UNSAFE AND UNEDUCATED:

INDIFFERENCE TO DANGERS IN PENNSYLVANIA'S RESIDENTIAL CHILD WELFARE FACILITIES

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ABOUT THE AUTHORS

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Christina Wilson Remlin is a Lead Counsel at Children's Rights. Since joining Children's Rights in 2011, Ms. Remlin has represented classes of children in foster care in suits challenging violence, inadequate medical care, inappropriate conditions and over-institutionalization. Her clients include those at risk of discrimination associated with their LGBTQ+ identity, gender, race, immigration status and class. Ms. Remlin created the Unaccompanied Minors project which directly represents youth petitioning for legal status. As part of that project, Ms. Remlin spearheaded Children's Rights' amicus brief supporting the ACLU's challenge to Family Separation which led to a federal judge in San Diego ruling that the administration must immediately begin reunifying immigrant families. Ms. Remlin also created Children's Rights' LGBTQ project and co-authored Safe Havens and Fostering Family Guide, both of which address the needs of LGBTQ children in out of home care. Ms. Remlin received her J.D. from Fordham University in 2004 where she participated in The Crowley Program on International Human Rights' Annual Mission to Bolivia and interned for the Center for Legal and Social Studies in Argentina. She received her B.A. in Political Science from Furman University in 1999 (cum laude). She has authored a variety of publications focusing on issues of LGBTQ equality in child welfare, immigration rights, corporate responsibility, investment disputes, environmental protection and human rights reparations.

Maura McInerney is Legal Director at the Education Law Center-PA ("ELC"), a non-profit legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation and policy advocacy, ELC advances the rights of vulnerable children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness. Since arriving at the Education Law Center in 2007, Ms. McInerney has litigated precedent-setting state and federal cases on behalf of at-risk children, including a class-action lawsuit on behalf of children in foster care which resulted in the dismantling of an inferior, segregated school program and the awarding of compensatory education services. Ms. McInerney engages in legislative and policy work at the national level to improve educational outcomes for children in the foster care and juvenile justice systems through ELC's work as a co-founder of the Legal Center for Foster Care and Education and the Legal Center for Youth Justice and Education.

CONTENTS

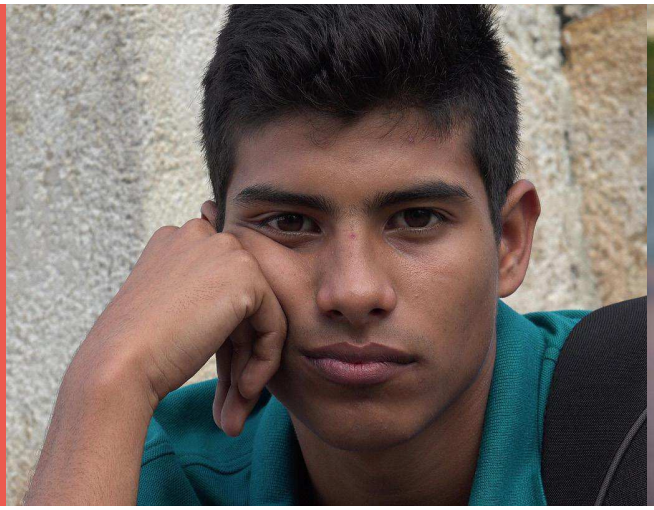
Children in Residential Facilities in Pennsylvania are in Danger

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.[3] 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."[4] 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.[5]

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.[6] 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.[7]

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 Kidspeace's King House a staff member entered a child's bedroom, pushed the child against the wall, and choked the child.[8] At a Woods Services facility, a staff member punched a child in the stomach and chest during a manual restraint.[9]

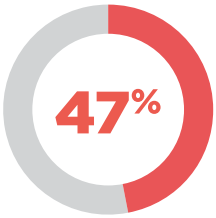
In 2017, there were 25,381 children

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.[11] 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.[12] 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 aged 14 to 21 are placed in a facility compared to 34% nationwide.[13] 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.[14] 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.[15] Another study found that 25.7% of LGBTQ youth lived in a group home, compared with only 10.1% of non-LGBTQ youth.[16] 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.[17] 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[18] 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.[20] Similarly, child residents at Glen Mills lived in facilities that had stained and ripped carpets, cracked and stained ceiling tiles, and torn mattresses.[21]

PA-DHS has the ultimate responsibility for ensuring the safety and well-being of the children entrusted to the state's custody.[22] 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.



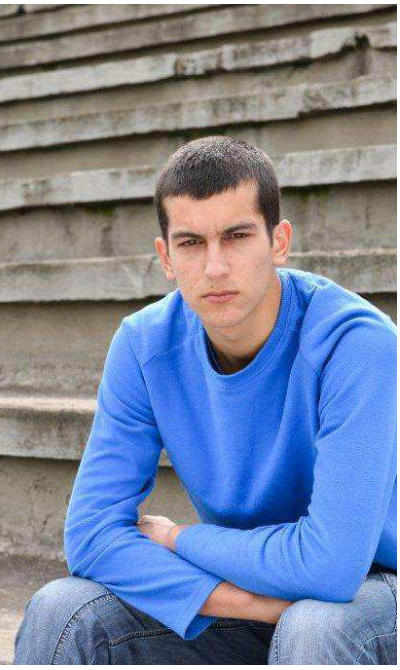
OF PENNSYLVANIA'S CHILDREN IN FOSTER CARE AGED 14 TO 21 ARE PLACED IN A FACILITY

COMPARED TO

34%

NATIONWIDE

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.[36] 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%)[37] and added other facilities mentioned to us by statewide stakeholders that house children from other counties. Although our research does not include every residential facility in the state, nor is it a random sample of Pennsylvania's residential facilities, our findings include nearly half of the facilities in the state and therefore, we believe, broadly reflect risks to which many children are exposed statewide as a result of PA-DHS's patterns and practices.

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.[38] 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%.

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.

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.

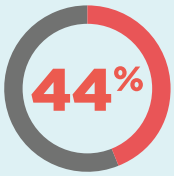
a. The Dangers at a Glance

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

CHILDREN WERE PHYSICALLY MALTREATED
156 TIMES
114 TIMES
BY STAFF
AND
42 TIMES
BY OTHER CHILDREN

THERE WERE
43
SEPARATE INCIDENTS OF
VERBAL MALTREATMENT
BY STAFF

CHILDREN WERE EXPOSED TO INAPPROPRIATE SEXUAL CONTACT
73 TIMES
39 TIMES
BY STAFF
AND
34 TIMES
BY OTHER CHILDREN



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,[39] 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;[40] 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.[41] 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.[42] 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")[43] behavior support and management practices, which promotes positive behavior and protects the safety of both child residents and staff,[44] 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.[45] 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.[46] 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.[47]

In addition, maltreatment of child residents at ***Kidspeace*** is a rampant problem and has been since at least February 2013.[48] 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.[49] Of the thirteen plans of correction for these violations that included any semblance of staff-wide retraining related to behavior with child residents,[50] only four of the plans indicate that the trainings actually occurred.[51] Despite the inadequacy of these plans of correction and their ineffective implementation,

THERE WERE

92

INCIDENTS OF INAPPROPRIATE

RESTRAINT

28

INCIDENTS OF RESTRAINT THAT RESULTED IN

AN INJURY

TO THE CHILD

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 Kidspeace 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 11, 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.[76] 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.[77] 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)[79]
- 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)[80]
- 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)[81]
- 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)[82]
- A staff member grabbed a child by the shirt and shoved the child through a chair. (December 5, 2016 report)[83]
- During a restraint a staff member punched the child in the ribs. (January 12, 2017 report)[84]

Child-on-Child Physical or Sexual Maltreatment

In addition to the staff maltreatment incidents listed above, ***Kidspeace*** fails to adequately oversee and supervise its child residents. Child-on-child sexual assaults are rampant at Kidspeace 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).[85] 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.[86] 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.[87] Instead of including all of these critical components, Kidspeace'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.[88] As stated earlier, despite these inadequate plans of correction, PA-DHS has not revoked a single certificate of compliance for a Kidspeace facility[89] or replaced any facility's certificates of compliance with a provisional certificate. Examples of child-on-child sexual maltreatment at Kidspeace 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)[90]
- A child engaged in non-consensual sexual contact with another child on at least one occasion. (November 16, 2016 report)[91]
- A child forced his/her hands into another child's pants and touched the child in a sexual manner. (December 29, 2016 report)[92]

Despite inadequate plans of correction, PA-DHS has not revoked a single certificate of compliance or replaced it with a provisional certificate.

