July 6, 2026

Independent Regulatory Review Commission
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Submitted via email to: RA-PWOCYF3900sReview@pa.gov

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Re: *Regulation Package #14-559: Residential Services for Children and Youth, commonly referred to as the 3900 regulations, posted on the Independent Regulatory Review Commission's website at IRRC Link*

Education Law Center-PA ("ELC-PA") submits these comments in response to proposed regulations to 55 PA Code §3900, §3910, and §3920 which sets forth licensing requirements, policies, and practice standards governing child residential, secure residential or secure detention facilities. As reflected in 55 PA Code § 3900.1, the regulations are intended to "protect the health, safety, and well-being of children and youth receiving care..." Our comments focus specifically on education as a key component of well-being which has been recognized in federal child welfare laws[1] and is expressly reflected in the definition of well-being in the proposed regulations which includes "cognitive, emotional, behavioral, as social functioning" and "education" as core elements of "well-being" that will allow children to "be successful throughout childhood, youthhood, and into adulthood…" 55 PA Code § 3900.5.

[1] For example, the *Fostering Connections to Success and Increasing Adoptions Act of 2008* requires all states to ensure educational stability and develop ongoing plans for the health and education of children in foster care. 42 U.S.C. § 675(1). Under the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations, state Title IV-E agencies are federally mandated to collect and report specific, case-level educational information for children in out-of-home care. *See* 45 CFR Part 1355.40. Specifically, § 1355.34 *Criteria for determining substantial conformity* includes criteria as to whether children "receive appropriate services to meet their educational needs"); § 1355.44 (defines child out-of-home care data elements to include child information on school enrollment (11); education level (12), and special education (14). See also Adoption and Foster Care Analysis and Reporting System (AFCARS), Children's Bureau, Office of the Administration of Children and Families, U.S. Health and Human Services (June 2024) at https://acf.gov/cb/data-research/adoption-fostercare.

We greatly appreciate the significant and overdue improvements to current regulations and are grateful to the Office of Children, Youth, and Families' ("OCYF") of the Department of Human Services ("Department") for thoughtfully updating the 1999 regulations to reflect important developments in law, guidance, and our understanding of the needs of children and youth. However, we believe that the proposed regulations require further revision and refinement to ensure access to a quality education for children and youth in residential settings and accomplish the Department's stated goal: "to clarify the authority and responsibility of facility management regarding education of children and youth and to reinforce the child's or youth's rights to an education while in a residential facility." *Notice of Proposed Rule Making, 55 Pa Code Chapters 3800, 3900, 3910 and 3920, Residential Services for Children and Youth* (April 9, 2026), Comments to § 3900.94 Education at p. 122 ("Comments").

Specifically, the proposed amendments should be amended to: (1) **identify additional key education rights** which are currently absent from the proposed regulations; (2) **reference the specific responsibilities of facilities** to ensure access to education under state law; (3) **integrate new state legal protections;** and (4) **ensure the accountability of facilities** to support access to education as envisioned by state law.

Because the regulations were last updated in 1999, there have been significant and transformative developments in both child welfare and education law at both the federal and state level, including expansions of the rights of children. With regard to education, these changes included: (1) the right to school stability and immediate enrollment for children in foster care[2] and in the juvenile justice system[3]; (2) a new state law which provides additional protections to support children who experience "educational instability" known as "Act 1"; (3) the recognition of education as a "fundamental right" and that the Education Clause of our state Constitution "requires that all students to access a comprehensive, effective, and contemporary system of public education*" William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.,* 294 A.3d 537, 964 (Pa. Commw. Ct. 2023); (4) expanded special education rights under the 2004 reauthorization of the *Individuals with Disabilities Education Act* (IDEA), 20 U.S.C. § 1400 *et seq*. which codified specific protections and procedures for students defined as "wards of the state" and (5) the adoption of a state complaint system which enables parent, youth and members of the public to raise concerns regarding the quality of education provided to publicly placed students.[4] Children in residential facilities and their parents, guardians/caregivers must be **notified of these rights.**

It is also imperative that the proposed regulations clarify the vital role of residential placements to ensure access to and immediate enrollment in the local public school where the facility is located as directed by 24 P.S. § 13-1306 and 22 Pa. Code 11.11(c) (providing that children residing in "children's institutions" are entitled to attend the local public school where the

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[2] *Every Students Succeeds Act*, 20 U.S.C. 6301 *et. seq*.

[3] Pa R.J.C.P. 148

[4] *See Publicly Placed Complaint*, Pennsylvania Dept. of Education (defining "Publicly placed student" as a school-aged student placed by a court or child welfare agency in a Private Residential Rehabilitative Institution (PRRI), detention center, state correctional facility, or child residential facility as defined in 55 Pa. Code § 3800.5. available at https://www.pa.gov/agencies/education/programs-and-services/instruction/elementary-and-secondary-education/publicly-placed-complaint.

placement is located)[5] and that facilities do not bundle education and residential services.[6]

We believe that our recommended amendments to the proposed regulations are necessary to both bring the residential services regulations into compliance with current federal and state laws, and most importantly, ensure the well-being of children and youth in residential facilities by ensuring their access to a quality public education.

Who We Are

ELC-PA is a statewide non-profit legal advocacy organization dedicated to ensuring access to a quality public education for all children in Pennsylvania. To accomplish our mission, we advocate and litigate on behalf of students who are most underserved by our education system, including children living in poverty, Black and Brown students, children with disabilities, multilingual learners, immigrant students, students experiencing homelessness, those who identify as LGBTQI+, students impacted by the child welfare and juvenile justice system, and students at the intersection of multiple identities. We work in three strategic areas: enforcing equal access to a quality public education, ensuring adequate and fair funding, and dismantling the school-to-prison pipeline. ELC-PA's work includes individual and impact litigation, statewide, local, and individual advocacy, and providing technical assistance and trainings to parents, students, child welfare agencies, school districts, advocacy organizations, and judges.

