

**IN THE SUPERIOR COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

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**240 EDA 2019**

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In the Interest of J.L., A Minor, *Petitioner*.

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**BRIEF OF JUVENILE LAW CENTER AND EDUCATION LAW CENTER-PA  
AS *AMICI CURIAE* IN SUPPORT OF APPELLANT J.L.**

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Appeal from the December 11, 2018, Adjudication Order of the Juvenile Court of  
Montgomery County, at No. CP-46-DP-0000278-2018.

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## STATEMENT OF INTEREST OF AMICI CURIAE<sup>1</sup>

**Juvenile Law Center** advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children’s unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country.

The **Education Law Center-PA** (ELC) is a non-profit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through individual and impact litigation, as well as advocacy at the local, state, and national levels, 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 language learners, LGBTQ students, children experiencing homelessness, and those

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<sup>1</sup> Pursuant to Rule 531, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.



who are truant. For over forty years, ELC has advocated vigorously to dismantle the school-to-prison pipeline through individual representation, class action lawsuits, and systemic policy reforms. ELC joins as amicus in this matter because we know that utilizing punitive measures, removing children from their homes, and placing them in residential placements are ineffective methods for addressing truancy. In addition, residential placements often provide an inferior education and push youth into the juvenile and criminal justice systems.

## SUMMARY OF ARGUMENT

Family separation often has devastating and lifelong consequences for children who are removed from their guardians. *See, e.g.*, ANNIE E. CASEY FOUNDATION, EVERY KID NEEDS A FAMILY POLICY REPORT 5 (2015), <https://www.aecf.org/m/resourcedoc/aecf-EveryKidNeedsAFamily-2015.pdf>. In recognition of this common-sense truth, the Juvenile Act favors family unity and permits courts to remove children from their guardians only when there is a “clear necessity” to do so and when it is in the child’s best interest. *See* 42 Pa.C.S.A. § 6301; *In Interest of S.S.*, 651 A.2d 174, 176 (Pa. Super. Ct. 1994). A child’s nonattendance in school does not, in and of itself, constitute clear and convincing evidence justifying the drastic step of removing a child from his guardian. Moreover, placing a child in a highly restrictive residential facility is ineffective and counterproductive to address truancy. Placing children in residential placements away from home also ignores the significant risks to a child’s health, development, educational progress, and future that placement in a residential facility poses. *See generally* CHILDREN’S RIGHTS, INC. & EDUCATION LAW CENTER, UNSAFE AND UNEDUCATED: INDIFFERENCE TO DANGERS IN PENNSYLVANIA’S RESIDENTIAL CHILD WELFARE FACILITIES 19-20 (2018).

In contravention of the Juvenile Act, the court below removed J.L. from his “loving parents” based solely on truancy and without considering the use of school-

based truancy interventions or allowing in-home psychological services to be implemented. (Tr. Disposition Hearing, Jan. 8, 2019 at 11.) The juvenile court’s decision to remove J.L. from his parents did not address the root causes of J.L.’s truancy. Instead, it put him at risk of harm. This Court should reverse the juvenile court’s ruling for failing to meet the clear necessity standard and thereby uphold the purpose of the Juvenile Act—to preserve family unity whenever possible. 42 Pa.C.S.A. § 6301(b)(1).

### **ARGUMENT**

In recognition of the fact that removing a child from his home has enduring traumatic effects, courts impose a high standard of requiring “clear necessity” to take such action. *See* 42 Pa.C.S.A. § 6301; *In Interest of S.S.*, 651 A.2d 174, 176 (Pa. Super. Ct. 1994). The attachment youth maintain with their parents is key to their social, emotional and neurological development and well-being. *See* ANNIE E. CASEY FOUNDATION, EVERY KID NEEDS A FAMILY POLICY REPORT 4 (2015), <https://www.aecf.org/m/resourcedoc/aecf-EveryKidNeedsAFamily-2015.pdf>. The Benchbook detailing best practices for child welfare judges in Pennsylvania acknowledges that family separation can produce “emotional trauma.” OFFICE OF CHILDREN & FAMILIES IN THE COURTS, PENNSYLVANIA DEPENDENCY BENCHBOOK 2-4 (2014), <http://www.ocfcpacourts.us/assets/files/page-442/file-1594.pdf>. Even temporary placements, as the juvenile court ordered here, disturb and confuse youth,

contributing to relationship dysfunction and problems with parental attachment. *See* THE FOSTER CARE ALUMNI STUDIES, WHY SHOULD THE CHILD WELFARE FIELD FOCUS ON MINIMIZING PLACEMENT CHANGE AS PART OF PERMANENCY PLANNING FOR CHILDREN? 3 (2007), <http://www.ocfcpacourts.us/assets/files/list-772/file-998.pdf> (noting profound relationship loss as an effect of multiple out-of-home placements, citing a landmark study in which formerly-placed youth described placement changes as unsettling and confusing). The damage of separation is not rendered benign simply because the placement is short-term, and “may haunt [children] for the rest of their lives.” *See* Vivek S. Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than Thirty Days in Foster Care*, 19 U. PA. J. L. & SOC. CHANGE 207, 209 (2016).