This entity had at least 21 incidents of child-on-child physical assault or sexual assault inside this three-and-a-half year period. This equates to an incident of child-on-child assault once every other month.

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.[93] This equates to an incident of child-on-child maltreatment once every other month. Despite this frequency of child-on-child maltreatment, PA-DHS never publicly addressed whether the plans of correction related to these violations were adequate nor whether the plans were satisfactorily completed.[94] 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)[95]
- 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)[96]
- 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)[97]
- 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)[98]
- 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)[99]

Inappropriate Use of Restraints

Abraxas is a residential facility with 326 beds.[100] 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[101], 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."[102] After this observation Abraxas was cited for inappropriate use of restraints eleven more times between September 19, 2013 and November 3, 2016.[103] 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.[104] 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.[105] 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 and focusing on retraining staff facility-wide, as is common in a well-functioning child welfare system.[106] As previously mentioned, staff should be retrained with programs and practices like COA's behavior support and management[107] or Therapeutic Crisis Intervention[108] 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.[109] 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]."[110] 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.[111] Each year PA-DHS continues to issue annual certificates of compliance.[112] 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)[113]
- 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)[114]
- Staff used a spit mask[115] on a child's face during an over hour-long restraint. (February 19, 2015 report)[116]
- 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)[117]

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.[118] ***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.[119] 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.[120] 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.[121] 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.[122] Similarly, PA-DHS revoked ***Williams House***'s certificate of compliance on April 14, 2016 due to "mistreatment 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.[123] 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.[124] 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.[125]

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,[126] including thirteen incidents of sexual maltreatment.[127] 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.[128]

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

V. Recommendations

To truly reform these facilities, 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.

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";[129]
- "Take prompt and aggressive action when concerns are raised related to the care of the children for whom they are responsible";[130]
- "Employ a sufficient number of staff members to assure appropriate supervision...";[131]
- "[A]ssure that agencies requesting licensure meet all licensing requirements"; and
- "[A]ssure that deficiencies are corrected in a timely manner."[132]

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."[133] 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."[134]

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."[135] 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.[136]

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.

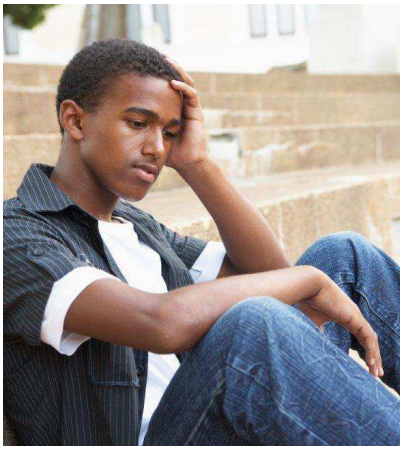
1. PA-DHS must critically evaluate, and revise if necessary, every plan of correction to ensure that it has the best likelihood of quickly and appropriately resolving the issues that brought about the violation.
2. PA-DHS must require that the plans of correction include specific steps to not only correct 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."[137] In addition, "Child care workers should have…sufficient experience in working with children. Other required specialized training may be provided during new employee orientation."[138] COA 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."[139]

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.



IN ALLEGHENY COUNTY FROM 2012 TO 2017, THE NUMBER OF CHILDREN IN [RESIDENTIAL PLACEMENTS]

DECLINED BY 60%

CURRENTLY,

ONLY 5%

OF CHILDREN IN FOSTER CARE IN ALLEGHENY COUNTY ARE PLACED IN RESIDENTIAL FACILITIES.

THE PHILADELPHIA DEPARTMENT OF HUMAN SERVICES

REDUCED

THE NUMBER OF DEPENDENT YOUTH IN CONGREGATE CARE FROM

22%

IN 2013

TO

12%

IN 2018

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;[140] have insufficient caregiving;[141] have reduced interaction with adults;[142] lack normal relationships with caregivers due to shift work;[143] and have deficits in motor skills, sensory processing, language production, and language comprehension development.[144] When residential placements are unnecessary, such placements can cause physical and non-physical harm to children in foster care.[145] 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.[146] 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

Allegheny 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%."[147] 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.[148]

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.[149] A similar improvement was made in the juvenile justice system with a 36% reduction in congregate care placements since 2015.[150] 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.[151] 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.[152] This often leads to a lifetime of unemployment, under-employment, and homelessness.[153]

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.[154] 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.[155] 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.[156] 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.[157] 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.[158] 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.[159] Moreover, the percentage of recent U.S. high school graduates enrolled in college in 2015 was 69.2%.[160] 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.[161] 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.[162]

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.

II. The Legal Landscape in PA: Educational Rights of Children in Residential Placements

CHILDREN LOSE

6-8 MONTHS

OF ACADEMIC PROGRESS WITH EACH SCHOOL MOVE

EVEN

ONE FEWER SCHOOL CHANGE

MAKES A HIGH SCHOOL STUDENT

1.8 TIMES

MORE LIKELY TO OBTAIN A DIPLOMA

All children in residential facilities have a clear legal entitlement to attend the local public school where the residential placement is located.[163] 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.[164] 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.[165]

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."[166] 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.[167]

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[168] 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.[169] The child's parent, guardian, or other legally authorized educational decision maker must make each school placement decision.[170] 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.[171]

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.[172] 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).[173] 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.[174] A child must make meaningful progress in light of the child's potential.[175]

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.[176] This is an important legal entitlement because children in such settings typically experience multiple placement changes, undermining academic progress with each school change.[177] It is estimated that children lose six to eight months of academic progress with each school move.[178] 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.[179]

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.[180] Seventy-one percent of youth in residential placements surveyed for the 2011 report stated that they attended on-site schools.[181] Fifty-six percent of providers reported that "none" or "less than 10 percent" attended public school.[182] Over 62% of child welfare professionals reported that their clients were "refused" enrollment by public schools.[183] At the time of the survey, there were over 6,200 children in residential placements across Pennsylvania.[184] According to a 2013 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.[185]

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.[186] 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.[187] 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.[188]

Accordingly, while their peers attend public schools, which must meet state educational standards,[189] 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.[190] This prevents them from developing critical skills, building knowledge, and staying on track to graduate.[191] 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.[192] Such inferior programs make it virtually impossible for students to stay on track to graduate. Coursework may be non-transferrable 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.[193] 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.[194]

On-grounds schools also often lack essential resources and services required to educate these children and youth.[195] In some cases, youth spend their days completing worksheets or engaging exclusively in online credit programs with minimal or no live instruction.[196] Many parents or education decision makers are never apprised of a child's legal right to attend a public school under the Pennsylvania School Code.[197] 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.[198]

OVER

62%

OF CHILD WELFARE PROFESSIONALS REPORTED THAT THEIR CLIENTS WERE

"REFUSED"

ENROLLMENT BY PUBLIC SCHOOLS

78.6%

REPORTED THAT CHILDREN IN RESIDENTIAL PLACEMENTS

"SOMETIMES"

OR

"RARELY"

ACCESSED LOCAL PUBLIC SCHOOLS

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.[199] Moreover, students with disabilities are more likely to be placed in residential facilities and are particularly harmed when educated onine or through a one-size-fits-all on-grounds school, both of which fail to differentiate instruction.[200]

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.[201] 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,[202] 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.[203]

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,[204] 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.[205]

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

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

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.[206] 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."[207] The May 2013 Report entitled *Review of Outside Educational Institutions*[208] (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 "**[l]ack 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).[209] 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.[210] Specifically, the evaluation found that none of the host school districts reviewed for the report had educated Philadelphia students in regular school district classrooms.[211] Two school districts merely "pass[ed]-through invoices from providers" and only one Intermediate Unit[212] actively participated in the special education process.[213] 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.[214] 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.[215]

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.*[216]

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.[217]

Unfortunately, while some gains have been made with regard to reintegration 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.

