

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

Nos. 8 EAP 2023 & 9 EAP 2023

IN THE INTEREST OF: N.E.M.
APPEAL OF N.E.M., A CHILD IN CUSTODY

BRIEF OF EDUCATION LAW CENTER AS *AMICUS CURIAE*
IN SUPPORT OF APPELLANT N.E.M.

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STATEMENT OF INTEREST OF AMICUS CURIAE¹

The **Education Law Center-PA** (ELC) is a non-profit, legal advocacy organization dedicated to ensuring that all children have access to a quality public education. Through individual and impact litigation, ELC advances the rights of children who are most marginalized by our education system—including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, and children experiencing homelessness. Over its nearly forty-eight-year history, ELC has handled thousands of individual matters and impact cases, including class action lawsuits on behalf of children in out-of-home care.

ELC has a long history of vigorous advocacy on behalf of children in the dependency and juvenile justice systems. ELC has worked on a systemic level to enforce and expand the rights of students through litigation, legislative advocacy, and policy reform. At the national level, ELC is a founding member of the Legal Center for Foster Care and Education and the Legal Center for Youth Justice and a recognized national expert on the educational rights of students in these systems.

SUMMARY OF ARGUMENT

It is well documented that removing a juvenile from home and placing that

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

youth in an out-of-home confinement setting causes substantial trauma, significant harm, and undermines a child's education. It is against this backdrop, that the Pennsylvania's Juvenile Act imposes clear obligations on courts to make specific findings regarding such placement decisions and mandates prompt and meaningful appellate review of orders to place juveniles in out-of-home settings. 42 Pa. C.S.A. §§ 6301 *et seq.* Specifically, Pennsylvania Rule of Appellate Procedure 1612 confers the right to expedited specialized appellate review of any order that places a juvenile in an out-of-home placement in an agency or institution. Pa. R.A.P. 1612. The purpose of this provision is to ensure the accountability of juvenile courts to place youth in out-of-home settings only as a last resort and to provide needed judicial oversight of court determinations that are known to be life-altering and harmful.

In addition to harms precipitated by lack of connection to family and community, it is well documented that youth in Pennsylvania's juvenile residential placement facilities and detention centers are often subject to abusive conditions, including solitary confinement, inappropriate use of physical restraints, exposure to inappropriate sexual contact and medical neglect. Children's Rights and Education Law Center, *Unsafe And Uneducated: Indifference To Dangers In Pennsylvania Residential Child Welfare Facilities* 9 (2018), https://www.elc-pa.org/wp-content/uploads/2018/12/2018_Pennsylvania-Residential-Facilities_Childrens-Rights_Education-Law-Center.pdf [hereinafter *Unsafe & Uneducated*]. Children

placed in out-of-home confinement settings are also deprived of their right to a quality education. They are denied the benefits of school stability, experience multiple educational disruptions, and are placed in inferior school settings where they are commonly denied a meaningful education with detrimental implications for a juvenile's educational trajectory. *Id.* at 20. Students with disabilities, who are disproportionately represented in the juvenile justice system, are routinely deprived of a free, appropriate, public education. *Id.* at 23-24. In sum, youth who are placed in out-of-home confinement settings are deprived of educational opportunities, academic progress, and diverted from on-time graduation and a successful future.

These dangerous conditions disproportionately harm Black and Brown youth who are disproportionately removed from their homes and placed in these settings. In Pennsylvania, Black Non-Hispanic youth make up only 14.4 percent of the statewide youth population and 37.3 percent of all delinquency allegations. Pennsylvania Juvenile Court Judges' Commission, *2021 Juvenile Court Annual Report* 7 (2021), <https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2021%20Juvenile%20Court%20Annual%20Report.pdf>. Yet Black Non-Hispanic youth represent 60.8 percent of youth held in detention prior to adjudication, and 40 percent of youth sent to residential placement. *Id.* at 34-35. Judges place Black youth in juvenile placements at a rate five times

higher than white youth. Charles Puzzanchera, Sarah Hockenberry, & Melissa Sickmund, *Youth And The Juvenile Justice System: 2022 National Report* 193 (2022), <https://ojjdp.ojp.gov/publications/2022-national-report.pdf>.

