

**IN THE SUPREME COURT OF PENNSYLVANIA
491 MAL 2019**

In the Interest of J.L., a Minor

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

Petition for Allowance of Appeal from the Memorandum Opinion and Order of the Superior Court at 240 EDA 2019 affirming the December 11, 2018 Order of the Juvenile Court of Montgomery County at CP-46-DP-0000278-2018

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STATEMENTS OF AMICI CURIAE

Founded in 1975, **Juvenile Law Center** advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications.

The **Education Law Center-PA** (ELC) is a non-profit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education.

CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 531

Pursuant to Rule Pa.R.A.P. 531(b)(2) *Amici* certify that no other party other than *Amici* paid for or authored any portion of this brief.

SUMMARY OF THE ARGUMENT

Amici urge the Supreme Court to allow for appeal of this matter to overturn a decision which needlessly removed a school-aged child from his family home based solely on truancy. Pennsylvania's Juvenile Act favors family unity and permits courts to remove children from their guardians only when it is "clearly necessary" to do so and when it is in the child's best interest. *See* 42 Pa.C.S.A. § 6301; *In Interest of S.S.*, 651 A.2d 174, 176 (Pa. Super. Ct. 1994). A child's nonattendance in school alone does not constitute sufficient evidence justifying the drastic step of removing a child from his guardian.

The court below removed J.L. from his "loving parents" based solely on truancy and without considering the use of school-based truancy interventions or allowing in-home services to be implemented. (Tr. Disposition Hearing, Jan. 8, 2019 at 11.) The juvenile court's decision to remove J.L. from his parents and place the child in a shelter did not address or consider the root causes of J.L.'s truancy at all. Instead, it put him at risk of harm. Applying the incorrect "best interest" standard, the facts of record did not support a finding of clear necessity. On appeal, Superior Court improperly affirmed the juvenile court's decision by substituting its own reweighing of the facts under the clear necessity standard. The insertion by the Superior Court of itself as fact-finder was inappropriate. *See, e.g., In re A.J.R.-H.*,

188 A.3d 1157, 1175-76 (2018). The exercise of this Court’s supervisory authority is warranted. *See* Pa.R.A.P. (b)(6).

This Court has never considered the question of whether a dependency court may order a minor to be removed from a safe parental home and placed in a residential facility as clearly necessary to address truancy. *See* Pa.R.A.P. 1114 (b)(3) (permitting review for issues of first impression). There are few opinions regarding truancy in any dependency context and the published opinion in this case establishes dangerous binding precedent that removal and placement of children in residential care based on truancy alone meets the clear necessity benchmark.

This case raises issues of substantial public importance. Placing a child in a highly restrictive residential facility away from home ignores the significant risks to a child’s health, development, educational progress, and future that placement in a residential facility poses. *See generally* CHILDREN’S RIGHTS, INC. & EDUCATION LAW CENTER, UNSAFE AND UNEDUCATED: INDIFFERENCE TO DANGERS IN PENNSYLVANIA’S RESIDENTIAL CHILD WELFARE FACILITIES (2018) https://www.elc-pa.org/wp-content/uploads/2018/12/2018_Pennsylvania-Residential-Facilities_Childrens-Rights_Education-Law-Center.pdf. [hereinafter UNSAFE & UNEDUCATED]. Indeed, family separation often has devastating and lifelong consequences for children who are removed from their guardians. *See, e.g.*, ANNIE

E. CASEY FOUNDATION, EVERY KID NEEDS A FAMILY POLICY REPORT 5 (2015), <https://www.aecf.org/m/resourcedoc/aecf-EveryKidNeedsAFamily-2015.pdf>. It is also well documented that placing children in residential placements is ineffective and counterproductive to address truancy.

This Court must establish a precedent to discourage the use of congregate care in anything other than the most serious of situations. We ask this Court to review the lower court’s ruling for failing to meet the clear necessity standard and thereby uphold one of the core purposes of both the Juvenile Act and state truancy laws—to preserve family unity whenever possible. 42 Pa.C.S.A. § 6301(b)(1); 24 P.S. § 13-1325.

ARGUMENT

A. THE JUVENILE COURT APPLIED THE WRONG STANDARD AND SUPERIOR COURT ERRONEOUSLY ENDORSED THIS MISAPPLICATION OF THE STATUTE.