85%

OF YOUTH AND

OVER

50%

OF CHILD WELFARE PROFESSIONALS SURVEYED REPORTED

DIFFICULTIES TRANSFERRING CREDITS

EARNED AT ON-GROUNDS SCHOOLS TO PUBLIC SCHOOLS

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.[218]

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.[219] 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.[220]

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.[221]

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.[222] 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.

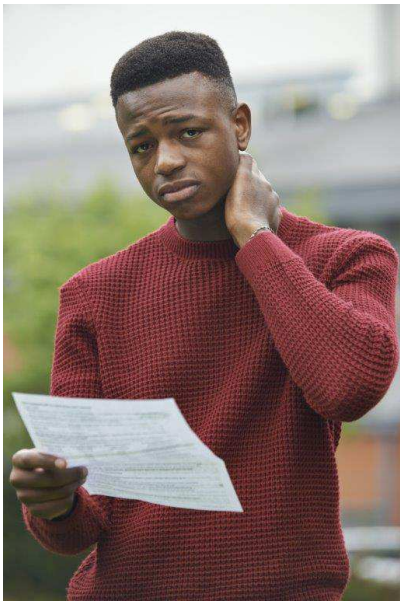
First, **Pennsylvania's Department of Education** must take a proactive role to ensure the education rights and legal entitlements of these children.

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 publicly-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.[223] 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.[148]

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.[222] 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.

a. 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 publicly-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.

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c. 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.

d. 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.[223] 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.

CHILDREN'S RIGHTS
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ENDNOTES

1. All Pennsylvania Violation Reports assign an alphabetical or numerical tag to residents and staff who are involved in incidents to protect the identities of those individuals.

2. Violation report from Child First, Williams House, December 20, 2017.

3. Violation Report from Wordsworth Academy, April 20, 2016.

4. The Inquirer Editorial Board, *State DHS Shares Blame for Teen's Death*, The Inquirer (Apr. 24, 2017, 3:52 PM), http://www2.philly.com/philly/opinion/editorials/state-dhs-shares-blame-for-teens-death.html.

5. *Id.*

6. Child Welfare Information Gateway, Developing a trauma-informed child welfare system, U.S. Dep't of Health and Human Servs., Children's Bureau. Washington, (2015).

7. This approach is known as "trauma-informed" practice. The Chadwick Trauma-Informed Systems Project, *Creating Trauma-Informed Child Welfare Systems: A Guide for Administrators* (2012), http://www.lacdcfs.org/katiea/docs/Trauma_Informed_CW_Systems_Guide.pdf.

8. Violation Report from Kidspeace National Centers, Inc., King House, May 19, 2015.

9. Violation Report from Woods Services, Inc., 12 Pinebrook Drive, Mar. 1, 2017.

10. State of Child Welfare 2018, Pa. Partnerships for Children 2018, 2 (2018) https://www.papartnerships.org/wp-content/uploads/2018/03/2018-SOCW-Pennsylvania-July-2018.pdf.

11. *State of Child Welfare 2018*, Pa. Partnerships for Children 2018, (2018), https://www.papartnerships.org/wp-content/uploads/2018/03/2018-SOCW-Pennsylvania-July-2018.pdf; *Human Services Provider Directory*, Pa. Dep't of Human Servs. (last updated Nov. 13, 2018),http://dhs.pa.gov/citizens/searchforprovider/humanservicesproviderdirectory/index.htm (select "Residential" for Service Code and select "Office of Children & Youth County Children & Youth Agencies" for Program Office).

12. Group homes are defined as a licensed or approved setting that provides 24 hour care for children in a small group setting that generally has from seven to twelve children. Institutions are defined as a licensed or approved setting that provides 24 hour care for 12 or more children. *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2009-2013*, National Conference of State Legislatures, http://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx (last visited Nov. 20, 2018).

13. *2018 Pennsylvania Profile Transition-Age Youth in Foster Care*, The Annie E. Casey Foundation 3 (2018), https://www.aecf.org/m/resourcedoc/pennsylvania-fosteringyouthtransitions-2018.pdf.

14. From data analysis using data from the Adoption and Foster Care Analysis and Reporting System, Foster Care File 2016.

15. Christina Wilson Remlin et al., , *Safe Havens: Closing the Gap between Recommended Practice and Reality for Transgender and Gender-Expansive Youth in Out-of-Home Care*, Children's Rights, Lambda Legal, & Ctr. for the Study of Soc. Policy 2 (2017).

16. It is not possible to calculate similar percentages for Pennsylvania because Pennsylvania does not keep data on LGBT and gender-nonconforming youth who are placed in foster care. Bianca D.M. Wilson, Khush Cooper, Angeliki Kastanis, Sheila Nezhad, *Sexual & Gender Minority Youth in Los Angeles Foster Care*, in Los Angeles Foster Youth Study Final Report, The Williams Institute 3 (2014) http://www.casala.org/pdfs/SexandGenderMinority.pdf; Karen U. Lindell & Leola Hardy, *Philly should reduce reliance on institutional placements for youth*, The Inquirer, Nov. 8, 2018, http://www2.philly.com/philly/opinion/commentary/juvenile-detention-institutionalization-glen-mills-wordsworth-philadelphia-task-force-20181108.html.

17. Nora Sydow & Melinda Taylor, *Every Kid Deserves a Family: Safely reducing reliance on group home placements for children in the child welfare system*, National Center for State Courts, 5 https://www.ncsc.org/-/media/Microsites/Files/Every%20Kid/Judicial_Toolkit.ashx.

18. 24 P.S. § 13-1306

19. The Inquirer Editorial Board, *State DHS Shares Blame for Teen's Death*, The Inquirer (Apr. 24, 2017, 3:52 PM), http://www2.philly.com/philly/opinion/editorials/state-dhs-shares-blame-for-teens-death.html.

20. Violation Report for Catholic Social Services, St. Gabriel's Hall, April 28, 2016.

21. Violation Report for Glen Mills School, Madison Hall, April 18, 2016; Violation Report for Glen Mills School, Van Buren Hall, April 18. 2016.

22. Overview of Pennsylvania's Child Welfare System: Joint Hearing Before the S. Aging and Youth Comm. and the S. Pub. Health and Welfare Comm., 2 (Pa. 2013) (statement by Beverly Mackereth, Acting Sec'y, Dep't of Pub. Welfare).

23. Overview of Pennsylvania's Child Welfare System: Joint Hearing Before the S. Aging and Youth Comm. and the S. Pub. Health and Welfare Comm., 2 (Pa. 2013) (statement by Beverly Mackereth, Acting Sec'y, Dep't of Pub. Welfare).

24. Pennsylvania defines a residential facility as any premises that is operated in a 24-hour living setting in which care is provided for children who are not relatives of the facility operator. 55 Pa Code § 3800.2(d)(1).

25. 55 Pa Code § 3800.4(a).

26. 55 Pa Code § 20.53.

27. 55 Pa. Code § 3800.32 (a).

28. *Id.*

29. 55 Pa. Code § 3800.32(c).

30. 55 Pa. Code § 3800.202.

31. 55 Pa Code § 20.71(a).

32. Alice Bussiere, Youth Law Ctr., State Policies on Non-Family Foster Care Settings, 8 (2015), http://www.ylc.org/wp/wp-content/uploads/State%20Policies%20on%20Non-Family%20Foster%20Care%20Settings%20(July%202015).pdf.

33. Human Services Provider Directory, Pa. Dep't of Human Servs. (last updated Nov. 13, 2018), http://dhs.pa.gov/citizens/searchforprovider/humanservicesproviderdirectory/index.htm (select "Residential" for Service Code and select "Office of Children & Youth County Children & Youth Agencies" for Program Office). 55 Pa. Code § 20.37.

34. 55 Pa. Code § 20.37.

35. *Human Services Provider Directory*, Pa. Dep't of Human Servs. (last updated Nov. 13, 2018), http://dhs.pa.gov/citizens/searchforprovider/humanservicesproviderdirectory/index.htm (select "Residential" for Service Code and select "Office of Children & Youth County Children & Youth Agencies" for Program Office).

36. *Human Services Provider Directory*, Pa. Dep't of Human Servs. (last updated Nov. 13, 2018), http://dhs.pa.gov/citizens/searchforprovider/humanservicesproviderdirectory/index.htm (select "Residential" for Service Code and select "Office of Children & Youth County Children & Youth Agencies" for Program Office).

37. From data analysis using data from the Adoption and Foster Care Analysis and Reporting System, Foster Care File 2016.