In this case, an appellate court dismissed N.E.M.'s petition without any explanation or exploration of the placement decision in clear contravention of the protections mandated by Pa. R.A.P. 1612. This error was particularly egregious in light of the underlying juvenile court's wholesale failure to state any reasons for ordering the child's placement, as required by Pennsylvania Rule of Juvenile Court Procedure 512(D) and Appellate Rule 1612(f). Pursuant to Pa. R.J.C.P. 512(D), if a juvenile is removed from home, judges in dispositional hearings must enter findings and conclusions of law into the record explaining the basis of the court's decision, including addressing the provision of educational services, none of which were occurred in this case. Pa. R.J.C.P. 512(D).

ELC submits this amicus brief to highlight the impact of the appellate court's error on the educational trajectory of youth. The decision to place a juvenile in a residential setting cannot be undertaken lightly but must be viewed as a placement of last resort as the Juvenile Act requires and must be subject to meaningful appellate review required to safeguard the best interest and educational futures of children. We underscore that a court's decision to place a child in a residential confinement setting significantly impacts a child's education and implicates important legal

rights. The Commonwealth Court recently held that education is a fundamental right and all students must have access to a “comprehensive, effective, and contemporary system of public education.” *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, No. 587 M.D. 2014, 634 (Pa. Commonw. Ct. Feb. 7, 2023). Students with disabilities placed in residential juvenile justice settings are also entitled to a free appropriate public education and have a range of other rights and protections under federal and state law. Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et. seq.*; 34 CFR 300.17; 22 Pa. Code §§ 14-15. Youth in the juvenile justice system also have a right to school stability as reflected in Pennsylvania Juvenile Court Rule 148 and the Every Student Succeeds Act which codifies the presumption that children should remain in their home school whenever possible. Pa. R.J.C.P. 148; Every Student Succeeds Act, 20 U.S.C. § 6312(c)(5)(B). The Juvenile Court Rules recognize the importance of education for the well-being of juveniles placed in the juvenile justice system and courts must enforce this core tenet.

For the reasons set forth below, we urge this Honorable Court to reverse the Superior Court’s Order and remand the case with instructions to grant N.E.M.’s petition for review. This is imperative to send clear guidance to trial and appellate courts to ensure that juveniles receive the critical protections of Pa. R.A.P. 1612 and Pa. R.J.C.P. 512(D) which were designed to protect children from unnecessary and harmful out-of-home placements that undermine a youth’s educational trajectory.

We further recommend that the Court act, in its advisory capacity, to refer Rule 1612 to the Appellate Court Procedural Rules Committee for consideration for possible amendment to expressly delineate the obligations of the reviewing court to consider findings that formed the basis of the out-of-home placement decision consistent with Pa. R.J.C.P. 512(D) and to issue a decision clearly stating the basis of the appellate court's judicial determination.

ARGUMENT

I. DECISIONS TO PLACE JUVENILES IN OUT-OF-HOME PLACEMENTS HAVE LONG-TERM DETRIMENTAL CONSEQUENCES FOR A YOUTH'S EDUCATION AND LIFE TRAJECTORY

A. Changing Schools Undermines Learning

Out-of-home placements remove children from familiar home and school environments and undermines their learning. Children lose four to six months of academic progress with every school change. Katherine C. Pears, Hyoun K. Kim, Rohanna Buchanan & Philip A. Fisher, *Adverse Consequences of School Mobility for Children in Foster Care: A Prospective Longitudinal Study* (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4618793/>. It is well documented that changing schools has negative effects on academic achievement, including lower scores on standardized tests and increasing the risk of dropping out. Frequent school changes are also associated with repeating a grade and repeated behavioral problems. Legal Center for Foster Care & Education, *Foster Care & Education Data*

At A Glance (Jan. 2022),

<https://www.fostercareandeducation.org/OurWork/NationalDatasheet2022.aspx>.