Despite stating in its subsequent order that “clear and convincing evidence” supported the removal, *Order of Adjudication*, at 2, the hearing court repeatedly referred to actions it believed to be in “best interests of the child,” and the transcript and the findings set forth in the Order of Adjudication reflect the application of that standard. *Id.* at 2-3. Pennsylvania courts have long held that courts may remove children from the care of their parents following an adjudication of dependency only upon on a showing that such removal is “clearly

necessary” for the child’s well-being. *See, e.g., In Interest of A.N.*, 39 A.3d 326, 331 (Pa. Super. Ct. 2012) (internal citations omitted). Importantly, the facts before the juvenile court did not support the removal of J.L. from his home under *either* a clear necessity *or* a best interest standard.

B. REMOVING J.L. FROM HIS HOME WAS NEITHER CLEARLY NECESSARY NOR IN HIS BEST INTEREST.

Pennsylvania courts, when weighing the evidence to determine whether it is clearly necessary to order a child removed from the home, properly consider a child’s truancy as a *contributing* factor supporting removal, but not sufficient in and of itself to support a finding of clear necessity for removal. In *In re E.P.*, a guardian had created a “deplorable” housing environment and the guardian’s continuing neglect and “lack of organization and discipline” warranted removal based on evidence that she continued to underfeed her children, obtained an eviction notice, *and* failed to get her children to school on time, even after receiving extensive services to assist her with her parenting. 841 A.2d 128, 130 (Pa. Super. Ct. 2003). In that case as in others, children were adjudicated dependent based on truancy *and* neglect and truancy is a contributing factor for removal. *See id.* Conversely, it would be contrary to the Act’s paramount purpose of preserving the unity of families to remove a child from their guardian based purely on truancy when community-based interventions had not been exhausted, and a child’s nonattendance is *not* a symptom of underlying abuse or neglect. *See*

42 Pa.C.S.A. § 6301(b)(1). In such cases, a trial court would not have sufficient evidence to warrant removing a child from their guardian absent findings that 1) it would be contrary to the child's welfare, safety, or health to stay at home and 2) a higher level of in-home services would not enable the child to remain with his guardian. *See In re E.P.*, 841 A.2d at 132 (removal permissible only where clearly necessity and reconciled with the paramount purpose of preserving family unity.). In the absence of such findings, removal is not warranted.

In this case, there was no finding that J.L.'s truancy was a symptom of more serious abuse or neglect. To the contrary, the lower court expressly acknowledged that J.L.'s parents are loving and vigilant, and that J.L. is safe at home with them. (*See* Order of Adjudication at 2 (finding J.L. was safe in his current placement with his parents); Tr. Disposition Hearing, Jan. 8, 2019 at 9, 11 (observing that J.L.'s parents are "loving" and have "been vigilant" with regard to J.L.'s educational needs.)) The court also failed to consider alternate interventions that would have allowed J.L.'s family to remain intact. (*See* Tr. Adjudication Hearing, Dec. 11, 2018 at 7–8 (J.L.'s counsel explaining that J.L. was compliant with and beginning his second week of in-home psychological services.)) At the time the court separated J.L. from his parents he had only received a week (two hours) of in-home psychological services with which he had been compliant. (*See* Dependency Pet., Nov. 21, 2018 at 4; Tr. Adjudication Hearing at 7–8.)). The court failed to consider

both the root causes of J.L.'s truancy and community- and school-based interventions and supports which are known to be more effective at remedying truancy than residential placement.

C. THE COURT IMPROPERLY FAILED TO CONSIDER ALTERNATIVE INTERVENTIONS TO ADDRESS J.L.'S TRUANCY.

The juvenile court failed to properly consider the availability of interventions to improve his school attendance. As is true for many habitually truant students, the record indicates that there may be multiple root causes of J.L.'s truancy. Specifically, the juvenile court should have considered J.L.'s learning disability, for which he requires an Individualized Education Program (IEP), and allegations that J.L. was bullied and/or harassed in school—which the court ignored. (*See* Tr. Adjudication Hearing at 6–9.) While the court heard conflicting accounts from counsel about whether bullying posed a problem for J.L., it did not consider the necessary information to determine whether bullying or harassment was a barrier to J.L.'s school attendance—including whether he was, in fact, bullied; whether he shared classes with any of his alleged bullies; what steps were or were not attempted by the school to address the perceived bullying; and how the alleged bullying impacted J.L. (*See* Tr. Adjudication Hearing at 6–9.)