38. The 16 categories do not represent all areas of concern, including but not limited to, strip searches or the use of restraints in classrooms, as they are not documented in violation reports.

39. 55 Pa. Code § 3800.202(c).

40. 55 Pa. Code § 3800.211(d).

41. Violation Reports for Alternative Rehabilitation Communities: Alternative Rehabilitation Communities 339470, July, 24, 2014; Alternative Rehabilitation Communities 339470. Jan. 8, 2015; Gloria J Zimmerman Group Home, Jan. 30, 2013; Shaffner Youth Center, Apr. 8, 2018; Shaffner Youth Center, May 7, 2015; Shaffner Youth Center, Dec. 7, 2016; Susquehanna Trail Group Home, Jan. 16, 2014; Susquehanna Trail Group Home, Mar. 18, 2014; Susquehanna Trail Group Home, June 12, 2014; Woodlawn Group Home, Jan. 14, 2014.

42. *Id.*

43. The Council on Accreditation is a preeminent international, independent, nonprofit, human service accrediting organization.

44. Council on Accreditation, Behavior Support and Management 1 (2006) ("Effective behavior support and management practices center around preemptive interventions, such as identifying challenging behaviors and working with the service recipient and their support systems to create practical solutions in order to minimize the need for crisis interventions... to the greatest extent possible. A culture that promotes respect, healing, and positive behavior, and provides individuals with the support they need to manage their own behaviors, can help prevent the need for crisis interventions... Training for personnel is an essential component of maintaining a safe work and service environment.").

45. Residential Child Care Project, *TCI System Overview*, Cornell Univ. Coll. of Human Ecology (2016), http://rccp.cornell.edu/tci/tci-1_system.html ("The purpose of the TCI system is to provide a crisis prevention and intervention model for residential child care organizations that will assist in: Preventing crises from occurring, de-escalating potential crises, effectively managing acute crises, reducing potential and actual injury to children and staff, learning constructive ways to handle stressful situations, and developing a learning circle within the organization.").

46. This total number of plans of correction that addressed staff-wide trainings does not include plans of correction that focused on trainings or instructions to recognize or report maltreatment after the maltreatment had already occurred. Violation Report for Alternative Rehabilitation Communities, Shaffner Youth Center, Apr. 8, 2015.

47. Violation Reports for Alternative Rehabilitation Communities: Alternative Rehabilitation Communities 339470, July, 24, 2014; Gloria J Zimmerman Group Home, Jan. 30, 2013; Susquehanna Trail Group Home, June 12, 2014; Woodlawn Group Home, Jan. 14, 2014.

48. Violation Report for Kidspeace, Fulton House, Feb. 19, 2013.

49. Violation Reports for Kidspeace: Bell House, Aug. 21, 2013; Bell House, Aug. 2, 2016; Bell House, Oct. 19, 2016; Bell House, Jan. 1, 2018; Edison House, Aug. 21, 2013; Franklin House, July 18, 2017; Franklin House, Feb. 14, 2018; Fulton House, Feb. 19, 2013; Fulton House, Jan. 30, 2017; Jefferson House, Aug. 16, 2016; King House, July 15, 2013; King House, May, 19, 2015; Marconi House, May 1, 2018; Marconi House, July 15, 2013; Pioneer House, Dec. 9, 2015; Pioneer House, July 8, 2016; Pioneer House, Oct. 19, 2016; Pioneer House, Mar. 10, 2017; Revere House Diagnostic Center, Feb. 1, 2016; Revere House Diagnostic Center, Oct. 19, 2016; Revere House Diagnostic Center, Feb. 28, 2018; Wright House, July 9, 2014; Wright House, Aug. 2, 2016; Wright House, June 22, 2017; Wright House, Feb. 14, 2018 (hereinafter "All Kidspeace Violation Reports Concerning Child Maltreatment"); Council on Accreditation, *supra* note 35; Residential Child Care Project, *supra* note 36.

50. Violation Reports for Kidspeace: Bell House, Oct. 19, 2016; Bell House, Jan. 2, 2018; Edison House, Aug. 21, 2013; Franklin House, July 18, 2017; Franklin House, Feb. 14, 2018; Fulton House, Feb. 19, 2013; Fulton House, Jan. 1, 2017; Jefferson House, Aug. 16, 2016; King House, May 19, 2015; Pioneer House, Dec. 9, 2015; Pioneer House, July 8, 2016; Pioneer House, Oct 19, 2016; Revere House Diagnostic Center, Feb. 28, 2018.

51. Violation Reports for Kidspeace: Bell House, Oct. 19, 2016; Fulton House, Jan. 1, 2017; Pioneer House, July 8, 2016.

52. All Kidspeace Violation Reports Concerning Child Maltreatment, *supra* note 40.

53. Violation Reports for Kidspeace: Bell House, Aug. 21, 2013; Oct. 19, 2016; Bell House, Jan. 1, 2018; Edison House, Aug. 21, 2013; Franklin House, Feb. 14, 2018; Fulton House, Jan. 30, 2017; King House, July 15, 2013; King House, May, 19, 2015; Pioneer House, Dec. 9, 2015; Pioneer House, July 8, 2016; Pioneer House, Mar. 10, 2017; Revere House Diagnostic Center, Oct. 19, 2016; Revere House Diagnostic Center, Feb. 28, 2018; Wright House, Aug. 2, 2016; Wright House, June 22, 2017; Wright House, Feb. 14, 2018.

54. Violation Reports for Kidspeace: Bell House, Aug. 21, 2013; Bell House, Aug. 2, 2016; Franklin House, July 18, 2017; Fulton House, Jan. 30, 2017; Jefferson House, Aug. 16, 2016; Marconi House, May 1, 2018; Marconi House, July 15, 2013; Pioneer House, July 8, 2016; Pioneer House, Oct. 19, 2016.

55. Violation Reports for Kidspeace: Fulton House, Feb. 19, 2013; Revere House Diagnostic Center, Feb. 1, 2016; Wright House, July 9, 2014.

56. Violation Report for Kidspeace, King House, May 19, 2015.

57. Violation Report for Kidspeace, Pioneer House, December 9, 2015.

58. Violation Report for Kidspeace, Pioneer House, July 8, 2016.

59. Violation Report for Kidspeace, Wright House, August 2, 2016.

60. Violation Report for Kidspeace, Bell House, October 19, 2016.

61. Violation Report for Kidspeace, Revere House, October 19, 2016.

62. Violation Report for Kidspeace, Pioneer House, October 19, 2016.

63. Violation Report for Kidspeace, Fulton House, January 30, 2017.

64. Violation Report for Kidspeace, Fulton House, January 30, 2017.

65. Violation Report for Kidspeace, Pioneer House, April 10, 2017.

66. Violation Report for Kidspeace, Wright House, June 22, 2017.

67. Violation Report for Kidspeace, Franklin House, July 18, 2017.

68. Violation Reports for Woods Services: 355 Roebling Drive, September 3, 2013; 361 South Bellevue Ave, Feb. 11, 2014; 32 Sandalwood Circle, April 2, 2014; 357 Roebling Drive, Jan. 12, 2015; 15 Fox Wood Lane, Sept. 22, 2015; 24 Elmwood Drive, Sept. 22, 2015; 9 Willow Way, June 27, 2016; 12 Pinebrook Drive, Sept. 6, 2016; 19 Sandalwood Circle, Oct. 12, 2016; 354 Roebling Drive, Nov. 12, 2016; 12 Pinebrook Drive, Nov. 26, 2016; 16 Woodlands Drive Dec. 19, 2016; 12 Pinebrook Drive, March 1, 2017; 355 Roebling Drive March 16, 2017; 29 A&B Sandalwood Circle Nov. 9, 2017.

69. Violation Reports for Woods Services: 12 Pinebrook Drive, Sept. 6, 2016; 12 Pinebrook Drive, Nov. 26, 2016; 12 Pinebrook Drive, March 1, 2017.

70. *E.g.*, Violation Report for Woods Services 12 Pinebrook Drive, March 1, 2017 at 3

71. Violation Report for Woods Services: 355 Roebling Drive, Sept. 3, 2013; 361 South Bellevue Ave., Feb. 11, 2014; 9 Willow Way, June 27, 2016; 19 Sandalwood Circle, Oct. 12, 2016; 355 Roebling Drive, March 16, 2017.