Youth who have even one fewer change in living arrangement per year are almost twice as likely to graduate from high school before leaving foster care. *Id.* Too often, credits earned at one school do not transfer or are not recognized towards graduation. These students are more likely to miss school, be placed in inappropriate classes, and fail to receive the special education and remedial services they need, due in part to the absence of a consistent and involved educational decisionmaker. *Id.*

Importantly, Pennsylvania’s Juvenile Court Rules recognizes the importance of school stability for students in the juvenile justice system. For example, Pa. R.J.C.P. 148, adopted in 2018, requires that “any order resulting in the removal of the juvenile from the home or a change in placement shall address the educational stability of the juvenile.” Pa. R.J.C.P. 148(A). Rule 148(B) requires that a juvenile remain in their school of origin unless “remaining in the school of origin is not in the juvenile’s best interest or protective of the community.” The best interest determination (“BID”) should include an assessment of their current educational setting based on their needs, proximity of the school of origin in relation to the placement, and the protection of the community. *Id.* This section is explicitly “intended to facilitate educational stability” throughout the juvenile’s time in the justice system. *Id.* The Rule also includes the requirement that students remain in

public schools even if they must transfer schools. Pa. R.J.C.P. 148(C). Rule 148 codifies the presumption of educational stability “absent evidence that it is not in the best interest of the juvenile.” *Id.*

B. Juvenile Justice Placements Offer a Vastly Inferior Education to Youth

In addition to the deleterious impact of changing schools, facilities typically provide inferior educational opportunities, causing students in juvenile justice placements to fall behind or drop out altogether when they return to their home communities. *Unsafe & Uneducated, supra*, at 22. Studies have found that less than half of youth attending “on-grounds” schools in juvenile justice placements earned any high school credits and fewer than 25% of disabled youth in juvenile justice facilities receive special education services while in placement. *Id.* at 20. These students need significant educational support which they fail to receive while in placement: Two-thirds of juveniles entering state institutions are below grade level in math and reading, and 44% of juveniles entering local juvenile justice facilities have reading or math levels below grade level. Southern Education Foundation, *Just Learning: The Imperative to Transform Juvenile Justice Systems into Effective Educational Systems* 14 (2014), <https://southerneducation.org/wp-content/uploads/documents/just-learning-final.pdf>; see generally Legal Center for Youth Justice and Education, *Goal 5: Quality Education in Facilities*, <https://www.jjeducationblueprint.org/goal-5-quality-education-in-facilities>; Peter

E. Leone, Sheri M. Meisel & Will Drakeford, *Special Education Programs for Youth with Disabilities in Juvenile Corrections*, 53 J. Correctional Educ. 46 (2002), <https://www.jstor.org/stable/41971066> (youth in special the juvenile justice system are more likely to have unmet special education needs and a history of truancy); 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 (June 2014), https://policylab.chop.edu/sites/default/files/pdf/publications/PolicyLab_Report_Supporting_Students_Involved_with_Child_Welfare_June_2014.pdf (Philadelphia youth with a history of child welfare or juvenile justice involvement score substantially lower on standardized tests, have lower promotion rates, higher rates of absenteeism and special education eligibility and accumulate fewer credits compared to their peers).

Although exact statewide data in Pennsylvania is lacking due to the lack of uniform mandated data collection or other accountability measures for placement facilities, in some jurisdictions “64% of youth involved in the juvenile justice system do not graduate from high school.” *Unsafe & Uneducated, supra*, at 19. On-grounds schools are not required to meet the same academic standards as public schools, offer a more limited curriculum and often fewer instruction hours. *Id.* Stakeholders report

that these facilities often group children together in multi-grade classrooms, sometimes taught by teachers who lack training or certifications, and these schools often rely on online learning or worksheets. *Id.* Students describe private educational placements as frustrating when they do trivial “kindergarten work” and don’t receive credit. Pennsylvania Juvenile Justice Task Force, *Report & Recommendations* 19-20 (June 2021), https://www.pacourts.us/Storage/media/pdfs/20210622/152647-pajuvenilejusticetaskforcereportandrecommendations_final.pdf. These often-dismal learning conditions stand in stark contrast to public schools that must conform to specific state standards and contravene the legal rights of students to stay enrolled in the public school where they reside. The Juvenile Justice Task Force has responded to these inadequacies and recommended legislation requiring PDE to develop licensing, oversight, and monitoring processes for education programs in juvenile justice placements. *Id.* at 42.