The importance of keeping families together is at the heart of the Juvenile Act, the purposes of which include “preserv[ing] the unity of the family whenever possible.” 42 Pa.C.S.A. § 6301(b)(1). The Act declares that a child should be separated from his parents “only when necessary for his welfare, safety or health or in the interests of public safety” based on clear and convincing evidence. *Id.* at § 6301(b)(3); *In re L.J.*, 691 A.2d 520, 525 (Pa. Super. Ct. 1997) (utilizing the clear and convincing standard for decisions in the dependency context). In making the determination of whether to remove a child from his home, judges should employ “evidenced-based practices whenever possible,” 42 Pa.C.S.A. § 6301(b)(3)

(emphasis added). The Juvenile Act permits a court to remove a child from his guardians only when there is a *clear necessity* to do so and, on the rare occasion when removal is clearly necessary, the Act also requires that youth be placed according to their best interests—favoring the least restrictive, most family-like setting possible. *See* 42 Pa.C.S.A. § 6301(b)(3)(i); 42 U.S.C. § 675(5)(A)(1); *In re L.C., II*, 900 A.2d 378, 381 (Pa. Super. Ct. 2006) (“If the court concludes that a child is dependent, then, and only then, can it proceed to address custody issues and make a disposition of the case consistent with the best interests of the child.” (first citing 42 Pa.C.S.A. §§ 6341(a) & (c), 6351(a), then citing *In re A.E.*, 722 A.2d 213, 215 (Pa. Super. Ct. 1998), then citing *In re Michael Y.*, 530 A.2d 1115, 118 (Pa Super. Ct. 1987))).

**I. REMOVING J.L. FROM HIS HOME WAS NOT CLEARLY NECESSARY OR IN HIS BEST INTEREST BECAUSE HE WAS EXPERIENCING TRUANCY ALONE AND WAS NOT SUBJECT TO OTHER NEGLIGENT CONDUCT OR ABUSE**

In applying the clear necessity standard, Pennsylvania courts properly consider truancy a *contributing* factor—not the *only* factor—supporting removal. For example, where a guardian had created a “deplorable” housing environment, the guardian’s continuing neglect and “lack of organization and discipline” warranted removal based on evidence that the guardian continued to underfeed her children, obtained an eviction notice, and failed to get her children to school on time even after receiving extensive services to assist her with her parenting. *See, e.g., In re*

*E.P.*, 841 A.2d 128, 130 (Pa. Super. Ct. 2003). Notably, in that case as in others, the children had been adjudicated dependent based on neglect and truancy. *See id.* In such cases, truancy is a contributing factor and a symptom of the guardian’s ongoing neglect. *See id.* Conversely, it would be contrary to the Act’s paramount purpose of preserving the unity of the family to remove a child from their guardian based purely on truancy, where a child’s nonattendance is not a symptom of underlying abuse or neglect. *See* 42 Pa.C.S.A. § 6301(b)(1) (describing one of the purposes of the Act as “preserv[ing] the unity of the family whenever possible”). In such cases, a trial court would not have sufficient evidence to warrant removing a child from their guardian absent findings that 1) it would be contrary to the child’s welfare, safety, or health to stay at home and 2) a higher level of in-home services would not enable the child to remain with his guardian. *See In re E.P.*, 841 A.2d at 132 (“[T]he Juvenile Act . . . allow[s] for the removal of a dependent child from the custody of his parents only where there is ‘clear necessity’ for such removal and where such removal can be reconciled with the ‘paramount purpose’ of preserving family unity.” (first citing *In the Interest of LaRue*, 366 A.2d 1271, 1273 (Pa. Super. Ct. 1976), then citing *In the Interest of Pernishek*, 408 A.2d 872, 877 (Pa. Super. Ct. 1979), then citing *In re Donna W.*, 425 A.2d 1132, 1134 (Pa. Super. Ct. 1981)). In the absence of such findings, there could not be sufficient evidence to rise to the level of justifying the removal of a child from his guardian’s care.