72. Violation Report for Woods Services, 12 Pinebrook Drive, Sept. 6, 2016.

73. Violation Report for Woods Services, 16 Woodlands Drive, Dec. 19, 2016.

74. Violation Report for Woods Services, 17 Woodlands Drive, Feb. 8, 2017.

75. Violation Report for Woods Services, 12 Pinebrook Drive, March 1, 2017.

76. In 2000 Glen Mills had multiple incidents where staff refused access to DHS investigators and state police. Although these egregious incidents occurred 18 years ago, it is important to note that Glen Mills' leadership, who are directly implicated in this inspection summary, did not change as a result of these incidents and Glen Mills continued to receive its regular certificate of compliance.

The Licensing/Approval/Registration Inspection states that "On February 11, 2000… The department conducted a site visit in response to an allegation of child abuse. The departmental staff person was accompanied by two state police officers. During the course of the investigation several other allegations of child abuse were received…A state police officer requested access to a child in order to privately interview the child relating to allegations of child abuse. Access to the facility and the child was repeatedly denied and physically obstructed by Unit Leader and several other Glen Mills staff, even following explanation by the state police officer that they were obstructing a police investigation of a crime. Although access to the facility continued to be denied, the state police officer eventually located the child and removed him from his living unit, Van Buren Hall, and placed the child in a police vehicle. While seated inside the police vehicle with a state police officer, at least three Glen Mills staff members, including Chief Executive Officer, began to yell at the child and the officer. Mr.----- and other Glen Mills staff threatened the state police officer with aggressive movements and speech. Both ---------- and the staff became increasingly belligerent. The state police officer threatened arrest of the Glen Mills staff if they did not back away. Fearing for the safety of the child and himself, the officer left the facility grounds and took the child to the state police barracks in order to ensure continued safety. At the request of the state police officer, about six to eight additional state police personnel arrived at the scene to assist departmental staff in carrying out its statutory duties. On March 16, 2000 the facility again prevented departmental staff and one state police officer access to five children. On the same date, the facility denied the department and state police the opportunity to privately interview one child. Access and the opportunity to privately interview these children was denied by Chief Executive Officer, Unit Leader, and other Glen Mills staff." Buchanan Hall Upper I, December 23, 2013 Report, 15-22

77. Violation Reports for Glen Mills: Van Buren Hall March 10, 2014; Hayes Hall, June 2, 2014; Jefferson Fillmore Hall, July 3, 2014; Tyler Hall, Nov. 7, 2014; Jefferson Fillmore Hall, Dec. 10, 2014; McKinley Hall, March 23, 2015; Jefferson Fillmore Hall Nov. 11, 2015; Madison Hall, July 26, 2016; Jackson Polk Hall Sept. 20, 2016; Tyler Hall, Oct. 11, 2016; Jefferson Fillmore Hall, Dec. 5, 2016; McKinley Hall Jan. 12, 2017.

78. Violation Report for Glen Mills, Buchanan Hall Upper 1, Dec. 23, 2013.

79. Violation Report for Glen Mills, Hayes Hall, June 2, 2014.

80. Violation Report for Glen Mills, Jefferson Fillmore Hall, July 3, 2014.

81. Violation Report for Glen Mills, Jefferson Fillmore Hall, Dec. 10, 2014.

82. Violation Report for Glen Mills, Jackson Polk Hall, Sept. 20, 2016.

83. Violation Report for Glen Mills, Jefferson Fillmore Hall, Dec. 5, 2016.

84. Violation Report for Glen Mills, McKinley Hall, Jan. 12, 2017.

85. Violation Reports for Kidspeace: Franklin House June 9, 2015; Pioneer House Sept. 17, 2015; Pioneer House Feb. 1, 2016; Pioneer House Oct. 19, 2016; Jackson House Nov. 16, 2016; Jefferson House Dec. 29, 2016; Fulton House Feb. 13, 2017; Bell House April 10, 2017.

86. This total number of plans of correction that addressed staff-wide trainings does not include plans of correction that focused on trainings or instructions to recognize or report maltreatment after the maltreatment had already occurred. Violation Reports for Kidspeace: Franklin House June 9, 2015; Pioneer House Sept. 17, 2015; Pioneer House Feb. 1, 2016; Pioneer House Oct. 19, 2016; Jackson House Nov. 16, 2016; Jefferson House Dec. 29, 2016; Fulton House Feb. 13, 2017; Bell House April 10, 2017.

87. Child Welfare League of America, Standards of Excellence for Residential Services, 1.6 Characteristics of Residential Treatment Programs.

88. Violation Reports for Kidspeace: Franklin House June 9, 2015; Pioneer House Sept. 17, 2015; Pioneer House Feb. 1, 2016; Pioneer House Oct. 19, 2016; Jackson House Nov. 16, 2016; Jefferson House Dec. 29, 2016; Fulton House Feb. 13, 2017; Bell House April 10, 2017.

89. *See* Violation Reports for Kidspeace, June 9, 2015 – April 10, 2017.

90. Violation Report for Kidspeace, Franklin House, June 9, 2015.

91. Violation Report for Kidspeace, Jackson House, Nov. 16, 2016.

92. Violation Report for Kidspeace, Jefferson House, Dec. 29, 2016.

93. Violation Reports for Child First: Progress House, April 16, 2013; Renaissance House, Dec. 27, 2013; Williams House, April 4, 2016; Meridian Group Home, May 5, 2016; Doris Clark House, June 9, 2016; Integrity House, June 9, 2016; Summit House, June 9, 2016; Unity House Feb. 2, 2015; Integrity House July 10, 2015; Victory House, Dec. 2, 2015; Glenn Clark House, April 4, 2016; Doris Clark House, Oct. 17, 2016; Integrity House, Oct. 17, 2016; Victory House, Oct. 24, 2016.

94. *Id.*

95. Violation Report for Child First, Integrity House, July 10, 2015.

96. Violation Report for Child First, Victory House, Dec. 2, 2015.

97. Violation Report for Child First, Doris Clark House, Oct. 17, 2016

98. Violation Report for Child First, Glen Clark House, April 4, 2016.

99. Violation Report for Child First, Williams House, April 4, 2016.

100. Violation Reports for Abraxas: Abraxas Open Residential, April 24, 2018; Abraxas Youth Center, April 24, 2018; Cornell-1 Dakota Dorm 4, Feb. 20, 2018; Cornell-Academy Shelter Program, June 25, 2018; Cornell-Evergreen Dorm 3, Feb. 20, 2018; Cornell-Explorer Dorm 5, Feb. 20, 2018; Cornell-1 Mohican Dorm, Feb. 20, 2018; Cornell-Pioneer Dorm 1, Feb. 20, 2018; Cornell-Seneca Dorm, Feb. 20, 2018; Leadership Development Program, April 24, 2018; Leadership Development Program Female Unit, April 24, 2018.

101. Violation Reports for Abraxas: Cornell-1 Dakota Dorm 4, May 3, 2010; Cornell-Evergreen Dorm 3, May 3, 2010; Cornell-Explorer Dorm 5, May 3, 2010; Cornell-I Mohican Dorm, May 3, 2010; Cornell-Pioneer Dorm 1, May 3, 2010; Cornell-Seneca Dorm, May 3, 2010; Cornell-1 Dakota Dorm 4, April 11, 2011; Cornell-Evergreen Dorm 3, April 11, 2011; Cornell-Explorer Dorm 5, April 11, 2011; Cornell-I Mohican Dorm, April 11, 2011; Cornell-Pioneer Dorm 1, April 11, 2011; Cornell-Seneca Dorm, April 11, 2011; Cornell-1 Dakota Dorm 4, Sept. 19, 2013; Cornell-1 Dakota Dorm 4, May 28, 2014; Abraxas Youth Center, July 7, 2014; Abraxas Youth Center, Aug. 28, 2014; Cornell-Academy Shelter Program, July 14, 2015; Cornell-Academy Shelter Program, Aug. 31, 2015; Cornell-Academy Shelter Program, Nov. 3, 2016; Cornell-1 Dakota Dorm 4, May 10, 2017

102. *E.g.*, Violation Report for Abraxas, Cornell-1 Dakota Dorm 4, April 11, 2011.