C. Juveniles Struggle to Stay on Track to Graduate Upon Re-entering School

Nationally, barriers to school re-engagement cause roughly two thirds of youth returning from juvenile justice placements to drop out of school. Office of Juvenile Justice and Delinquency Prevention, *Education for Youth Under Formal Supervision of the Juvenile Justice System* 6 (Jan. 2019), https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/education_for_youth_under_formal_supervision_of_the_juvenile_justice_

system.pdf [hereinafter OJJDP]. Often, the credits students receive from these programs cannot be transferred to their home schools when they return, placing them further behind their peers and threatening their ability to finish their education. *Id.* See also Juvenile Law Center, Education Law Center, Drexel University & Southern Poverty Law Center, *Credit Overdue: How States Can Mitigate Academic Credit Transfer Problems for Youth in the Juvenile Justice System* 6 (2020), https://jlc.org/sites/default/files/attachments/2020-10/Credit%20Overdue_0.pdf. (students reporting their placement never sent their credits to their school or were told they earned a different number of credits than they actually did). Even when these credits are accepted, youth find it difficult to keep up after the poor education they received in placement. See generally Juvenile Law Center, *Operation: Education* (2019) <https://jlc.org/sites/default/files/attachments/2019-06/Operation-Education-FINAL-DIGITAL-FULL.pdf> (Pennsylvania youth described how system involvement disrupted their education). Since placements can be so disruptive of their educational experience, particularly for students with disabilities, these youth also often have much poorer educational and employment outcomes as adults. Juvenile Law Center, *Transforming Justice: Bringing Pennsylvania's Young People Safely Home from Juvenile Justice Placements* 9-10 (2019), https://jlc.org/sites/default/files/attachments/2019-10/Transforming_Justice_final.pdf [hereinafter *Transforming Justice*].

Students with disabilities are also overrepresented in residential facilities, and at particular risk of receiving an inadequate education. OJJDP, *supra*, at 2. Nationally, approximately 65-70 percent of justice-involved youth have a disability and these statistics are even more disproportionate for youth of color with disabilities. “Involvement with the juvenile justice system has a damaging snowball effect for youth with disabilities- limited and poor quality education while incarcerated and violations of the Individuals with Disabilities Education Act (IDEA) put youth far behind, and reentry to school is a major challenge.” National Center For Learning Disabilities, *Unlocking Futures: Youth with Learning Disabilities & the Juvenile Justice System* (2022), <https://www.nclld.org/wp-content/uploads/2022/12/NCLD-Unlocking-Futures-Final-7th-Dec-Updated-.pdf>. A study by the Defender Association of Philadelphia found 62% youth in delinquency placement have a documented disability or mental health diagnosis, and over half (51%) have an Individualized Education Plan (IEP) for special education needs. *Transforming Justice, supra*, at 5.

Out-of-home placements are ill-equipped to properly identify students who need special education services. If a student does have an IEP at their home school, there is often a lengthy delay transferring that information to the residential facility. Moreover, residential juvenile placements often fail to comply with a youth’s IEP due to a confluence of factors including lack of qualified special education teachers

and trained professionals, lack of services and supports required to implement an IEP and residential staff's lack of training to recognize and respond to behaviors associated with a child's disability. *Id.* They fail to receive the specially designed instruction, individualized programming, and necessary accommodations they need to access the curriculum. As a result, students with disabilities languish in juvenile justice placements and fail to make progress at all. *Unsafe & Uneducated, supra*, at 23.

Over the years, ELC has responded to hundreds of calls from parents, attorneys, juvenile probation officers, and judges seeking legal intervention on behalf of juveniles placed by courts in residential placements who were languishing without any education, receiving below-grade worksheets, or unable to make progress through self-directed online learning. We have advocated for students with disabilities who failed to receive a free appropriate public education and students who lacked access to a meaningful curriculum or core subjects who were unable to stay on track to graduate. *See e.g., Derrick v. Glen Mills Sch.*, Civil Action No. 19-1541, (E.D. Pa. Dec. 19, 2019).

D. Low Academic Attainment Often Has Lifelong Consequences

It is well documented that poor educational outcomes result in negative “life outcomes” such as unemployment, homelessness and incarceration. *See e.g.,* John M. Bridgeland, John J. Dilulio, Jr. & Karen Burke Morison, *The Silent Epidemic:*

Perspectives of High School Dropouts (2006), <https://docs.gatesfoundation.org/documents/thesilentepidemic3-06final.pdf>; Dan Lips, *Foster Care Children Need Better Educational Opportunities*, Backgrounder (June 5, 2007), <https://files.eric.ed.gov/fulltext/ED498013.pdf>. High school dropouts are three and a half times more likely to be incarcerated, more likely to be unemployed, and substantially more likely to rely on public assistance than high school graduates. Nancy Martin & Samuel Halperin, *Whatever It Takes: How Twelve Communities Are Reconnecting Out-of-School Youth* viii (2006), <https://search.issuelab.org/resource/whatever-it-takes-how-twelve-communities-are-reconnecting-out-of-school-youth.html>.