ELC-PA has a long history of representing and advocating for students in foster care and in the juvenile justice system in Pennsylvania. We have also sought to advance the rights of students in residential facilities specifically through litigation efforts and policy advocacy. ELC-PA has drafted and informed statewide and federal legislation, state education regulations, and contributed to state regulatory guidance regarding children in residential facilities. In addition to individual representation, we have filed state administrative complaints on behalf of students in detention centers and undertaken impact litigation by filing a class action lawsuit against Glen Mills Schools. *See Derrick v. Glen Mills Schs.*, 2024 WL 2134340 (E.D. Pa. May 13, 2024). In 2018, ELC-PA also co-authored a report, Unsafe and Uneducated which analyzed education related data and issues and made recommendations to improve educational outcomes for students in residential facilities.[7] At a national level, ELC-PA is a co-founder of the national Legal Center for Foster Care and Education, a collaboration of the American Bar Association and Juvenile Law Center and the Legal Center for Youth Justice and Education (LCYJE).

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[5] *See* Pennsylvania Department of Education Basic Education Circular on Educational Programs for Students in "Non-Educational" Placements available at https://www.pa.gov/agencies/education/resources/policies-acts-and-laws/basic-education-circulars-becs/pa-code/educational-programs-for-students-in-non-educational-placements and Pennsylvania Dept. of Human Services, *Education of Students Served by Pennsylvania County Children and Youth Agencies,(*delineating responsibilities of contracted private providers "to make certain that the educational needs of the children and youth that they serve are met"), available at https://www.pa.gov/agencies/dhs/resources/early-learning-child-care/education-stability-child-welfare-services.

[6] Educational Portions of "Non-Educational" Residential Placement Bulletin, OMHSAS-10-02 (prohibiting private providers from "bundling" educational and non-educational services). available at https://www.pa.gov/content/dam/copapwp-pagov/en/dhs/documents/docs/publications/documents/forms-and-pubs-omhsas/d_006963.pdf.

[7] Children's Rights, Inc & Education Law Center, *Unsafe and Uneducated: Indifference to Dangers in Pennsylvania Child Welfare Facilities* (2018), available at https://www.elc-pa.org/wpcontent/uploads/2018/12/2018_Pennsylvania-Residential-Facilities_Childrens-Rights_Education-Law-Center.pdf.

Our comments emanate from ELC-PA's over fifty years of experience litigating cases and engagement in legislative and regulatory reforms to ensure access to a quality education for children and youth in residential placements.

I. The Critical Role of Education For Children in Residential Facilities

As discussed above, education is a core component of a child's well-being. Sadly, children and youth in the dependency and delinquency system – and children in residential placements in particular -- are among the most educationally underserved of all student populations.

As detailed in a May 2025 report jointly written by Education Law Center-PA (ELC-PA) and PA Partnerships for Children, *Supporting Success for Pennsylvania's Students in Foster Care: Data, Outcomes, and Stories from the Field*, the low academic performance of students in foster care is negatively driven by systemic failures including systemic racism,[8] high rates of school mobility,[9] unmet special education and remedial needs, and high rates of school discipline.[10] These factors lead to lower academic performance and higher grade retention rates, culminating in often insurmountable barriers to graduate and the opportunity to achieve postsecondary success.[11]

Youth in the juvenile justice system are also more likely to be behind academically, more likely to change schools and have a history of truancy, and far more likely to need special education services (e.g. 50-70% of students in the juvenile justice system are students with disabilities).[12]

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[8] Pennsylvania Department of Human Services, *Racial Equity Report: Leading the Fight for Justice, Equity, and Opportunity for All People* 2 (2021), available at https://www.dhs.pa.gov/about/Documents/2021%20DHS%20Racial%20Equity%20Report%20final.pdf.

[9] Catherine S. Zorc, Amanda L.R. O'Reilly, Meredith Matone, Jin Long, Caroline L. Watts, David Rubin, Children and Youth Services Review, Volume 35, Issue 5, 2013, The relationship of placement experience to school absenteeism and changing schools in young, school-aged children in foster care, 826-833, https://doi.org/10.1016/j.childyouth.2013.02.006, 2; 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, National Library of Medicine (Oct. 23, 2016), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4618793/.

[10] Legal Center for Foster Care and Education National Data Sheet, *Exploring Education Outcomes: What the Research Tells Us*, ABA Center on Children and the Law, Jan. 2022) available at https://static1.squarespace.com/static/63dcf65b8d0c56709027332e/t/65206d213728bb028bee2ee8/1696623910191/Education%2BOutcomes%2Bfinal-combined.pdf

[11] Somers CL, Goutman RL, Day A, Enright O, Crosby S, Taussig H. *Academic Achievement Among a Sample of Youth in Foster Care: The Role of School Connectedness.* Psychol Sch. 2020 Dec;57(12):1845-1863. doi: 10.1002/pits.22433. Epub 2020 Aug 14. PMID: 33707787; PMCID: PMC7942201.

[12] *See* Peter Leone and Lois Weinberg, "Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems" (Washington, DC: The Center for Juvenile Justice Reform, May 2010), 10-11; Research studies collected by Legal Center for Youth Justice and Education (2017) available at https://jjeducationblueprint.org/sites/default/files/YouthJusticeBlueprintGoals_6-27-17.pdf; Sophia Hwang, Heather Griffis, Lihai Song, David Rubin, Supporting the Needs of Students Involved with the Child Welfare and Juvenile Justice System in the School District of Philadelphia, The Children's Hospital of Philadelphia PolicyLab 9-19 (2014), available at https://policylab.chop.edu/tools-and-memos/supporting-needs-students-involved-child-welfare-and-juvenile-justice-system-school, (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). SOUTHERN EDUCATION FOUNDATION, JUST LEARNING: THE IMPERATIVE TO TRANSFORM JUVENILE JUSTICE SYSTEMS INTO EFFECTIVE EDUCATIONAL SYSTEMS—A STUDY OF JUVENILE JUSTICE SCHOOLS IN THE