103. Violation Reports for Abraxas: Cornell-1 Dakota Dorm 4, Sept. 19, 2013; Cornell-1 Dakota Dorm 4, May 28, 2014; Abraxas Youth Center, July 7, 2014; Abraxas Youth Center, Aug. 28, 2014; Cornell-Academy Shelter Program, July 14, 2015; Cornell-Academy Shelter Program, Aug. 31, 2015; Cornell-Academy Shelter Program, Nov. 3, 2016.

104. *Id.*

105. Violation Reports for Abraxas: Cornell-1 Dakota Dorm 4, May 3, 2010; Cornell-Evergreen Dorm 3, May 3, 2010; Cornell-Explorer Dorm 5, May 3, 2010; Cornell-I Mohican Dorm, May 3, 2010; Cornell-Pioneer Dorm 1, May 3, 2010; Cornell-Seneca Dorm, May 3, 2010; Cornell-1 Dakota Dorm 4, April 11, 2011; Cornell-Evergreen Dorm 3, April 11, 2011; Cornell-Explorer Dorm 5, April 11, 2011; Cornell-I Mohican Dorm, April 11, 2011; Cornell-Pioneer Dorm 1, April 11, 2011; Cornell-Seneca Dorm, April 11, 2011; Cornell-1 Dakota Dorm 4, Sept. 19, 2013; Cornell-1 Dakota Dorm 4, May 28, 2014; Abraxas Youth Center, July 7, 2014; Abraxas Youth Center, Aug. 28, 2014; Cornell-Academy Shelter Program, July 14, 2015; Cornell-Academy Shelter Program, Aug. 31, 2015; Cornell-Academy Shelter Program, Nov. 3, 2016; Cornell-1 Dakota Dorm 4, May 10, 2017.

106. *Id.*

107. Council on Accreditation Behavior Support and Management, BSM 4: Restricting Behavior Management Training (2018) at 24-25

108. *TCI System Overview*, Residential Child Care Project, Cornell University College of Human Ecology (2016), http://rccp.cornell.edu/tci/tci-1_system.html.

109. Violation Reports for George Junior: Special Needs XIV Sept. 18, 2014; CIU North Feb. 19, 2015; Intensive Supervision Unit I, Feb. 19, 2015; Intensive Unit I, June 5, 2015; Intensive Supervision Unit III, Nov. 5, 2015; CIU South, Dec. 22, 2015; Intensive Supervision Unit III, Dec. 22, 2015; Phillips Cottage, April 25, 2016.

110. *Id.*; Violation Report for George Junior, CIU North, Feb. 19, 2015 at 3.

111. *See* Violation Reports for George Junior: Dec. 7, 2009 – April 29, 2018.

112. *Id.*

113. Violation Report for George Junior, Intensive Supervision Unit I, Feb. 19, 2015.

114. Violation Report for George Junior, Intensive Supervision Unit I, Feb. 19, 2015.

115. A spit mask is a restraint device intended to prevent someone from spitting or biting. The use of the spit mask was considered to have violated the child's right to be treated with fairness, dignity, and respect.

116. Violation Report for George Junior, CIU North, Feb. 19, 2015.

117. Violation Report for George Junior, CIU South, Dec. 22, 2015.

118. PA-DHS has closed at least two facilities due to dangerous conditions: Wordsworth Academy and VisionQuest shelter in Northern Philadelphia. Jeff Gammage, *Accused of harming children at its North Philly shelter, VisionQuest now plans to house immigrant youth here*, The Inquirer, Oct. 26, 2018, http://www2.philly.com/philly/news/visionquest-immigrant-children-philadelphia-shelter-abuse-20181026.html.

119. Violation Reports for Child First: Glenn Clark House, April 4, 2016; Glenn Clark House Dec. 20, 2017; Williams House, April 4, 2016; Williams House Dec. 20, 2017.

120. Violation Report for Child First: Glenn Clark House, April 4, 2016.

121. Violation Report for Child First: Glenn Clark House, Dec. 20, 2017.

122. *Id.*

123. Violation Report for Child First: Williams House, April 4, 2016.

124. Violation Report for Child First: Williams House, Dec. 20, 2017.

125. *Id.*

126. Violation Reports for Children's Home of Easton, Cordina Cottage: March 23, 2015; June 30, 2015; Sept. 21, 2015; Jan. 12, 2016; Sept. 19, 2016; Oct. 12, 2016.

127. Violation Reports for Children's Home of Easton, Cordina Cottage: June 30, 2015; Sept. 21, 2015; Jan. 12, 2016; Sept. 19, 2016; Oct. 12, 2016.

128. Violation Reports for Children's Home of Easton, Cordina Cottage: June 26, 2016; June 11, 2018.

129. Child Welfare League of America Standards of Excellence for Services for Abused or Neglected Children and Their Families, 6.3 Program Design, Implementation, and Monitoring, 1999, at 179.

130. *Id.*

131. *Id.*

132. *Id.*, at 183-84.

133. *Id.*, at 184.

134. *Id.*

135. Council on Accreditation Performance and Quality Improvement, PA-PQI 9: Contract Monitoring and Quality Improvement (2018) at 40.

136. Council on Accreditation Performance and Quality Improvement, PA-PQI 9.04: Contract Monitoring and Quality Improvement (2018) at 44.

137. Child Welfare League of America Standards of Excellence for Residential Services, 1.3 Attributes of all types of residential service (2004) at 38.

138. Child Welfare League of America Standards of Excellence for Residential Services, 1.3 Attributes of all types of residential service (2004) at 38.

139. Council on Accreditation Residential Treatment Services, RTX 22.03: Personnel (2018) at 102-103.

140. Charles H. Zeanah, Anna T. Smyke, & Lisa D. Settles, *Orphanages as a Developmental Context for Early Childhood* (Feb. 2006), in Blackwell Handbook of Early Childhood Development 424-454 (Kathleen McCartney & Deborah Phillips, 2008)

141. *Id.*

142. *Id.*

143. *Id.*

144. J. Wilbarger, M. Gunnar, M. Schneider, & S. Pollak, *Sensory Processing in Internationally Adopted, Post-Institutionalization Children*, 51(10) Journal of Child Psychology and Psychiatry 1105-14 (Oct. 2010); National Scientific Council on the Developing Child, *The Science of Neglect: The Persistent Absence of Responsive Care Disrupts the Developing Brain* 2-9 (Center on the Developing Child, Harvard University, Working Paper No. 12, Dec. 2012), http://developingchild.harvard.edu/wp-content/uploads/2012/05/The-Science-of-Neglect-The-Persistent-Absence-of-Responsive-Care-Disrupts-the-Developing-Brain.pdf; Charles H. Zeanah, C.A. Nelson, N.A. Fox, Anna T. Smyke, P. Marshall, S.W. Parker, & S. Koga, *Designing Research to Study the Effects of Institutionalization on Brain and Behavioral Development: The Bucharest Early Intervention Project*, 15(4) Development and Psychopathology 885-907 (2003); Lisa Albers, Dana E. Johnson, Margaret K. Hostetter, et al., *Health of Children Adopted From the Soviet Union and Eastern Europe: Comparison With Preadoptive Medical Records*, 278(11), JAMA 922-24 (Sept. 1997); Jennifer Windsor, Joan P. Benigno, Christine A. Wing, Patrick J. Carroll, Sebastian F. Koga, Charles A. Nelson III, Nathan A. Fox, Charles H. Zeanah, *Effect of Foster Care on Young Children's Language Learning*, 82(4) Child Development 1040-46 (June 2011).

145. Ira Lustbader & Elissa Glucksman Hyne, *The Urgent Need to Disrupt Structural Violence Against Children in American Foster Care*, in Violence Against Children: Making Human Rights Real 313-333 (Gertrude Lenzer, 2018).

146. *Every Kids Needs a Family*, The Annie E. Casey Foundation, 2, 9 (2015) https://www.aecf.org/m/resourcedoc/aecf-EveryKidNeedsAFamily-2015.pdf.