In this case, there was no finding that J.L.’s truancy was a symptom of more serious abuse or neglect presenting a clear necessity to remove him from his home. To the contrary, the lower court expressly acknowledged that J.L.’s parents are loving and vigilant, and that J.L. is safe at home with them. (*See* Order of Adjudication at 2 (finding J.L. was safe in his current placement with his parents); Tr. Disposition Hearing, Jan. 8, 2019 at 9, 11 (observing that J.L.’s parents are “loving” and have “been vigilant” with regard to J.L.’s educational needs.)) The court also failed to consider alternate interventions that would have allowed J.L.’s family to remain intact. (*See* Tr. Adjudication Hearing, Dec. 11, 2018 at 7–8 (J.L.’s counsel explaining that J.L. was compliant with and beginning his second week of in-home psychological services.))

While a limited prior, less intensive in-home intervention had proven unsuccessful for J.L., the juvenile court’s decision to separate J.L. from his family was premature because at the time the court separated J.L. from his parents he had only received a week (two hours) of in-home psychological services—services with which he had been compliant. (*See* Dependency Pet., Nov. 21, 2018 at 4 (describing a prior, unsuccessful intervention); Tr. Adjudication Hearing at 7–8.)) As discussed below, community- and school-based interventions and supports are effective at remedying truancy, and the juvenile court should have considered those rather than remove J.L. from his home solely for truancy.

## **II. REMOVING J.L. FROM HIS HOME WAS NOT CLEARLY NECESSARY OR IN HIS BEST INTEREST BECAUSE COMMUNITY-BASED SERVICES—NOT RESIDENTIAL PLACEMENTS—ARE EFFECTIVE AT ADDRESSING TRUANCY**

### **A. In Placing J.L., The Court Failed To Consider Or Address The Root Causes Of His Truancy**

Research demonstrates that removing children from their homes and placing them in residential facilities is ineffective at addressing truancy because such placements do not address the underlying causes of nonattendance and do not support the student’s further engagement with their home school. The root causes of truancy are highly individualized and often school-related. Research shows the root causes of truancy include the following factors: “student struggles with anxiety and depression, poor performance in school and schools’ failure to meet students’ educational needs, poverty-based family difficulties and obligations, concern and fear from victimization and harassment, and transitions to new schools.” *See* U.S. DEP’T OF JUSTICE, ET. AL., EVERY STUDENT, EVERY DAY: A COMMUNITY TOOLKIT TO ADDRESS AND ELIMINATE CHRONIC ABSENTEEISM 40 (2015) (enumerating some of the “complex and diverse” causes of truancy).<sup>2</sup> Truancy is predominantly a school

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<sup>2</sup> In addition, due to the impact of bias and systemic oppression on children and families, historically-underserved student groups are more likely to be truant, as they are more likely to experience the root causes of truancy. *See, e.g.,* M. Hannah Koseki, *Meeting the Needs of All Students: Amending the IDEA to Support Special Education Students from Low-income Households*, 44 FORDHAM URB. L.J. 793, 818 (2017) (“Low-income and minority students with disabilities are often pushed out of public education through . . . educational neglect.”); National Bullying Prevention Center, *Bullying and Harassment of Students with Disabilities*,



engagement issue. As such, in order for their attendance to improve, chronically truant students must have access to a positive school environment that encourages attachment to the school community. See Robert Balfanz, et al., *Preventing Student Disengagement and Keeping Students on the Graduation Path in Urban Middle-Grades Schools: Early Identification and Effective Interventions*, 42 EDUC. PSYCHOL. 223, 223-24 (2007); ATTENDANCE WORKS AND EVERYONE GRADUATES CENTER, PORTRAITS OF CHANGE: ALIGNING SCHOOL AND COMMUNITY RESOURCES TO REDUCE CHRONIC ABSENCE 11 (2017).

While it may appear that “a student’s nonattendance is simply a poor decision to skip school or ‘play hooky,’” this misses the point: frequently the student is in fact missing school due to one or more of the socioeconomic factors described above. DEBORAH FOWLER ET. AL., TEXAS APPLESEED, CLASS, NOT COURT: RECONSIDERING TEXAS’ CRIMINALIZATION OF TRUANCY 14 (2015) [hereinafter CLASS, NOT COURT], [https://www.texasappleseed.org/sites/default/files/TruancyReport\\_All\\_FINAL\\_SinglePages.pdf](https://www.texasappleseed.org/sites/default/files/TruancyReport_All_FINAL_SinglePages.pdf). Courts often miss these underlying issues, as “courts neither seek out nor are provided with detailed, specific information about each youth’s past and