Due to individual and systemic racism, youth of color are disproportionately placed in both the foster care and juvenile justice systems and are also more likely to placed in more restrictive settings such as residential facilities. As the bipartisan Pennsylvania Juvenile Justice Task Force concluded, "Serious racial disparities pervade Pennsylvania's juvenile justice system."[13] While Black non-Hispanic youth make up 14% of the statewide youth population, they represent 38% of written allegations referred to the system and are far more likely than their white peers to be removed from home, held in detention, and prosecuted in adult court. Black youth represent 62% of youth held in detention prior to adjudication, 47% of youth sent to residential placement, 62% of youth charged as adults directly filed in adult court, and 55% of youth charged in adult court at the discretion of a juvenile court judge.[14]

Nationally, the overrepresentation of Black children in the child welfare system has been well documented across numerous studies.[15] The same is true in Pennsylvania. As explained in the Pennsylvania Department of Human Services 2021 Racial Equity Report — which documented the impact of racial injustice across systems in Pennsylvania — 35% of children in foster care in Pennsylvania are Black, despite Black children making up only 13% of the state's total child population.[16] Moreover, two-thirds of the youth referred to secure youth treatment centers are Black.[17] White families who are system-involved are more likely to receive less punitive interventions, such as family and home support, while Black families are more likely to be subjected to more punitive interventions and heightened surveillance and placement in residential settings.[18] As a result due to systemic and structural racism, Black children are disproportionately removed from their homes and experience greater harm educationally.[19]

Research shows that placement in a residential setting exacerbates pre-existing harm due to lack of access to a quality public education while in a residential placement, inferior unregulated

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SOUTH AND THE NATION 14 (2014), available at https://southerneducation.org/wp-content/uploads/documents/just-learning-final.pdf, (two-thirds of juveniles entering state institutions were below grade level in math and reading and 44% entering local juvenile justice facilities were below grade level in math and reading).

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

[14] *Id.*

[15] Cenat, J. M., McIntee, S. E., Mukunzi, J. N., & Noorishad, P. G *Overrepresentation of Black children in Child Welfare.* (2020). *Overrepresentation of Black children in the child welfare system: A systematic review to understand and better act.* Children and Youth Services Review, 120, https://doi.org/10.1016/j.childyouth.2020.105714. https://ncwwi.org/wp-content/uploads/2022/05/Overrepresentation-of-Black-children-in-Child-Welfare.pdf

[16] *See* PA. DEP'T OF HUM. SERVS., RACIAL EQUITY REPORT 2021: LEADING THE FIGHT FOR JUSTICE, EQUITY, AND OPPORTUNITY FOR ALL PEOPLE 2 (2021) [hereinafter RACIAL EQUITY REPORT 2021], https://www.pa.gov/content/dam/copapwp-pagov/en/dhs/documents/about/documents/2021%20DHS%20Racial%20Equity%20Report%20final.pdf.

[17] *Id*.

[18] See 2022 State of Child Welfare in PA report, Pennsylvania Partnerships for Children at pages 12-13, https://online.flippingbook.com/view/1067488899/12/. See also Sarah A. Font, Lawrence M. Berger, and Kristen S. Slack, *Examining Racial Disproportionality in Child Protective Services Case Decisions,* Child Youth Serv Rev. 2012 Nov 1; 34(11): 2188–2200, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3439815/.

[19] See EDUCATION LAW CENTER & PA. PARTNERSHIPS FOR CHILDREN, SUPPORTING SUCCESS FOR PENNSYLVANIA'S STUDENTS IN FOSTER CARE: DATA, OUTCOMES, AND STORIES FROM THE FIELD 4–11 (2025), https://www.elc-pa.org/wp-content/uploads/2025/05/Supporting-Success-for-Pennsylvanias-Students-in-Foster-Care.pdf.

educational programs associated with a residential facility, multiple school disruptions, the failure to receive appropriate special education services, lack of access to a state aligned curriculum and qualified trained educators, and poor re-entry processes.[20] Placement in a residential facility has become a driver of students dropping out of school and entry or re-entry into the juvenile justice or criminal justice system.[21]

Too often youth suffer academically as they fail to receive a meaningful education while attending an unmonitored residential placement school or program. These programs often offer few hours of instruction, lack access to trained or certified teachers, and provide electives rather than core subjects, with coursework far below grade level. Youth in these programs earn few credits towards graduation[22] and subsequently face multiple barriers to re-engaging in their community schools and due to educational disruption they are unable to stay on track to graduate. As a result, students experience far higher dropout rates than their peers.[23] In addition, youth may then violate probation due to non-attendance in school – even in circumstances when they are awaiting enrollment or referral to a special education placement.

Children with disabilities are overrepresented in dependency and juvenile delinquency placements. For example, students in foster care are more likely to be identified as being eligible for special education services than their peers[24] who have not had experience in care and more than 40% of students in foster care receive special education compared to just under 19% of their peers.[25] A 2019 snapshot of data from the Defender Association of Philadelphia found that 62% of youth in delinquency placement had a documented disability or mental health diagnosis.[26] Many facilities also fail to provide proper education to these students.[27] In several situations ELC-PA has

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[20] *Unsafe and Uneducated: Indifference to Dangers in Pennsylvania Child Welfare Facilities, pp XX* (2018) (collecting research)

[21] *Id.*

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

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

[24] Farnsworth, E. M., Cordle, M., Kromminga, K., Shaver, E. L., Szydlo, T., & Frederick, J. (2022). *Protecting the Educational Rights of Students in Foster Care: Legal Considerations for Educational Professionals*, CHILD. AND YOUTH SERVS. REV., 141, 106585. https://doi.org/10.1016/j.childyouth.2022.106585.

[25] Foster Care Supporting Success Report, *supra* note 19 at 5.