147. Claire Chiamulera, *Reducing Congregate Care Placements: Strategies for Judges and Attorneys*, American Bar Association (Sept. 20, 2018), https://www.americanbar.org/groups/child_law/resources/child_law_practiceonline/january-december-2018/reducing-congregate-care-placements--strategies-for-judges-and-a/

148. *Id.*

149. Amending Fair Criminal Record Screening Standards and Authorizing the Committee to Hold Public Hearings Reviewing the Quality of Residential Placements: Hearing on Comm. B. 180368 & Comm. Res. 171142, Before the Council of the City of Philadelphia Committee on Children and Youth 79:3-10, 91:9-92:13 (Pa. May 17, 2018) (testimony of Cynthia Figueroa, Philadelphia DHS Commissioner) http://legislation.phila.gov/transcripts/Public%20Hearings/children/2018/cy051718.pdf (the Commissioner defined "congregate care" as an umbrella term for residential placement, including institutional facilities, group homes and emergency shelters).

150. Amending Fair Criminal Record Screening Standards and Authorizing the Committee to Hold Public Hearings Reviewing the Quality of Residential Placements: Hearing on Comm. B. 180368 & Comm. Res. 171142 ,Before the Council of the City of Philadelphia Committee on Children and Youth 79:20-23 (Pa. May 17, 2018) (testimony of Cynthia Figueroa, Philadelphia DHS Commissioner) http://legislation.phila.gov/transcripts/Public%20Hearings/children/2018/cy051718.pdf.

151. National Working Group on Foster Care and Education, *Fostering Success in Education: National Fact Sheet on the Educational Outcomes of Children in Foster Care*, Legal Center for Foster Care and Education 7 (April 2018), http://www.fostercareandeducation.org/OurWork/NationalWorkingGroup.aspx (gathering national and regional studies); Sophia Hwang, Heather Griffis, Lihai Song, David Rubin, *Supporting the Needs of Students Involved with the Child Welfare and Juvenile Justice System in the School District of Philadelphia*, The Children's Hospital of Philadelphia PolicyLab 9-19 (2014), http://policylab.chop.edu/sites/default/files/pdf/publications/PolicyLab_Report_Supporting_Students_Involved_with_Child_Welfare_June_2014.pdf (Philadelphia youth with a history of child welfare or juvenile justice involvement score substantially lower on standardized tests, have lower promotion rates, higher rates of absenteeism and special education eligibility and accumulate fewer credits compared to their peers.)

152. Julia Ransom, Heather Griffis, Jennifer Eder, Vaughan Byrnes, et al., *A Promise Worth Keeping, Advancing the High School Graduation Rate in Philadelphia*, Project U-Turn 12 (2014), http://www.projectuturn.net/docs/PromiseWorthKeeping.pdf.

153. According to the 2017 Voices of Youth Count Report, nearly one-third of youth identified as homeless in a point-in-time count had been in foster care or the juvenile justice system. *Voices of Youth Count Philadelphia County, Pennsylvania Report on Youth Homelessness: Findings from the Youth Count, Brief Youth Survey, and Provider Survey*, Chapin Hall at the University of Chicago 21, 37-39 (2017), http://www.philadelphiaofficeofhomelessservices.org/wp-content/uploads/2017/04/voices-of-youth-count-philadelphia-9-2017.pdf; See also Melissa Ford Shah, Quinghua Liu, David Mancuso, David Marshall, et al., *Youth at Risk of Homelessness: Identifying Key Predictive Factors Among Youth Aging Out of Foster Care in Washington State*, Department of Social and Health Services 1 (Jan. 2015), https://www.dshs.wa.gov/sites/default/files/SESA/rda/documents/research-7-106.pdf

154. *See* Arley Styer & Education Law Center, *Moving the Dial: A Report on Education Experiences of Children in Pennsylvania Residential Treatment Facilities*, Stoneleigh Foundation 1-2 (2011), https://stoneleighfoundation.org/wp-content/uploads/2018/02/Moving-the-Dial.Styer_.pdf

155. *Voices of Youth Count Philadelphia County, Pennsylvania Report on Youth Homelessness: Findings from the Youth Count, Brief Youth Survey, and Provider Survey*, Chapin Hall at the University of Chicago 1-2 (2017), http://www.philadelphiaofficeofhomelessservices.org/wp-content/uploads/2017/04/voices-of-youth-count-philadelphia-9-2017.pdf

156. *E.g.*, *The Juvenile Justice No Child Left Behind Collaboration Project: A National Effort to Improve Education for Incarcerated Youth Final Report 2008*, Florida State University College of Criminology and Criminal Justice 3-4 (2008), http://criminology.fsu.edu/wp-content/uploads/The-Juvenile-Justice-No-Child-Left-Behind-Collaboration-Project-Final-Report-2008.pdf.

157. *Just Learning: The Imperative to Transform Juvenile Justice Systems into Effective Educational Systems—A Study of Juvenile Justice Schools in the South and the Nation*, Southern Education Foundation 14-17 (2014), http://www.southerneducation.org/getattachment/cf39e156-5992-4050-bd03-fb34cc5bf7e3/Just-Learning.aspx.

158. *Id.*, at 15-16.

159. *Public High School Graduation Rates*, National Center for Education Statistics 1 (May 2016), https://nces.ed.gov/programs/coe/pdf/Indicator_COI/coe_coi_2016_05.pdf; *Public High School Graduation Rates*, National Center for Education Statistics (May 2018), https://nces.ed.gov/programs/coe/indicator_coi.asp.

160. *Percentage of recent high school completers enrolled in college, by income level: 1975 through 2016*, National Center for Education Statistics (July 2017), https://nces.ed.gov/programs/digest/d17/tables/dt17_302.30.asp.

161. *Just Learning: The Imperative to Transform Juvenile Justice Systems into Effective Educational Systems—A Study of Juvenile Justice Schools in the South and the Nation*, Southern Education Foundation 14-15 (2014), http://www.southerneducation.org/getattachment/cf39e156-5992-4050-bd03-fb34cc5bf7e3/Just-Learning.aspx.

162. *Id.*, 14-18.

163. Specifically, statute states: "The board of school directors of any school district in which there is located any orphan asylum, home for the friendless, children's home, or other institution for the care or training of orphans or other children, shall permit any children who are inmates of such homes, but not legal residents in such district, to attend the public schools in said district...." 24 P.S. § 13-1306(a).

164. 22 PA CODE §§ 11.11(c), 11.18(d).

165. *Educational Programs for Students in Non-Educational* Placement, Pa. Dep't of Education 1-2 (1997), https://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/PA%20Code/Educational%20Programs%20for%20Students%20in%20Non-Educational%20Placements.pdf ("[W]hen a non-educational placement is made, such a placement is presumed to determine where the child lives and where the child may receive non-educational services. This residential placement is not presumed to determine where the child will be educated.").

166. *Educational Programs for Students in Non-Educational* Placement, Pa. Dep't of Education 6 (1997), https://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/PA%20Code/Educational%20Programs%20for%20Students%20in%20Non-Educational%20Placements.pdf.

167. 42 Pa. C.S. § 6335

168. 34 C.F.R. § 300.116; 34 C.F.R. § 300.325; 34 C.F.R. § 300.327.

169. 24 P.S. § 13-1317.2(e.1)

170. 34 C.F.R § 300.325; 34 C.F.R. § 300.327

171. 34 C.F.R. § 300.519(d)(2)(i)

172. 24 P.S. § 13-1306(c).

173. An appropriate education for a student with a disability includes specialized instruction and related services that are provided in conformity with the IEP. 20 U.S.C. § 1400(d)(1)(A). The IEP must include a statement of the services to be provided as well as measurable goals and how progress will be monitored towards those goals. 34 C.F.R. § 300.320(a)(4). Children with disabilities transferring to a new school are entitled to comparable services in accordance with a prior IEP until a new IEP is developed. 34 C.F.R. § 300.323(e),(f). Public agencies must take steps to ensure parent participation in the IEP process. 34 C.F.R. 300.322. The LRE principle mandates that, "[t]o the maximum extent appropriate, children with disabilities . . . are educated with children who are nondisabled..." 34 C.F.R. § 300.114(a)(2)(i). See 34 C.F.R. 300.116. State and local education agencies must "ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services." 34 C.F.R. § 300.115 (a).

174. 20 U.S.C. § 1412(a)(1)(A); 20 U.S.C. § 1414(d)(A).