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<https://www.pacer.org/bullying/resources/students-with-disabilities/> (last visited Mar. 7, 2019) (reporting students with disabilities are more likely to be bullied or harassed than their nondisabled peers). Specifically, students with disabilities are 50% more likely to be chronically absent than their nondisabled peers. U.S. Dep’t of Educ., *Chronic Absenteeism in the Nation’s Schools*, <https://www2.ed.gov/datastory/chronicabsenteeism.html#one> (last visited Mar. 7, 2019).

present situation.” *Id.* at 53. When judges do not consider the information necessary to determine appropriate interventions, they fail to address the root causes of truancy, and therefore their ordered interventions, including placing a child in a residential setting, prove ineffective and not in the child’s best interest. *See id.* Specifically, judges often do not consider or weigh the information necessary to order appropriate programming that takes into consideration common truancy-related factors such as “prior offenses, past or current trauma, special education needs, family obligations, or medical issues.” *Id.*; JESSICA GUNDERSON ET AL., VERA INST. OF JUSTICE, RETHINKING EDUCATIONAL NEGLECT FOR TEENAGERS: NEW STRATEGIES FOR NEW YORK STATE, 10-11 (2009), [http://ocfs.ny.gov/main/reports/Rethinking%20Educational%20Neglect\\_final.pdf](http://ocfs.ny.gov/main/reports/Rethinking%20Educational%20Neglect_final.pdf) (finding no research indicating that placing a teenager in foster care improved attendance and explaining that the child protective system and the family court are ill-equipped to address barriers to school attendance). Rather, substantial research shows that youth have poor educational outcomes while in foster care and stakeholders agree that removal is not an appropriate where youth who are truant are not otherwise maltreated. *Id.* at 22.

The juvenile court failed to properly consider the root causes of truancy in J.L.’s case. As is true for many habitually-truant students, the record here indicates that there may be multiple root causes of J.L.’s truancy. Specifically, the juvenile

court should have considered J.L.’s learning disability, for which he requires an Individualized Education Program (IEP), and allegations that J.L. was bullied and/or harassed in school—which the court decided not to address. (*See* Tr. Adjudication Hearing at 6–9.) While the court heard conflicting accounts from counsel about whether bullying posed a problem for J.L., it did not consider the necessary information to determine whether bullying or harassment was an obstacle for J.L. to attend school—including whether he was, in fact, bullied; whether he shared classes with any of his alleged bullies; what steps were or were not attempted by the school to address the perceived bullying; and how the alleged bullying impacted J.L. (*See* Tr. Adjudication Hearing at 6–9.)

Additionally, at the time the court decided to remove J.L. from his home, the court had not considered or assessed J.L.’s special education needs and whether J.L.’s disability contributed to his nonattendance. The juvenile court had a duty under Juvenile Court Procedural Rule 1512 to make findings about the “stability and appropriateness” of J.L.’s education as well as “any findings necessary to identify, monitor, and address the child’s needs concerning health care and disability.” Pa.R.J.C.P. 1512. Yet, the juvenile court did not consider J.L.’s specific disabilities, whether J.L. required changes to his special education plan, or how J.L.’s truancy might be a manifestation of his disability before it decided to place him outside the home in a residential facility. (*See* Tr. Disposition Hearing at 14–16 (reflecting that

the court continued to be unaware of J.L.'s specific disabilities.)) Cases in the special education and dependency contexts consistently recognize the strong causal link between truancy and the need for appropriate special education services. For example, it is improper for a child to be adjudicated dependent based on habitual truancy without a court considering evidence linking the child's disabilities to his absenteeism because the child's disabilities could in fact justify the absenteeism, resulting in excused rather than unexcused absences. *See In re C.M.T.*, 861 A.2d 348, 357 (Pa. Super. Ct. 2004). Indeed, evidence regarding the child's disability and availability of services to facilitate the child's ability to attend school, is "not only relevant but necessary to any determination of dependency."<sup>3</sup> *Id.* at 356. Similarly, courts have recognized the duty of school districts to proactively address absenteeism in the special education context. *See R.B. v. Mastery Charter School*, 762 F. Supp. 2d 745, 758-62 (E.D. Pa. 2010) (holding that charter school violated child's Individuals with Disabilities Education Act (IDEA) rights by unilaterally disenrolling student when truancy was related to her disability); *Springfield School Committee v. Doe*, 623 F. Supp. 2d 150, 158-162 (D. Mass. 2009) (holding that school district denied student a free and appropriate public education (FAPE) by

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<sup>3</sup> In this case, the impact of J.L.'s disabilities as a potential cause of his truancy was not addressed in adjudicating him dependent. While this issue was not challenged, the impact of J.L.'s disability remained an important factor at the disposition phase as necessary to ensure that the placement was in the best interest of the child.

failing to address truancy through appropriate IDEA mechanisms). Here, with little understanding of J.L.'s disability and whether his truancy was related to his special education needs, the court failed to consider or explore truancy-related relevant evidence critical to determining whether placement in a shelter was in any way appropriate to address J.L.'s truancy.