[26] Lisa Pilnik et al., Juvenile Law Center., Transforming Justice: Bringing Pennsylvania's Young People Safely Home From Juvenile Justice Placements 5 (2019), https://jlc.org/sites/default/files/attachments/2019-10/Transforming_Justice_final.pdf

[27] Elissa Glucksman Hyne et al., Children's Rts. & Educ. L. Ctr., Unsafe and Uneducated: Indifference to Dangers in Pennsylvania Residential Child Welfare Facilities (2018); https:// www.elc-pa.org/wp-content/uploads/2018/12/2018_Pennsylvania-Residential-Facilities_Childrens-Rights_Education-Law-Center.pdf.

represented children in residential placements who receive access only self-paced asynchronous virtual programs or worksheets completed independently. These self-paced, one-size-fits-all programs are particularly challenging for students with disabilities as well as children who are reading below grade level and need in-person academic support to understand the material. The use of such virtual modalities directly undermines the ability of students to stay on track to graduate. However, the use of virtual programs is particularly devastating for students with disabilities, who are commonly denied their legal entitlement to individualized programming, differentiated instruction, and a school placement decision made by legally authorized representatives.[28] We therefore recommend including specific rights regarding children with disabilities.

The research and reports cited above must inform the Commission's review of the proposed regulations as they highlight the urgent need to address the educational needs of children and youth in residential placements and the vital role that child welfare providers and residential facilities must play in the process of ensuring access to a quality education for the children they serve. The need to address these issues is critical to the life trajectories of the children served in residential facilities. Research shows that education is not only the principal pathway to financial security, housing stability, employment, and social success[29] but educational attainment directly impacts the health and lifespan of individuals.[30]

II. Recommendations for Education Related Provisions

Note: This section proposes specific amendments to the proposed regulations addressing education alone. With regard to each provision, the current language is provided in black and ELC-PA's proposed amendments are in red. Explanatory comments follow each proposed amendment.

§ 3900.194. Education.

(a) Each child or youth of compulsory school age must have access to the local public school

[28] Federal and state special education laws provide robust protections and mandate that all eligible students receive a free appropriate public education in the least restrictive environment with non-disabled peers, which enables them to make meaningful progress. 20 U.S.C. § 1412(a)(1)(A); 20 U.S.C. § 1414(d)(A); *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017); 34 C.F.R. § 300.114(a)(2)(i).; 34 C.F.R. 300.116; 34 C.F.R § 300.325; 34 C.F.R. § 300.327. 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. State and local education agencies must also "ensure that a continuum of alternative placements is available to meet the needs of students. 34 C.F.R. § 300.115 (a).

[29] Tamborini CR, Kim C, Sakamoto A. Education and Lifetime Earnings in the United States. Demography. 2015 Aug;52(4):1383-407. doi: 10.1007/s13524-015-0407-0. PMID: 26100983; PMCID: PMC4534330.

[30] Zajacova A, Lawrence EM. The Relationship Between Education and Health: Reducing Disparities Through a Contextual Approach. Annu Rev Public Health. 2018 Apr 1;39:273-289. doi: 10.1146/annurev-publhealth-031816-044628. Epub 2018 Jan 12. PMID: 29328865; PMCID: PMC5880718; David M. Cutler and Adriana Lleras-Muney, "Education and Health: Evaluating Theories and Evidence," NBER Working Paper 12352 (2006), https://doi.org/10.3386/w12352.

where the facility is located in accordance with state law unless (1) a court order dictates otherwise; (2) the student's current IEP and Notice of Recommended Educational Placement require a different educational placement or (3) the student is in an "interim alternative educational setting" and placed in accordance with the IDEA or currently expelled for a weapons offense under 24 P.S. § 13-1317.2(e.1)).

(b) If a child participates in a Department of Education-approved school while in placement at the facility that school must ~~program or an educational program which~~ comply with the State law requirements relating to student attendance, provision of special education services and programs, and the provision of accommodations for protected students with disabilities.

(c) Facility staff shall collaborate to ensure access to education by: (1) facilitating school stability or immediate enrollment in a new school in accordance with the rights of students under federal and state law and assisting in obtaining education records, including a child's IEP; (2) facilitating prompt enrollment in the local public school or other school placement identified by the appropriate LEA following a best interest determination conference with a Children & Youth agency or identified through the special education process; (3) notifying the Local Educational Agency (LEA) when a child is eligible for the protections of Act 1 of 2022; (4) notifying the LEA and Children & Youth agency if a child with a disability needs a surrogate parent an Educational Decision Maker (EDM) appointed by a court; and (5) notifying parents, guardians, Educational Decision Makers of the Pennsylvania Department of Education's complaint system for publicly placed students.

(d) Facility staff shall not require or compel a child to attend a school associated with or located on the grounds of a residential facility nor shall they compel them to participate in a General Educational Development (GED) or High School Equivalency Diploma program instead of accessing their right to school.

(e) Facility staff shall actively participate in discussions regarding the child's or youth's education, convened by the Local Educationa~~l~~ Agency ~~Authority~~ (LEA) or county agency and comply with ~~the~~ any education plan as developed, including a child's Individual Education Program ("IEP"), graduation plan developed under Act 1, and any transition plans.

(f) Facility staff shall cooperate with any investigation or inquiry conducted by the Pennsylvania Department of Education to ensure children and youth in residential facilities receive a quality education.