It is also well documented that youth in the juvenile justice system who remain in the school fare significantly better than those who drop out—their odds of obtaining employment increase by 48% and they are far less likely to be re-arrested within 12 and 24 months after release from incarceration. See Thomas G. Blomberg & George B. Pesta, *Education and Delinquency* (Nov. 2017), https://www.researchgate.net/publication/321166142_Education_and_Delinquency ; Thomas G. Blomberg, William D Bales & Alex R. Piquero, *Is Educational Achievement a Turning Point for Incarcerated Delinquents Across Race and Sex?*, 41 *J. Youth & Adolescence* 202 (2012), <https://pubmed.ncbi.nlm.nih.gov/21643669/>. In addition, “hundreds of studies have

documented ‘the gradient’ whereby more schooling is linked with better health and longer life.” Anna Zajacova & Elizabeth M. Lawrence, *The Relationship Between Education and Health: Reducing Disparities Through a Contextual Approach*, 39 Ann. R. Pub. Health 273 (2018), <https://doi.org/10.1146/annurev-publhealth-031816-044628>. Accordingly, a court’s decision to alter a youth’s education not only has implications for a child’s current well-being but has long-term consequences for their life trajectory.

II. REQUIREMENTS IMPOSED ON JUVENILE COURTS TO MAKE SPECIFIC FINDINGS REGARDING THE EDUCATIONAL NEEDS OF JUVENILES IS ESSENTIAL TO ENSURING ACCESS TO A QUALITY EDUCATION

A. Courts Have Recognized the High Importance of Education

The U.S. Supreme Court highlighted the importance of education in many landmark federal constitutional cases. As stated in *Brown v. Board of Education*, “[i]n these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” *Brown v. Bd. of Ed.*, 347 U.S. 483, 493 (1954). In *Goss v. Lopez*, the High Court ruled that a ten-day exclusion from school constitutes a “serious and possibly traumatic event in the life of the suspended child” requiring due process under the Fourteenth Amendment of the U.S. Constitution. 419 U.S. 565, 574-575 (1975). In *Plyler v. Doe*, the Court held that the U.S. Constitution guarantees all children equal access to public education regardless of immigration status explaining “ [t]he inestimable toll of that

deprivation [of education] on the social, economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement.” 457 U.S. 202, 222 (1982).

Due to the importance of education, state and federal courts have also recognized that deprivation of educational rights produces irreparable harm and establishes a need for prompt and immediate relief. *See e.g., Oravetz v. West Allegheny Sch. Dist.*, 74 Pa. D. & C.2d 733, 737-38 (1975); *Minnicks v. McKeesport Area Sch. Dist.*, 74 Pa. D. & C.2d 744, 749-50 (1975); *L.R. v. Steelton-Highspire Sch. Dist.*, No. 1:10-CV-00468, 2010 WL 1433146 at *3 (M.D. Pa. Apr. 7, 2010).

Most recently, the Pennsylvania’s Commonwealth Court held that the Education Clause of the Pennsylvania Constitution, Pa. Const. art. III, § 14, “requires that every student be provided with a meaningful opportunity to succeed academically, socially, and civically, which requires that all students have access to a comprehensive, effective, and contemporary system of public education” *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, No. 587 M.D. 2014, 646 (Pa. Commonw. Ct. Feb. 7, 2023). Relying on the plain language and detailed history of Pennsylvania’s Education Clause, the Court also concluded that “the right to public education is a fundamental right explicitly and/or implicitly derived from the Pennsylvania Constitution[.]” *Id.* at 775. Prior to this ruling, this Court also recognized that the framers of the Education Clause “appear to have linked the importance of public

education to the success of democracy.” *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 170 A.3d 414, 424 (Pa. 2017).

Youth placed by the state in juvenile justice placements are equally entitled access a “comprehensive, effective, and contemporary system of public education” one that prepares them for their futures by providing a meaningful opportunity to succeed academically, socially, and civically. Juvenile courts are obligated to protect and uphold this fundamental right guaranteed to all school-age children residing in the Commonwealth.