**B. The Juvenile Court Failed To Consider More Effective Intensive Community-Based And In-School Interventions To Address J.L.'s Truancy Before Resorting To An Out-Of-Home Placement**

The purpose of Pennsylvania's truancy law is to "improve school attendance and deter truancy" through a comprehensive approach that identifies and addresses attendance issues using credible intervention techniques which "[p]reserve the unity of the family whenever possible" and "[a]void . . . the possible entry of a child to foster care and other unintended consequences of disruption of an intact family unit." 24 P.S. § 13-1325. The truancy law is consistent with research that overwhelmingly finds that school and community-based truancy interventions are most effective in addressing nonattendance and should be considered prior to court-based interventions, particularly removals from home.

Effective truancy reduction programs encourage active collaboration between "all relevant parties, including students, their parents, teachers, school administration, community-based organizations, and others." *Class, Not Court*, *supra*, at 17. Effective programs also acknowledge that there are multiple factors

that may contribute to truancy and “a variety of individualized problems or needs that may need to be addressed in order to improve attendance.” *Id.* Rather than falling into the counterproductive pitfalls of relying on punitive responses, research suggests “incentives for improved attendance are more effective.” *See id.* at 18. Accordingly, such evidence-based programs are actively promoted by the Pennsylvania Department of Education (PDE). *See* PA. DEP’T OF EDUC, SCHOOL ATTENDANCE IMPROVEMENT & TRUANCY REDUCTION 122–27, 135 (2015), <https://1.cdn.edl.io/UbpaOxyxPZCYTvrU0QUvkXWBk2je1WbxoB6S1U0sc8sFtaBv.pdf>.

For habitually truant students with disabilities, it is particularly important that interventions focus on school-based approaches which view the student’s nonattendance in the context of his disability. PDE recommends where a student with an IEP “is chronically or habitually truant, or where truancy is impacting a student’s academic or functional performance, the IEP team should reconvene . . . to determine whether revisions to the IEP are necessary and/or appropriate.” *Id.* at 92. This is congruent with special education law which “encourages the use of individualized positive behavior supports to assist students with disabilities by improving behaviors that interfere with their learning” as well as the utilization of a Functional Behavior Assessment (FBA), where appropriate, “to determine the cause of behavior” and make accommodations or interventions. *Class, Not Court, supra*,

at 72. Most students with disabilities who are in the court system due to truancy never benefitted from an FBA or an amendment to their IEP to address their nonattendance, despite the fact that “where schools utilize these tools, student attendance often improves without court intervention.” *Id.*

Here, the court below did not explore or exhaust school and community-based interventions before removing J.L. from his home. While the school had conducted attendance improvement conferences, the court did not consider or assess what attempts were or were not made by the school to address J.L.’s truancy in the context of his disability—including whether the school conducted an FBA or attempted to amend his IEP. (*See* Dependency Pet. at 4 (alleging the school had conducted attendance improvement meetings but not detailing what interventions the school did or did not implement as a result of those meetings); Tr. Disposition Hearing at 7–8 (J.L.’s counsel discussing a concern that perhaps his IEP team had not appropriately reconvened.)) At the time the court placed J.L. out of his parents’ home, J.L. had been complying with newly started in-home multisystemic therapy (MST), but the court placed J.L. in a shelter before J.L. could benefit from more than one appointment (two hours) with MST providers. (Tr. Adjudication Hearing at 7–8.)

By placing J.L. in an out-of-home placement and failing to pursue more intensive in-home services and school-based interventions, the court did not support

J.L. to reengage with his school, but rather diverted J.L. away from his school to a placement offering a subpar alternative educational program unaligned with his home curriculum. (See Tr. Disposition Hearing at 4); Bethany Children's Home, *Shelter Care*, [hereinafter *Shelter Care* ], <https://www.bethanyhome.org/programs/shelter-care/> (last visited Mar. 8, 2019) (listing alternative education programming as one of the services offered at the shelter). Indeed, instead of improving J.L.'s attendance, the shelter offered J.L. *no educational programming whatsoever*. (See Appellant's Concise Statement 2, 5 (stating J.L. received no educational services while at Bethany.)) Accordingly, there was no clear necessity to place J.L. away from his parents when he had not yet had the opportunity to benefit from community-based MST services and school-based interventions focused on J.L.'s disability had not been explored or assessed by the court.