175. *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017)

176. ESSA, 20 U.S. Code § 6311(g)(1)(E)(i).

177. *See e.g.*, Paul A. Sunseri, *Children Referred to Residential Care: Reducing Multiple Placements, Managing Costs and Improving Treatment Outcomes*, 22 Residential Treatment for Children & Youth 55-66, 57 (2005).

178. Rogers, J. (1991). Education Report of Rule 706 Expert Panel, presented in B.H. v. Johnson, 715 F. Supp. 1387 (N.D. Ill. 1989). Chicago, IL: Department of Education, Loyola University.

179. *E.g.*, Peter J. Pecora, Jason Williams, Ronald Kessler, A. Chris Downs, Kirk O'Brien, Eva Hiripi, Sarah Morello, *Assessing the Effects of Foster Care: Early Results from the Casey National Alumni Study*. Casey Family Programs, 43 (2003), https://caseyfamilypro-wpengine.netdna-ssl.com/media/AlumniStudy_US_Report_Full.pdf.

180. See e.g., Arley Styer & Education Law Center, *Moving the Dial: A Report on Education Experiences of Children in Pennsylvania Residential Treatment Facilities*, Stoneleigh Foundation (2011), https://stoneleighfoundation.org/wp-content/uploads/2018/02/Moving-the-Dial.Styer_.pdf

181. *Id.* at pg. 2.

182. *Id.*

183. *Id.*

184. *State of Child Welfare, Pennsylvania 2015*, The Porch Light Project, (2009-2013) https://www.papartnerships.org/reports/2015_socw/2015%20SOCW%20Centre.pdf.)

185. *2013 Report to the Pennsylvania Roundtable*, Educational Success and Truancy Prevention Workgroup 5-6 (2013) http://www.ocfcpacourts.us/assets/upload/Resources/Documents/2013%20State%20RT%20report%20on%20Educational%20Success%20and%20Truancy%20Prevention(8).pdf

186. 24 P.S. § 6702, 22 Pa. Code § 51.2. Data obtained from Pa. Dep't of Education website regarding type of school. *Educational Names and Addresses*, Pa. Dep't of Education, http://www.edna.pa.gov/Screens/wfHome.aspx .(last visited Nov. 20, 2018). Cyclical monitoring occurs once every six years. A few on-grounds schools are licensed as approved private schools as defined by 22 Pa. Code § 171.11 or private residential rehabilitative institutions (PRRIs) as defined by 24 P.S. § 9-964.1. Approved private schools are reevaluated once every 3 years. 22 Pa. Code § 171.20(b).

187. *Cyclical Monitoring Documents*, Pa. Dep't of Education, https://www.education.pa.gov/K-12/Special%20Education/Pages/Cyclical-Monitoring.aspx (last visited on Nov. 20, 2018).

188. *Private Academic Schools Act*, 24 P. S. § 6707 (delineating limited information which must be provided to apply for licensure); 24 P.S. § 6715 (identifying minimal requirements for licensure); 22 Pa Code §51.4 (Private Academic License requirements).

189. 22 Pa Code § 4.12 (academic standards applicable to public education providers).

190. *E.g.*, Arley Styer & Education Law Center, *Moving the Dial: A Report on Education Experiences of Children in Pennsylvania Residential Treatment Facilities*, Stoneleigh Foundation 5 (2011), https://stoneleighfoundation.org/wp-content/uploads/2018/02/Moving-the-Dial.Styer_.pdf.

191. *See e.g.*,Gabriel Reich, Volkan Sevim, Aanda Turner, *Academic Rigor for All: A Review of Literature*, Virginia Commonwealth University Scholars Compass 4, 19 (2013) https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=1011&context=merc_pubs.

192. E.g., Arley Styer & Education Law Center, *Moving the Dial: A Report on Education Experiences of Children in Pennsylvania Residential Treatment Facilities*, Stoneleigh Foundation 2 (2011), https://stoneleighfoundation.org/wp-content/uploads/2018/02/Moving-the-Dial.Styer_.pdf

193. *Id.*

194. *Id.*

195. *E.g.*, Arley Styer & Education Law Center, *Moving the Dial: A Report on Education Experiences of Children in Pennsylvania Residential Treatment Facilities*, Stoneleigh Foundation 2 (2011), https://stoneleighfoundation.org/wp-content/uploads/2018/02/Moving-the-Dial.Styer_.pdf

196. *Id.*

197. 24 P.S. § 13-1306(a).

198. *Why Does Attendance Matter?*, National Center for Education Statistics, (2009) https://nces.ed.gov/pubs2009/attendancedata/chapter1a.asp (noting that attendance is the greatest predictor of dropout).

199. In Philadelphia, 1 in 4 students ever involved with the child welfare and/or juvenile justice system received special education services. This rate is 64% higher than students with no history of involvement. Sophia Hwang, Heather Griffis, Lihai Song, David Rubin, *Supporting the Needs of Students Involved with the Child Welfare and Juvenile Justice System in the School District of Philadelphia*, The Children's Hospital of Philadelphia PolicyLab 5 (2014), http://policylab.chop.edu/sites/default/files/pdf/publications/PolicyLab_Report_Supporting_Students_Involved_with_Child_Welfare_June_2014.pdf; National Working Group on Foster Care and Education, *Fostering Success in Education: National Fact Sheet on the Educational Outcomes of Children in Foster Care*, Legal Center for Foster Care and Education 2 (April 2018), http://www.fostercareandeducation.org/OurWork/NationalWorkingGroup.aspx (between 35.6% and 47.3% of children in foster care receive special education services compared to 16% at the state and national level)

200. *Youth with Disabilities in the Foster Care System: Barriers to Success and Proposed Policy Solutions, Executive Summary*, National Council on Disability (2008) https://www.ncd.gov/publications/2008/02262008#Executive Summary

201. 20 U.S.C. §1412(a)(3).

202. *A National Look at The Use of Congregate Care in Child Welfare*, U.S. Department of Health and Human Services, Administration of Children and Families, Children's Bureau (2015) https://www.acf.hhs.gov/sites/default/files/cb/cbcongregatecare_brief.pdf

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. § 300.115(b)(1); *D.B. v. Ocean Twp. Bd. of Educ.*, 985 F. Supp. 457, 490 (D.N.J. 1997). As the district court explained in D.B., "[j]ust 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. Sup. 1392, 1400 (D.N.J. 1992), *aff'd*, 995 F.2d 1204 (3d Cir. 1993)).

204. *Cyclical Monitoring Documents*, Pa. Dep't of Education, https://www.education.pa.gov/K-12/Special%20Education/Pages/Cyclical-Monitoring.aspx (last visited on Nov. 20, 2018).

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 14.133(b); LEAs must report data on the use of restraints. See 24 P.S. 13-1303-A(b)(4.1) and (4.2).

206. *Review of Outside Educational Institutions Final Report*, School District of Philadelphia, May 22, 2013.

207. *Id.* at 3.

208. Herein "The Report."

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.*

218. See Sigrid S. James, PhD, MSW, Jin Jin Zhang, MS, and John Landsverk, PhD Residential Care for Youth in the Child Welfare System: Stop-Gap Option or Not? (2012) available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3835815/

219. 22 PA Code § 4.24 (each school district or charter school establishes requirements for graduation).

220. Arley Styer & Education Law Center, *Moving the Dial: A Report on Education Experiences of Children in Pennsylvania Residential Treatment Facilities*, Stoneleigh Foundation 2 (2011), https://stoneleighfoundation.org/wp-content/uploads/2018/02/Moving-the-Dial.Styer_.pdf.

221. *On Track of Falling Behind? How States Include Measures of 9th Grade Performance in their ESSA Plans*, Achieve 1-2 (Feb 2018), https://achieve.org/files/sites/default/files/On-Track-Brief.pdf.

222. *E.g.*, Magellan Health Services Children's Services Task Force, *Perspectives on Residential and Community-Based Treatment for Youth and Families* Magellan Health Services 4-5 (2008) (noting correlation to incarceration); See Dongdong Li, Grace S. Chng, & Chi Meng Chu, *Comparing Long-Term Placement Outcomes of Residential and Family Foster Care: A Meta-Analysis*, Trauma, Violence, & Abuse 9 (2017), https://doi.org/10.1177/1524838017726427 (highlighting coping skills deficits and behavioral problems of youth in residential placements).

223. *See* e.g. S.B. 702 Gen. Assemb. 2018 Sess. (Pa. 2018).

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