B. The Juvenile Court Rules Recognize the Importance of Education in Making Out-of-Home Placement Decisions

The Pennsylvania Juvenile Act requires courts to issue orders that provide for the care, supervision, rehabilitation, and mental development of children and enables them to become responsible and productive members of the community. 42 Pa. C.S.A. § 6301(b)(1)-(3). Clearly, addressing a child’s educational needs falls squarely within the purview of this mandate. Citing the importance of education to the well-being of children, Pennsylvania adopted several court rules and amended other provisions to ensure that education issues, particularly school stability, academic progress, and assignment of an Educational Decision Maker if needed would be addressed in dependency and delinquency proceedings and at critical stages of the adjudicatory process. *See e.g.*, Pa. R.J.C.P. 147, 148, 512, 515; 1147, 1242, 1515 and 1609.

While placement decisions in dependency and delinquency proceedings involve different contexts, they share parallel provisions of the Rules of Juvenile Court Procedure relating to out-of-home placement determinations and ensuring educational stability.² Both require courts to make specific findings regarding a youth’s educational needs, and recent revisions to the Rules reinforce the necessity of educational stability. Rule 512 requires courts to state their findings and conclusions at a dispositional hearing after a finding of delinquency. Pa. R.J.C.P. 512(D). These findings must include the reasons the juvenile was removed from the home, including why removal is the least restrictive placement. Pa. R.J.C.P. 512(D)(4). In 2018, the Juvenile Court Procedural Rules Committee adopted an addition to this section specifically requiring the court to include “the provision of educational services for the juvenile pursuant to Rule 148.” Pa. R.J.C.P. 512(D)(4)(c). Rule 148, discussed *supra*, requires courts to “address the educational stability of the juvenile” in “any order resulting in the removal of the juvenile from the home or a change in a placement.” Pa. R.J.C.P. 148(A). The Final Report from the Juvenile Court Procedural Rules Committee explained that these rule amendments were in response to the Every Students Succeeds Act (ESSA), which requires that a child in placement remains in their school of origin unless it is not in the child’s best interest. 49 Pa. B 208 (Jan. 12, 2019),

² Pa. R.J.C.P Rules 1148 and 1512 are the “dependency analogs” to Rules 148 and 512.

<https://www.pacodeandbulletin.gov/secure/pabulletin/data/vol49/49-2/49-2.pdf>; 20 U.S.C. § 6311(g)(1)(E). The Rules Committee took care to emphasize that these changes “only serve to reinforce what is already required by the Rules—once the child is subject to juvenile court jurisdiction, the court is *required* to make educational decisions in the child’s best interest.” 49 Pa. B. 214 (Jan. 12, 2019) (emphasis added).

These rules are more fully explicated in the Pennsylvania Juvenile Delinquency Benchbook which gives clear notice to judges that they must consider education when determining a child’s placement and provides guidance to judges on how to do so under the law. As explained in the Delinquency Benchbook, “[t]he juvenile’s educational needs should be of particular concern to the court in crafting the disposition that will be ordered.” Pennsylvania Juvenile Court Judges’ Commission, *Pennsylvania Juvenile Delinquency Benchbook* 9.4 (2018), https://www.jcjc.pa.gov/Publications/Documents/Juvenile%20Delinquency%20Benchbook/Pennsylvania%20Juvenile%20Delinquency%20Benchbook_10-2018.pdf [hereinafter *Delinquency Benchbook*].

The Benchbook states that “[t]he Juvenile Act clearly designates [out-of-home] placement as a ‘last resort’ disposition.” *Id.* at 9.31-32. In particular, the Benchbook notes that Judges are required to state why an out-of-home placement is the least restrictive, including making findings regarding education and school

stability. *Id.* at 9.17. “The court must also make findings as to whether any evaluations, tests, counseling or treatments are necessary for the juvenile and any findings necessary to insure the stability and appropriateness of the juvenile’s education.” *Id.* In making a disposition decision, a court must also consider educational deficits and strengths to identify what competencies a juvenile needs to be developed. *Id.* at 9.6-9.7.

Despite these Rules and guidance, many juvenile court judges are failing to make required education-related findings or undertake a rigorous analysis to ensure that a child’s educational needs, including school stability and the quality of education to be provided is fully considered and that children are placed in out-of-home settings only as a last resort. This case where an appellate court failed to issue any opinion and the juvenile court judge made no findings at all is emblematic of this recurring problem.

