervision of those children.

2. PA-DHS must require that staff be trained in, at a minimum, trauma-informed care, behavior management, and crisis intervention.

3. If it is apparent that staff at residential facilities are not appropriately trained, it is up to PA-DHS to require, both in future contracts and in current plans of correction, that staff at the facilities be trained or retrained to appropriately interact with the children in their care.

c. PA-DHS Must Ensure that Children are Only Placed at Residential Facilities When They Have a Level of Need that Cannot be Met within Community-Based Services

Reducing Referrals to Residential Facilities

1. Clearly defining when congregate care is appropriate.

2. Engaging families when a child is placed in residential facilities.

3. Increasing the number children placed with relatives.

4. Visiting residential facilities to evaluate them firsthand.

5. Talking to children in residential facilities to learn what works.

6. Routinely monitoring children’s placements in residential facilities.\textsuperscript{114}
Educational Outcomes

In summary, we know that placing children and youth in institutional placements harms them academically, often emotionally, and sometimes physically. Institutional placements are highly restrictive, underpin academic progress, and therefore, set our most vulnerable children on a path to homelessness, unemployment, and incarceration. All of this occurs with little oversight by either PDE, which licenses the on-grounds schools, or the local educational agency where the residential school is located, which remains responsible for admitting the children in the facilities into the local public schools and for ensuring a free, appropriate public education, including education in the least restrictive environment, for children with disabilities. As a result, children in foster care placed by our courts and child welfare systems are forced to languish far from home in segregated programs in inferior schools as the hope of graduation and educational progress slips away from them. “Our” children, wards of the state, have the right to be safe, supported, and receive all services to which they are legally entitled — including education, whenever possible in regular public schools and, for children with disabilities, with non-disabled peers. For these children and youth who continue to be placed in residential facilities the following recommendations should be considered.

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In addition, as the licensor of on-grounds schools, PDE must exercise greater oversight, monitoring, and control of these private academic schools to ensure they confer a quality education in accordance with proposed new standards outlined below. If indicated, PDE must refuse to renew licenses for schools which fail to comply with these requirements.

2. **The Department’s Bureau of Special Education** must ensure that children with disabilities are identified and effectively served by these host school districts through more robust oversight and monitoring including that all children with disabilities are promptly evaluated; receive adequate services; have active, involved, and informed educational decision makers; and are educated in the least restrictive environment. This should include more frequent monitoring, and, if necessary, the imposition of appropriate sanctions on LEAs which fail to comply with applicable disability laws governing the education of these students.

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However, our ultimate goal must be to stop isolating these children in residential placements far from their communities and focus our collaborative attention on building community-based mental health and education services that keep all these children close to home, with the educational opportunities and stability they desperately need to graduate, thrive, and succeed in life.
203. The continuum of placements for students with disabilities starts at instruction in regular education classes in public school, as the least restrictive, and ends with instruction in institutions as the most restrictive. See 34 C.F.R. § 300.156(b)(1); D.B. v. Ocean Twp. Bd. of Educ., 986 F. Supp. 457, 490 (D.N.J. 1997). As the district court explained in D.B., “just as placement in a regular class with supplementary aids and services is at one end of the continuum of alternative placements required to be made available to special education students under IDEA, placement at a completely segregated, full time residential facility is at the other end of the continuum.” Id. citing Oberti v. Bd. of Educ., 801 F. Supp. 1392, 1400 (D.N.J. 1992). 


205. Restraints are a measure of last resort which may only be used in an educational program to control acute or episodic aggressive or self-injurious behavior when a student is a clear and present danger to himself or others. Certain limited restraints may only be employed after less restrictive measures have been proven to be less effective. See 22 PA Code § 143.33(b). LEAs must report data on the use of restraints. See 24 P.S. 11-1303-A(6)(41) and (42). 


207. Id. at 3. 


209. Id. 

210. Id. at 15 

211. Id. 

212. Intermediate units are unique to Pennsylvania and function as regional local educational service agencies. Intermediate units are public entities which serve a given geographic area’s educational needs, including providing professional development training and facilitating or providing special education services to children with disabilities in public school districts within their jurisdiction. 

213. Id. at 3 

214. Id. 

215. Id. at 3-4. 

216. Id. at 4. 

217. Id. 


219. 22 PA Code § 4.42 (each school district or charter school establishes requirements for graduation). 