### **III. PLACING J.L. IN A RESIDENTIAL FACILITY WAS NOT IN HIS BEST INTEREST BECAUSE RESIDENTIAL PLACEMENTS ARE COUNTERPRODUCTIVE IN ADDRESSING TRUANCY AND CAUSE ADDITIONAL HARM**

#### **A. Residential Placements Further Alienate Children From School And Undermine Educational Outcomes**

By failing to adhere to its responsibility to place J.L. in the least restrictive, most family-like setting, 42 Pa.C.S.A. § 6301(b)(3)(i); 42 U.S.C. § 675(5)(A)(1), and instead placing J.L. immediately in a residential placement, the juvenile court



unduly exposed J.L. to many new harms. *See* CHILDREN’S RIGHTS, INC. & EDUCATION LAW CENTER, UNSAFE AND UNEDUCATED: INDIFFERENCE TO DANGERS IN PENNSYLVANIA’S RESIDENTIAL CHILD WELFARE FACILITIES 9-14 (2018) [hereinafter UNSAFE & UNEDUCATED]. In the long-term, students who experience court interventions for truancy are at an increased risk of accruing more absences, dropping out of school, and having contact with the criminal justice system, compared to truant students who escape court involvement. Dana Golstein, *Inexcusable Absences*, THE NEW REPUBLIC (Mar. 6, 2015), <https://newrepublic.com/article/121186/truancy-laws-unfairly-attack-poor-children-and-parents>. This is due, in part, to court involvement leading to placements at residential facilities. While placements are not technically punitive measures in the dependency context, in *Amici*’s experience working with students and their families, forcefully taking a child away from his loving home *feels* like a punishment for the child. Punitive measures, or measures that feel punitive, only further disengage truant students from their school communities and undermine attendance. *See, e.g., Class, Not Court, supra*, at 7, 18. Being punished for what are largely socioeconomic factors beyond the control of the truant student often further alienates the student from school—increasing students’ negative feelings toward school, poor academic performance, stress within families, and students’ risk of dropping out of school and involvement with the criminal justice system. *See id.* at 7.

In addition, while students have the right to attend the local public school in the district where their residential placement is located,<sup>4</sup> too often they are directed to attend inferior on-grounds schools where they often languish and are placed on a trajectory to dropping out. As their peers attend public schools which must meet state educational standards, children attending separate schools on the campus of the residential facility (“on grounds schools”) typically receive a subpar education which undermines their ability to graduate from high school. *See UNSAFE & UNEDUCATED, supra*, at 19-20. *See also* WENDY WIEGMANN ET AL., THE INVISIBLE ACHIEVEMENT GAP: HOW THE FOSTER CARE EXPERIENCES OF CALIFORNIA PUBLIC SCHOOL STUDENTS ARE ASSOCIATED WITH THEIR EDUCATIONAL OUTCOMES (PART TWO) iv, 11, 31, 37, 40 (2016), <https://stuartfoundation.org/wp-content/uploads/2016/04/IAGpart2.pdf> (comprehensive study showing youth in California group homes fared worse than other students in care, testing lower on English language arts and math, being more likely to be old for their grades, and being less likely to graduate from high school).

Placing truant students in such settings causes them to fall further behind in school because residential placements with on-grounds schools generally provide

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<sup>4</sup> “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).

only limited curricula and fewer hours of instruction. UNSAFE & UNEDUCATED, *supra*, at 22; EDUCATIONAL SUCCESS & TRUANCY PREVENTION WORKGROUP, 2013 REPORT TO THE PENNSYLVANIA STATE ROUNDTABLE: EDUCATIONAL SUCCESS & TRUANCY PREVENTION 5-6 (2013) [hereinafter 2013 ROUNDTABLE REPORT], [http://www.ocfcpcourts.us/assets/upload/Resources/Documents/2013%20State%20ORT%20report%20on%20Educational%20Success%20and%20Truancy%20Prevention\(8\).pdf](http://www.ocfcpcourts.us/assets/upload/Resources/Documents/2013%20State%20ORT%20report%20on%20Educational%20Success%20and%20Truancy%20Prevention(8).pdf) (reporting that only 2.4% of respondents indicated that children attending on-grounds schools “always” received educational services and opportunities equal to that provided in the local public schools). For this reason, among others, placing a child in a residential placement in response to truancy, is ineffectual. Moreover, *Amici* frequently hear from students and families that youth who attend on-grounds schools experience substantial delays in receiving educational services as it can take significant time for the placement to obtain education records, conduct intake evaluations, and assess a child’s needs. This can result in students who are placed in such facilities spending significant portions of their time in placement not receiving any educational services at all—as occurred in this case. (*See* Appellant’s Concise Statement 2, 5.)