Comments: *In order to accomplish the stated goal of clarifying the responsibilities of facility management regarding education and reinforcing the child's rights to an education while in a residential facility it is imperative for this provision to acknowledge and integrate the role of the facility staff to ensure a child's right to access the local public school under state law. See 24 P.S. § 13-1306 and 22 Pa. Code 11.11(c) (children residing in "children's institutions" are entitled to attend the local public school where the placement is located).*[31] *This role has been*

[31] See also *See* 24 P.S. §§ 13-1301--13-1302, 1306, and 13- 1327.

consistently acknowledged in guidance issued by PDE.[32] *Facility staff are the linchpin to ensuring immediate access to school and it is insufficient for staff to merely participate in a meeting when they the ones who are aware of the child's placement and have relationships with the local public school.*

We also recommend that this section address a child's eligibility under Act 1 for children who have experienced one or more school changes due to involvement in foster care, the juvenile justice system, or due to experiencing homelessness. Under Act 1 of 2022, 24 P.S. § 13-1331.1 a child must be identified as eligible. The law removes educational and graduation barriers for students experiencing "educational instability." It mandates that schools assign a point of contact, ensure access to the full range of opportunities in school, adopt clear credit transfer policies, waive courses or modify graduation requirements or provide alternative projects or assignments, and develop graduation plans for these highly mobile students. Id. Yet students, including those in the juvenile justice system and dependency system, are often never identified for these protections and as a result, drop out of school when they could have graduated under the benefits of Act 1.

Facility staff should play a role in notifying students of the complaint system adopted by PDE in 2025 to ensure access to a quality education for all "publicly placed students" in residential settings. "Publicly placed students" are defined as school-aged students placed by a court or child welfare agency in a detention center, state correctional facility, PRRI or child residential facility. Once again, facility staff should provide information about this complaint system to facilitate access to this grievance system for children in residential placements. Alternatively, we recommend that a reference to the complaint system be included § 3900.31 (relating to notification of rights and grievance procedures).

Finally, while we recognize that facility staff do not and should not make decisions relating to a child's school placement or educational program, they are responsible for ensuring access to education which is critical to support every child's well-being. Changes proposed by the Department in § 3900.194 do not go far enough to effectuate this important goal. The proposed language also addresses a common barrier to children accessing a local public school education: a practice whereby facility staff compel families to attend an on-grounds schools or divert students to a GED program. The Department and PDE have both sought to address this issue through guidance but is has nonetheless continued.

§ 3900.32. Specific Rights.

(a) A child or youth may not be discriminated against because of race, color, creed, disability, religious affiliation, ancestry, gender, gender identity or expression, sexual orientation, national 31 origin or age and a facility shall comply with applicable Federal and State statutes and regulations.

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[32] *See* Pennsylvania Department of Education Basic Education Circular on Educational Programs for Students in "Non-Educational" Placements available at https://www.pa.gov/agencies/education/resources/policies-acts-and-laws/basic-education-circulars-becs/pa-code/educational-programs-for-students-in-non-educational-placements.

(b) A child or youth may not be subject to harassment, corporal punishment, unreasonable restraint or physical, sexual, emotional or other abuse and a child with a disability may not be restrained in violation of their rights under state law.

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(o) ~~A child or youth has the right to education stability and an appropriate education consistent with the laws of this Commonwealth.~~

(o) A school-aged child or youth has the following rights:

(1) the right to attend the local public school of the host school district where the facility is located unless a court order specifies otherwise;
(2) the right to school stability or immediate enrollment in a new school if the child qualifies as a student in foster care under federal law or in the juvenile justice system under state law;
(3) the right to the protections of Act 1 of 2022 if the child has experienced educational instability due to placement in foster care, the juvenile justice system, or homelessness.
(4) A child with a disability who is eligible under the IDEA, has the right to a free, appropriate, public education and the right to be educated in the least restrictive environment with non-disabled peers.
(5) A child with a disability has the right to accommodations to ensure equal access to educational opportunities.
(6) A child with a disability has a right to have a surrogate parent appointed to ensure that the rights of the child are protected when the child (1) has no parent or a parent as defined by the IDEA cannot be identified; (2) the child is a ward of the State; or (3) the child is an unaccompanied homeless youth.
(7) A child with a disability cannot be subject to illegal restraints under federal and state law.
(8) A child who is limited English proficient has a right to language instruction, written translations, and the right to access interpreters and language access services.

(w) A child or youth with a disability has the right to reasonable accommodation while in the facility, including reasonable modifications in policies, practices, and procedures.

(x) A child, youth, and their parent/guardian have the right to access qualified, live interpretation services provided in-person, telephonic, or through video, and translated documents. A child or family member or bilingual facility staff cannot substitute for qualified interpretation or translation services.

Comments: *As per the discussion above, the proposed additions to this provision identify and notify facilities and the others of the important educational rights of children and youth in residential facilities. This is necessary to "reinforce the child's rights to an education while in a residential facility." See Comments to § 3900.94 Education at p. 122. The current proposal includes the following language relating to education: (o) A child or youth has the right to education stability and an appropriate education consistent with the laws of this Commonwealth. The proposed language does not include the right to immediate enrollment and also fails to*

define what is meant by an "appropriate" education which has a specific meaning in the disability context. We believe that the proposed revisions acknowledge several important specific rights which are currently absent from the proposed regulations and necessary to protect the child, including the right to the protections of Act 1, the rights of students with disabilities, and the rights of multilingual learners.

§ 3900.195. Transfer or discharge.

(a) Facility management shall develop and adhere to a comprehensive discharge planning process structured to support permanency, long-term stability, and successful outcomes for a child or youth, including policies addressing the exchange of information with the family and family notifications if applicable, and a planning meeting to take place at least 14 days prior to discharge.

(b) The discharge planning process shall begin as of the date of admission and shall include. the following:

(1) Individualized teaming efforts, with the opportunity for the child or youth to identify participants to act as their representatives in the planning process.
(2) Confirmation that each child or youth is an active participant in their own discharge planning process, which includes the input offered by their team to address needs and identify supports.
(3) Viable concurrent discharge planning that includes potential discharge resources and community connections.
(4) A plan for each school aged child's school stability or prompt enrollment in a community school, including, a plan for placement of a child with a disability in an approved private school or other school setting. The facility shall notify the appropriate LEA of the child's expected discharge at least 14 days prior to the event and shall forward or facilitate the transfer of any education records in its possession, including a record of academic full and partial credits earned.
(5) Community connections for physical and behavioral health services and insurance coverage information.
(6) Competencies developed, intervention programming completed and certifications earned, if applicable.
(7) An updated inventory of the child's or youth's personal belongings and the process through which the items, clothing and personal documents will be returned to the child or youth.