C. Appellate Court Rule 1612 Requires Judges to Consider Education and Other Factors When Making Out-of-Home Placements.

Rule 1612 authorizes specialized expedited appellate review of out-of-home placements made following an adjudication of juvenile delinquency. Pa. R.A.P. 1612. While juvenile court judges are clearly required under Pa. R.J.C.P 512 to state their findings supporting such placements on the record, Pa. R.A.P. 1612(f) also sets forth a procedure expressly requiring judges to submit their reasons for determination during this specialized review process if they failed to do so prior to

an appeal. Rule 1612 emanates from an understanding of the significant trauma wrought by placing a juvenile in an out-of-home placement, provides a mechanism for expedited review, and by referencing Rule 512(D) reinforces that juvenile courts *must* make specific findings relating to an out-of-home placement to be considered by the reviewing appellate court. Specifically, if a juvenile is placed out of home, the record provided for appellate review must set forth findings and conclusions that formed the basis of its decision, including “why the court found that the out-of-home placement ordered is the least restrictive type of placement that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare” and “the provision of educational services for the juvenile pursuant to Rule 148;” Pa. R.J.C.P. 512(D)(4)(b)-(c). In addition, these findings must include “any findings necessary to ensure the stability and appropriateness of the juvenile's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 148” Pa. R.J.C.P. 512(D)(6).

There is nothing in the language of Rule 1612 that indicates that an appellate court's review is in any way discretionary. The Rule expressly mandates that the trial court record be transcribed expeditiously within five business days to be available for further review. Rule 1612(c) entitled “Scope of Review” makes clear that a juvenile may “challenge . . . the fact that the placement is out-of-home” but clarifies that an appellate court's review does not encompass a challenge to the

specific agency or institutional placement or a challenge to the underlying adjudication of delinquency. While the Rule is clear, the egregious circumstances presented in this case raise concerns regarding a systemic appellate practice. Accordingly, we urge the Court to consider referring Rule 1612(c) to the Appellate Court Procedural Rules Committee to consider possible amendment to further clarify the appellate court's duty and scope of review. Specifically, we recommend that Rule 1612(c) be revised to add the following provision:

(3) The reviewing court shall consider all factors set forth in Pa.R.J.C.P. 512(D) in conducting its review and shall state the legal and factual basis for its determination as to whether the juvenile court abused its discretion in ordering the out-of-home placement and, if necessary, define the terms and conditions of an alternative disposition for the juvenile.

III. THE SUPERIOR AND JUVENILE COURT ORDERS IN THIS CASE CONTRAVENED THE REQUIREMENTS OF APPLICABLE PROCEDURAL RULES, PLACING N.E.M. AT GREAT RISK OF HARM

In this case, N.E.M. was ordered into out-of-home placement by a juvenile court without any statement of reasons on the record for ordering the placement or any subsequent court findings whatsoever, including findings regarding N.E.M.'s educational needs, school stability, and school community connections. N.E.M. properly sought review in the Pennsylvania Superior Court under Pa. R.A.P. 1612, a rule intended to provide meaningful expedited review of orders placing children in out-of-home placements pursuant to orders in delinquency cases. The juvenile court never filed any statement of the reasons for the determination as required by Rule

1612(f). And instead of considering N.E.M.'s appeal, the Superior Court denied the petition for review without any opinion when in fact the absence of an oral record or any other findings supporting the out-of-home placement decision disclosed that the juvenile court abused its discretion by failing to articulate a legal and factual basis for the decision that placed N.E.M. at risk of harm and that the court had not addressed nor made findings regarding the factors set forth in Pa. R.J.C.P. 512(D).

Superior Court erred by thwarting its responsibilities and denying review without issuing any opinion, an error which is particularly egregious in light of the juvenile court's failure to make any record or issue any statement of findings. The absence of any record constitutes a grave oversight which placed N.E.M. at risk of educational harm. At both stages, these courts failed to follow the clear language of applicable court rules and ignored well-known policy justifications underlying those rules which were specifically designed to protect juveniles from a host of harms associated with out-of-home confinement settings. These actions also discredit the Juvenile Act's espoused commitment to protecting, nurturing, and ensuring the safety, treatment, rehabilitation and education of youth and the stated goal of preserving the unity of the family whenever possible. 42 Pa.C.S.A. § 6301(b)(1)-(3).