To the extent students do receive educational services, many placements fail to provide quality programming. On-grounds schools often place children of various ages in multi-grade classrooms, sometimes taught by uncertified or improperly

certified teachers, and rely on worksheets or cyber-based credit-recovery programs, without live instruction provided by teachers. UNSAFE & UNEDUCATED, *supra*, at 22. Due to the inferior quality of education services provided in residential facilities, students often find themselves lagging behind their peers upon return to their neighborhood school and missing academic credits needed to graduate, increasing the chances that they will continue to be truant and ultimately disengage from school entirely. *See* ACHIEVE, ON TRACK OR FALLING BEHIND? HOW STATES INCLUDE MEASURES OF 9TH GRADE PERFORMANCE IN THEIR ESSA PLANS 1-2 (2018), <https://www.achieve.org/files/On-Track-Brief.pdf>, (reporting that students who fail classes or fall behind in credits or coursework are more likely to drop out of high school); 2013 ROUNDTABLE REPORT, *supra*, at 5–6 (indicating students who attend on-ground schools often do not receive education on par with what is provided in local public schools); LEGAL CENTER FOR FOSTER CARE AND EDUCATION, HOW CAN WE ENSURE EDUCATIONAL SUCCESS FOR DEPENDENT YOUTH IN CONGREGATE CARE? 1 (2014), [http://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=1988&Command=Core\\_Download&method=inlin&PortalId=0&TabId=124](http://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=1988&Command=Core_Download&method=inlin&PortalId=0&TabId=124) (noting common barriers to school reentry including that the youth may not receive appropriate academic credit).

Moreover, students with disabilities like J.L. are further harmed by attending

on-grounds schools which fail to provide the differentiated instruction, individualized services, and the wide array of special education supports needed to address the disabilities of the children they serve. UNSAFE & UNEDUCATED, *supra*, at 23-24. Students with disabilities are over-represented in foster care and residential facilities.<sup>5</sup> Many of these children with disabilities face significant delays in receiving appropriate education services because of delays in obtaining the child's Individualized Education Program (IEP) from the prior school. UNSAFE & UNEDUCATED, *supra*, at 23. In other instances, a facility fails to conduct timely evaluations to determine the child's actual needs or staff are untrained to modify instructions and provide appropriate accommodations. *Id.* In sum, children with disabilities like J.L. often do not receive the special education services to which they are legally entitled and as a result are unable to make meaningful progress. *See id.*

As such, rather than supporting his education, placing J.L. in a residential facility harmed him academically. Like many children placed in a residential facility,

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<sup>5</sup> Studies show that children in foster care are between 2.5 and 3.5 times more likely to receive special education services than their non-system involved peers. *See* SOPHIA HWANG ET. AL., POLICYLAB SUPPORTING THE NEEDS OF STUDENTS INVOLVED WITH THE CHILD WELFARE AND JUVENILE JUSTICE SYSTEM IN THE SCHOOL DISTRICT OF PHILADELPHIA 5 (2014), [http://www.projectuturn.net/docs/supporting\\_needs.pdf](http://www.projectuturn.net/docs/supporting_needs.pdf) (reporting that, in Philadelphia, 1 in 4 students ever involved with the child welfare and/or juvenile justice system received special education services—a rate 64% higher than students with no history of involvement); NATIONAL WORKING GROUP ON FOSTER CARE AND EDUCATION, FOSTERING SUCCESS IN EDUCATION: NATIONAL FACT SHEET ON THE EDUCATIONAL OUTCOMES OF CHILDREN IN FOSTER CARE 2 (2018), <file:///C:/Users/TiffanyFaith/OneDrive%20-%20Juvenile%20Law%20Center/downloads/NationalEducationDatasheet2018.pdf> (stating that between 35.6% and 47.3% of children in foster care receive special education services compared to 16% at the state and national level).

the shelter where the court placed J.L. provides “alternative education programming” indicating that J.L.’s curriculum would be very different from his prior school and that he may not stay on track to earn credits towards graduation. (See Tr. Disposition Hearing at 4 (statement that J.L. was placed at Bethany shelter)); *Shelter Care, supra* (listing alternative education programming as one of the services offered at the shelter). While at the shelter, J.L. did not attend or reengage with his home school. In fact, J.L. did not attend any school and Bethany provided *no educational instruction* to J.L. while he was placed there. (Appellant’s Concise Statement 2.)

The reality that J.L. received no education at all only reinforces the conclusion there was no clear necessity for J.L. to be removed from his home and that remaining at home would have better served his interests.