Comments: *In § 3900.195 (relating to transfer or discharge), the Department is proposing requirements that expand and add additional plan components to current discharge planning requirements. We welcome these additions and strongly recommend that the discharge plan address a child's education placement needs. At present, the listed components of discharge planning outlined in § 3900.195(b)(1) – (6) do not include any reference to education. ELC-PA has handled many cases where a child was out of school for weeks or months due to lack of any discharge planning. Some are students whose grade placement is not identified or who have no course roster due to lack of communication with the school they attended while in a residential*

facility but many are students with disabilities who are placed on long waiting lists for an appropriate placement. These barriers to school re-entry could be avoided or mitigated if education is included in discharge planning.

§3900.16. Reportable incidents.

(a) A reportable incident includes the following situations occurring at the facility or while a child or youth is under the supervision of the facility staff in the community
***

(14) The unlawful use of restraints of restraints, isolation, seclusion or exclusion from school, including the use of restraints on a child with a disability in violation of 22 Pa. Code § 14.133 and/or failure to report the use of restraints to a parent, guardian, or educational decisionmaker under 22 PA Code § 10.25.

(15) The failure to provide any education to a child for a consecutive period of 10 days or more without due process or in violation of federal and state laws, including laws applicable to children with disabilities.

Comments: *We recommend adding these provisions as protective measures to ensure the ongoing education of all children, protection of their right to due process in cases of constructive expulsion from school, and to identify the unlawful use of restraints and seclusion on children with disabilities. Due to the use of virtual programs and worksheets, and reliance of facility staff in classrooms, children are often under the supervision of facility staff while students access their education program.*

§3900.5 Definitions (most carried over from §3800.5) and § 3910.4. Definitions

Comments: Based on the foregoing, we recommend that the following education related terms be added to the Definitions provision:

Act 1 of 2022 - 24 P.S. § 13-1331.1

Child with a disability - A child with a disability who meets the eligibility criteria in 34 C.F.R. § 300.8 (relating to child with a disability) and/or 34 C.F.R. § 104(3)(j) (relating to a child eligible under the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794).

Educational Decision Maker – An individual appointed by the court to make education decisions for a child adjudicated dependent or delinquent pursuant to Pa. Juv. Ct. P. R. 147 and 1147

Free appropriate public education – as defined by 34 CFR § 300.17 under the Individuals with Disabilities Education Act (IDEA).

Host District - The district where a residential facility is located as defined by 24 P.S. § 13-1306.

IDEA – Individuals with Disabilities Education Act (20 U.S.C. §1400 et seq.)

IEP – Individualized Education Program as defined by 34 CFR §300.22.

Local Educational Agency – as defined by 24 P.S. § 5311.

Publicly Placed Student Complaint – A complaint filed with the PA Dept. of Education by a school-aged student placed by a court or child welfare agency in any detention center, state correctional facility, child residential facility or Private Residential Rehabilitative Institution.

School stability – The right of a child in foster care or in the delinquency system to remain in their current school when this is in the child's best interest pursuant to the *Every Student Succeeds Act* and *Pa. Juv. Ct. P. R. 512(D)(6).*

Proposed New Section- §3900.171. Data Collection, including education-related elements

(a)Each facility must collect data and report to the department on the following:
(1) Use of seclusion/exclusion procedures
(2) Use of restrictive procedures, including use of restraints on children and youth with disabilities
(3) Grievances filed (aggregated by area: education, physical and sexual abuse).
(4) Demographics
(5) Length of stay
(6) Reportable incidents
(7) Number of students by educational placement (local public school, IEP-related school placement, on-grounds school and type of school, school disciplinary placement, cyber program)
(8) Average number of full and partial credits earned while in the facility per student in one semester
(9) Number of students with a disability under IDEA
(b) In addition, any on-grounds schools should report:
(1) Number of hours of instruction provided (specifying whether live or online, credit recovery, or GED prep)
(2) Number of total and certified teachers, with disaggregated data for special ed teachers and ESL teachers
(3) Courses offered (including core subjects, electives and extracurriculars)
(4) Number of multi-grade vs. grade-level classrooms and number of students educated in each
(c) All data should be disaggregated by race, disability, ethnicity, EL status, gender, and age.
(d) Information shall be disclosed to parents, attorneys, advocates and judges.
(e) Deidentified information shall be disclosed to the public.

***Comments**: Data, especially publicly-available data, allows system stakeholders to track and discover trends/problems which ultimately make children safer. Given the harms of restrictive procedures and reportable incidents, facilities should report on their use and DHS should evaluate how often they are used. Specifically, we recommend ensuring data about abuse, incidents, citations, and grievances be made available in real time to families, advocates, and*

system partners. We additionally recommend monitoring and disseminating data about educational progress and length of stay. We also recommend weighing certain incidents more heavily to ensure an immediate and comprehensive response. In particular, we recommend giving extra weight to youth reported violations, physical abuse, sexual abuse, seclusion/exclusion, restrictive procedures, and deprivation of quality education violations.

III. Recommendations Regarding Non-Education Related Provisions

In addition to the proposed revisions above, we also recommend the following changes.

§ 3900.168. Physical Restraints.
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(b) A physical restraint does not include:

(1) A physical hands-on assist of any duration during which the child or youth does not physically resist.
(2) Verbal redirection.
~~(3) Physical prompts.~~
~~(4) Escorting and guiding a child or youth.~~

Comment: Physical restraints have long-lasting physical, mental, and psychological impacts on children. It is documented that many children in residential facilities in Pennsylvania have experienced harmful overuse and improper use of physical restraints. For example, our *Unsafe and Uneducated* report found 92 incidents involving the use of inappropriate restraints, with 28 of those incidents resulting in the documented injury of a child.[33] Facilities should only use physical restraints as a last resort, and the regulations should clearly define the situations in which they are authorized. The term "physical prompt" is vague and it is unclear how that differs from a "physical hands-on assist." Additionally, "escorting and guiding a child or youth" is frequently used as a guise for harmful physical restraints, and results in the same harms. Lastly, both of these actions are encompassed under "physical hands-on assist" and are unnecessary. We recommend prohibiting physical prompts and escorting and guiding a child or youth and imposing stricter time limitations.