Pennsylvania's Juvenile Act explicitly limits juvenile courts' ability to impose confinement, requiring the "least restrictive intervention" and permitting

confinement “only if necessary and for the minimum length of time” consistent with the Act’s goals. 42 Pa.C.S.A. § 6301(b)(1)-(3). The Pennsylvania Juvenile Delinquency Benchbook emphasizes that “[t]he Juvenile Act clearly designates placement as a ‘last resort’ disposition” and “[r]esearch and experience demonstrate that the many youth placed in residential settings do not need to be in secure facilities to ensure community protection.” *Delinquency Benchbook, supra*, at 9.31 (“The Juvenile Act dictates the strongest possible preference for noncustodial dispositions over custodial ones.”) As the Benchbook instructs, “[a]mong the Act’s stated purposes is to ‘preserve the unity of the family whenever possible,’ and to respond to delinquency through measures that operate ‘in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety.’” *Id.* (quoting the Juvenile Act, 42 Pa.C.S.A. § 6301).

Clearly effective, meaningful, and timely appellate review is necessary to ensure that judges fairly apply these important standards and appropriately limit out-of-home confinement. In the wake of the “Kids for Cash” scandal, the General Assembly established an “Interbranch Commission” which highlighted the need for robust appellate review to operate as a check on potential abuse of judicial power and to create a path to releasing or sparing youth from placements. *Interbranch Commission on Juvenile Justice Report, generally* and at 55 (May 2010),

<https://www.pacourts.us/Storage/media/pdfs/20210208/161601->

[interbranchcommissiononjuvenilejustice.pdf](#) [hereinafter *Interbranch Commission Report*]. As the Commission emphasized, “[a]ppellate review by the Superior Court of Pennsylvania is essential to the proper functioning of the juvenile justice system because it provides an aggrieved party an opportunity to seek review of the juvenile court judge’s decision and provides a mechanism to correct legal and procedural errors that may have been made by the judge.” *Id.* at 55-56.

To make appellate review meaningful, the Commission recommended that juvenile courts state on the record the reasons for ordering out of home placement as this would foster transparency and help judges adhere to the principles of the Juvenile Act: “Additional emphasis on the court’s justification for orders requiring out-of-home placement would serve both as a reminder that out-of-home placement should occur only when there is a ‘clear necessity’ to remove the child from the home, but also would assure children and families that juvenile court judges did not take this step lightly.” *Interbranch Commission Report, supra*, at 53. Adding this explanation to the record supports meaningful and appropriate appellate review, as “appellate courts would have a clear record to review.” *Id.* Consequently, the Juvenile Court Procedural Rules were amended to require that when a juvenile court removes the youth from the home, it must state on the record “why the court found that the out-of-home placement ordered is the least restrictive type of placement that

is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare." Pa. R.J.C.P. 512(D)(4)(b).

The Interbranch Commission also recommended an expedited process for juvenile appeals, now set forth in Pa. R.A.P. 1612 finding that "[t]o be meaningful ... appellate review must be completed before the child's placement, or other disposition, has been completed" *Id.* at 56. In this case, the juvenile court and Superior Court operated completely outside the rules designed pursuant to the Interbranch Commission's recommendations to protect juveniles like N.E.M. from unnecessary and harmful out-of-home placements that disrupt and undermine a child's education.

CONCLUSION

The Superior Court's Order denying N.E.M.'s petition for specialized appeal under Rule 1612 without any explanation contravenes applicable juvenile court rules, sets a dangerous precedent signaling the absence of accountability and oversight, and defies decades of reform efforts to reduce referrals to out-of-home placements which are documented to be harmful to children educationally, physically, and emotionally. This error is particularly egregious here as the lower court failed to make any record of the reasons it ordered N.E.M. to be confined, allowing a drastic measure to be implemented without proper consideration at the trial level and the appellate review N.E.M. diligently sought and should have been

able to rely on for protection. For the foregoing reasons, *amici* respectfully urge this Court to reverse the Superior Court's Order and remand with instructions to grant N.E.M.'s petition for review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 531 and 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 7,000 words. In preparing this certificate, I relied on the word count feature of Microsoft Word. I further certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that requires filing confidential information and documents differently than non-confidential information and documents.

Dated: June 26, 2023

/s/ Maura McInerney
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