**B. Placing J.L. In A Residential Facility Exposed Him To Additional Trauma And Harm**

Compounding the negative educational outcomes described above, placing a child in a residential facility, as opposed to with their parents or in a family-like setting, is detrimental to normal adolescent development. The structure of group care disrupts attachment with a consistent, nurturing adult—attachment that is key to helping youth develop positive social-emotional skills, including: relationship-building skills, appropriate risk-taking, and instilling a sense of security and self-worth. CASEY FAMILY PROGRAMS, WHAT ARE THE OUTCOMES FOR YOUTH PLACED

IN CONGREGATE CARE SETTINGS? 2 (2018), [https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF\\_CC-Outcomes-Resource.pdf](https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF_CC-Outcomes-Resource.pdf); *Reducing Congregate Care: Worth the Fight*, THE ANNIE E. CASEY FOUNDATION (Apr. 4, 2012) [hereinafter *Worth the Fight*], <https://www.aecf.org/blog/reducing-congregate-care-worth-the-fight/>; RICHARD P. BARTH, INSTITUTIONS VS. FOSTER HOMES: THE EMPIRICAL BASE FOR A CENTURY OF ACTION i (2002), <https://resourcecentre.savethechildren.net/sites/default/files/documents/2344.pdf>.

Specifically, children who are placed in residential facilities may experience insufficient caregiving and limited interaction with adults and parental figures, leading to delays and deficits in development.” UNSAFE & UNEDUCATED, *supra*, at 17. Residential placements also hinder access to the “real life opportunities—like doing chores or preparing or purchasing food—that youth need to prepare for independent living.” BARTH, *supra*, at ii. New research shows youth in Pennsylvania child welfare residential facilities are at significant risk of harm—including physical, verbal, and sexual abuse from staff; assaults from other youth due to a lack of staff supervision; and inappropriate restraints. *See* UNSAFE & UNEDUCATED, *supra*, at 9-14.

Given that residential facilities are developmentally inappropriate and place youth in danger, it is unsurprising that children who spend time in residential placements can bear lifelong scars from that experience. Research shows that after

leaving care, youth who were in residential placements are “less successful,” meaning they have lower scores on developmental measures and are less prepared for independent living than youth who were in family-based foster care. CASEY FAMILY PROGRAMS, *supra*, at 2. Youth living in residential placement are also more than twice as likely to be arrested than youth in family setting. *Id.*

In recognition of these harms, there is a growing trend away from residential placements in both Pennsylvania and across the country. *See Worth the Fight, supra* (citing Louisiana, Maryland, Maine, New York City, Virginia, Colorado, Connecticut, Delaware, and Washington, D.C. as jurisdictions that have reduced reliance on residential placements); UNSAFE & UNEDUCATED, *supra*, at 17 (noting drastic reduction in child welfare residential placements in Allegheny and Philadelphia Counties). Federal and state law have long required that youth be placed in the least restrictive, most family-like setting. *See* 42 U.S.C. § 675(5)(A)(1); 42 Pa.C.S.A. § 6301(b)(3)(i). In 2018, the United States Congress extended this trend, passing the landmark Family First Prevention Services Act (FFPSA), which emphasizes the importance of keeping youth in families, and financially incentivizes states to reduce reliance on inappropriate institutional care. *See* The Family First Prevention Services Act, enacted as part of Division E of the Bipartisan Budget Act of 2018, H.R. 1892, 115th Cong. (2018) (enacted), <https://www.congress.gov/bill/115th-congress/house-bill/1892>; Children’s Defense



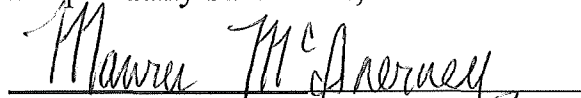
Fund, Family First Prevention Services Act, Historic New Reforms for Child Welfare, <https://www.childrensdefense.org/policy/policy-priorities/child-welfare/family-first/https://www.childrensdefense.org/policy/policy-priorities/child-welfare/family-first/>.

The juvenile court's decision to remove J.L. from a safe and loving home and place him in a facility where he is likely to experience greater harm defies the substantial body of social science research, the national policy trend, and common sense.

### CONCLUSION

The weight of research, *Amici's* experiences as advocates for students experiencing truancy, and the truancy law itself demonstrate both that school-based interventions are most effective in preventing and addressing truancy and that removing students from their homes is dangerous, harmful, and ineffective. For all the reasons described herein, *Amici* respectfully request that this Court reverse the juvenile court's decision.

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## CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 531 of the Pennsylvania Rules of Appellate Procedure. This brief contains 5,783 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

Dated: March 11, 2019

/s/ Marsha L. Levick  
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