§ 3900.168. Physical restraints.
***

(e) The physical restraint should not last more than ~~position and the facility staff applying a physical restraint shall be changed at least every~~ 5~~10~~ consecutive minutes at which time alternative de-escalation techniques must be used if the child or youth is still a risk of harm to self or others.

[33] Elissa Glucksman Hyne et al., Children's Rts. & Educ. L. Ctr., Unsafe and Uneducated: Indifference to Dangers in Pennsylvania Residential Child Welfare Facilities (2018); https:// www.elc-pa.org/wp-content/uploads/2018/12/2018_Pennsylvania-Residential-Facilities_Childrens-Rights_Education-Law-Center.pdf.

Comments: *The regulations should limit how long restraints can last. David Hess tragically died at the Wordsworth residential facility because of an excessive restraint that prevented him from breathing.*[34] *We recommend providing maximum time limits for restraints to ensure facilities do not overuse them and prevent tragedies.*

§ 3900.168. Physical restraints.
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(f) A physical restraint must occur in a public location where it is recorded by a video surveillance system. Physical restraints that are not recorded by a video surveillance system are prohibited.

Comments: *To increase the safety of restraints, we suggest prohibiting restraints that do not occur in a location where there is a camera. There is limited accountability for restraints that occur off-camera and children are at-risk of serious injury.*

3920.23. Mechanical Restraints

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(c) Handcuffs behind the back, and leg restraints ~~and locking transportation waist belts with handcuffs in front of the child or youth~~ used during transportation~~,~~ are the only types of mechanical restraints that are permitted, as follows:

(1) Mechanical restraints are only permissible as the least restrictive means of addressing a child's behavior that poses a serious and immediate risk of physical harm to self or others. Mechanical restraints shall never be used for punishment or discipline.

(2~~1~~) A child or youth may not be handcuffed to an object or another person.

(3~~2~~) Oral or written authorization by supervisory staff is required prior to each use of a mechanical restraint, except for those restraints used during transportation. Only facility staff who have been specifically trained in the use of physical force and restraints, and trained on proper de-escalation techniques may place a child or youth in mechanical restraints.

(4~~3~~) The use of handcuffs or leg restraints, except for those used during transportation, may not exceed 15 minutes ~~2 hours~~, unless a licensed physician, a licensed physician's assistant or CRNP examines the child or youth and gives written orders to continue the restraint's use. A registered nurse may also examine the child or youth and provide written approval to continue the use of handcuffs or leg restraints. Reexamination and new written orders are required for each 45 minute ~~2 hour~~ period the restraint is continued. If a restraint is removed for any purpose other than for movement and reused within 24 hours after the initial use of the restraint, it is considered continuation of the initial restraint. When a child or youth is being transported for release to a non-secure environment, there shall be a presumption that mechanical restraints are not used.

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[34] Chris Palmer, State shuts down Philly program after teen's death in fight with staff, Philadelphia Inquirer, https://www.inquirer.com/philly/news/20161025_State_shuts_down_W__Philly_program_after_teen_s_death_in_fight_with_staff.html#:~:text=StaffPermissionsReprints,State%20shuts%20down%20Philly%20program%20after%20teen's%20death%20in%20fight,in%20a%20fight%20with%20staff.

~~(5)~~4) ~~The restraint shall be checked for proper fit by a facility staff at least every 15 minutes, except for those used during transportation.~~

~~(6)~~5) ~~The child's or youth's physical needs shall be met promptly.~~

~~(7)~~6) ~~Handcuffs and leg restraints, except for those used during transportation, shall be removed completely for at least 10 minutes during every 45 minutes 2 hours the restraint is used.~~

~~(8)~~7) ~~Handcuffs and leg restraints, except those used during transportation, shall be checked and observed by a supervisory facility staff who is not administering the restraint, at every 1 hour the restraint is used.~~

(9~~8~~) Handcuff and leg restraint use for a child or youth, except those used during transportation, may not exceed 2 [4] hours in any 48-hour period without a written court order from the committing judge or if unavailable, a master from the referring county if court personnel are not available, written approval from the assigned chief probation officer. A child or youth must receive a medical and mental health evaluation following the use of a mechanical restraint. Medical and mental health treatment shall be provided as appropriate. The results of any evaluations and any treatment provided under this subsection shall be documented in the child's or youth's record

(d) ~~If use of~~ Mechanical restraints shall not be used with a pregnant or postpartum child or youth. ~~facility and management shall comply with 42 Pa.C.S. Chapter 63, Subchapter G (relating to pregnant or postpartum restrictions, training, supports and reporting).~~

Comments: *We recommend significantly restricting the use of mechanical restraints so they are only used as the least restrictive means of addressing an imminent threat of physical harm. Mechanical restraints should not be used for punishment or discipline and should be time limited to ensure they are not overused.*

3920.22. Seclusion.

The following requirements should apply to the use of seclusion:

(1) No form of seclusion is permitted for any reason other than as a temporary and short-term response to a child's behavior that poses a serious and immediate risk of physical harm to self or others. A child in seclusion must be released as soon as the serious and immediate risk of physical harm abates and shall remain in seclusion no longer than one hour.

(2) Oral or written authorization by supervisory facility staff is required prior to each use of seclusion. Before a child can be placed in any form of seclusion or exclusion, a staff member must:

(a) Explain the reason for the seclusion; and

(b) Inform the child that release will occur as soon as the child regains self-control and the serious and immediate risk of physical harm is no longer present.

Comments: *Solitary confinement can cause severe and long-lasting psychological harm to youth. Even a short period of solitary confinement can result in someone becoming "impaired,"*

"incapable of processing external stimuli," or "hyperresponsive" to their surroundings.[35] These effects are particularly devastating for children, whose brains are at a critical developmental moment during which they are actively forming their self-image and identities and are also more vulnerable to adverse experiences.[36] Moreover, a lack of appropriate stimulation during adolescence can have lasting negative impacts on physical and mental health.[37] Solitary confinement also exacerbates pre-existing mental health conditions such as severe depression, post-traumatic stress disorder, paranoia, and psychosis and increases the risk of suicidal ideation.[38] Over half of suicides in juvenile justice facilities take place while a young person is in a room alone.[39] In January of 2025, the OYO released a report detailing the unlawful use of solitary confinement at the JJSC.[40] We recommend curtailing the use of solitary confinement, and imposing stricter limits on its use.

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Recommendations to Ensure Facility Accountability

a. Broaden the Application/Scope of the §3900, §3910, and §3920 Regulations

Children and emerging adults placed in state-run facilities deserve regulatory protection of their safety and care, regardless of facility operator. The Department is authorized to supervise such institutions under 62 P.S. § 902. Accordingly, we recommend that the protections in the §3900, §3910, and §3920 regulations apply to state-run residential facilities in addition to those that are county or privately run and that **§ 3900.3. Exemptions** be amended accordingly.

b. Increase Frequency of Licensing Inspections

We recommend that the Department inspect facilities at least twice a year, in addition to conducting at least two unannounced visits and that **§ 3900.4. Inspections and certificates of compliance** be amended accordingly. More frequent visits, especially unannounced, will allow DHS to identify patterns, proactively address issues, prevent abuse, and reform policies and practices.

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[35] JUVENILE LAW CENTER, UNLOCKING YOUTH: LEGAL STRATEGIES TO END SOLITARY CONFINEMENT IN JUVENILE FACILITIES (August 2017), 10, https://jlc.org/news/unlocking-youth-new-report-ending-youth-solitary (citing Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325, 331 (2006)).

[36] *Id.* at 11-12.

[37] *Id.* at 11 (citing Delia Fuhrman et al., *Adolescence as a Sensitive Period of Brain Development*, 19 Trends in Cognitive Sci. 561 (2015).

[38] *Id.* (citing Sarah-Jayne Blakemore & Kathryn L. Mills, *Is Adolescence a Sensitive Period for Sociocultural Processing?*, 65 The Ann. Rev. of Psychol. 187, 189 (2014); *see also* Delia Fuhrman, et al., *supra* note 34 at 559. For a description of the scientific evidence on the connection between solitary confinement and exacerbation of mental health disorders, see the complaint and opinion in *V.W. v. Conway*, available at https://www.clearinghouse.net/detail.php?id=15575 and *V.W. v. Conway,* No. 9:16-CV-1150, 2017 WL 696808, at *7 (N.D.N.Y. Feb. 22, 2017) (citing expert testimony); Fatos Kaba, MA, et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 Amer. J. Pub. Health 442, 444 (2014), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/pdf/ AJPH.2013.301742.pdf.)

[39] *Id.* (citing Lindsay M. Hayes, Lindsay M. Hayes, OJJDP Report: Juvenile Suicide in Confinement: A National Survey 18 (2009), https://www. ncjrs.gov/pdffiles1/ojjdp/213691.pdf).

[40] Gabrielle Haeuber, Office of the Youth Ombudsman, https://www.phila.gov/2025-01-09-use-of-seclusion-at-the-philadelphia-juvenile-justice-services-center-pjjsc/.

c. Require DHS Review of Facility Policies

We recommend that the Department review all facility written policies to ensure they comply with the §3900, §3910, and §3920 regulations and that **§ 3900.11. Licensure or approval of a facility** be amended accordingly.

d. Impose Penalties for Rights Violations and Reportable/Recordable Incidents

We recommend that the licensing downgrades and revocations be identified as potential penalties when facilities repeatedly violate regulations. This is imperative to ensure the safety of children.

3900.211. Sanctions.

(1) The Department shall downgrade a facility's license pursuant to Chapter 20 if a facility has more than one reportable incident or three recordable incidents under §3900.17(a)(3) (fights among youth) in a year.
(2) The Department shall revoke a facility's license pursuant to Chapter 20 if a facility has more than three reportable incidents or five recordable incidents under §3900.17(a)(3) (fights among youth) in a year.

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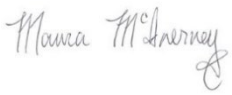
Conclusion

We greatly appreciate the opportunity to provide comments to the proposed regulations and are grateful for the Commission's thoughtful consideration of the issues presented. As described herein, we believe that further revisions are needed to ensure children and youth in facilities have access to education and that the pivotal role of facility staff is clearly defined and effectuated. Moreover, we must ensure that the important education rights of students are upheld. Education is a not only a critical element of well-being in the child welfare context, but a transformative constitutional right that changes the life trajectory of our a child. ELC-PA's recommendations focus on upholding that right by ensuring that children in residential facilities have access to "a comprehensive, effective, and contemporary system of public education" as our state constitution requires,[41] and that parents and students are apprised of their rights while in placement. To that end, the proposed amendments: (1) **identify additional key education rights** which are currently absent from the proposed regulations; (2) **reference the specific responsibilities of facilities** to ensure access to education under state law; (3) **integrate new state legal protections;** and (4) **seek to ensure the accountability of facilities** to support access to education. Our additional recommendations focus on the need to proactively reduce or eliminate the use of restraints, seclusion, and opportunities for abuse, broaden the application of key safeguards, and increase facility accountability.

Thank you for this opportunity to comment.

[41] *William Penn,* 294 A.3d at 964.

Sincerely,



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