Additionally, at the time the court ordered J.L. removed from his home, the court had not considered or assessed J.L.'s special education needs and whether

J.L.'s disability contributed to his nonattendance. The juvenile court had a duty under Rule of Juvenile Court Procedure 1512 to make findings about the "stability and appropriateness" of J.L.'s education as well as "any findings necessary to identify, monitor, and address the child's needs concerning health care and disability." Pa.R.J.C.P. 1512. But the court failed to make this inquiry. It did not consider J.L.'s specific disabilities, whether J.L. required changes to his special education plan, or how J.L.'s truancy might be a manifestation of his disability before it decided to place him outside the home in a residential facility. (*See* Tr. Disposition Hearing at 14–16 (reflecting that the court continued to be unaware of J.L.'s specific disabilities.))

Cases addressing the overlap of children with disabilities and truancy consistently recognize the strong causal link between truancy and the need for school-based interventions, as well as the importance of a robust judicial inquiry regarding this topic in dependency proceedings. *See, e.g., In re C.M.T.*, 861 A.2d 348, 355 (Pa. Super. Ct. 2004) (hearing court erred as a matter of law by failing to consider evidence that child's disabilities may have been responsible for her poor school attendance or that her local school district failed to meet her special education needs). As this Court has stated, evidence regarding a child's disability and

availability of services to facilitate the child's ability to attend school, is “not only relevant but necessary to any determination of dependency.”¹ *Id.* at 356.

Similarly, courts have recognized the duty of school districts to proactively address absenteeism in the special education context. *See e.g., R.B. v. Mastery Charter School*, 762 F. Supp. 2d 745, 758-62 (E.D. Pa. 2010) (holding that charter school violated child’s Individuals with Disabilities Education Act (IDEA) rights by unilaterally disenrolling student for nonattendance where her truancy was related to her disability). Here, the juvenile court failed to probe or explore relevant evidence regarding the root causes of his truancy, including evidence of J.L.’s disability and its impact on his nonattendance and evidence that J.L. was bullied in school. It was critical for the juvenile court to consider this evidence prior to determining whether placement in a shelter was in any way an appropriate intervention to address J.L.’s truancy.

D. THE JUVENILE COURT FAILED TO CONSIDER MORE EFFECTIVE INTENSIVE COMMUNITY-BASED AND IN-SCHOOL INTERVENTIONS BEFORE RESORTING TO AN OUT-OF-HOME PLACEMENT

Pennsylvania’s truancy law is designed to “improve school attendance and deter truancy” through a comprehensive approach that identifies and addresses

¹ In this case, the impact of J.L.’s disabilities as a potential cause of his truancy was not addressed in adjudicating him dependent. While this issue was not challenged, the impact of J.L.’s disability remained an important factor at the disposition phase as necessary to ensure that placement was appropriate.

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

Effective truancy reduction programs encourage active collaboration between “all relevant parties, including students, their parents, teachers, school administration, community-based organizations, and others.” DEBORAH FOWLER ET. AL., TEXAS APPLESEED, CLASS, NOT COURT: RECONSIDERING TEXAS’ CRIMINALIZATION OF TRUANCY 14, 17 (2015) [hereinafter CLASS, NOT COURT], https://www.texasappleseed.org/sites/default/files/TruancyReport_All_FINAL_SinglePages.pdf. Effective programs also acknowledge that there are multiple factors that may contribute to truancy and “a variety of individualized problems or needs that may need to be addressed in order to improve attendance.” *Id.* Rather than falling into the counterproductive pitfalls of relying on punitive responses, research suggests “incentives for improved attendance are more effective.” *See id.* at 18.

For habitually truant students with disabilities, it is particularly important that interventions focus on school-based approaches which view the student’s

nonattendance in the context of his disability. PDE recommends where a student with an IEP “is chronically or habitually truant, or where truancy is impacting a student’s academic or functional performance, the IEP team should reconvene . . . to determine whether revisions to the IEP are necessary and/or appropriate.” *Id.* at 92. This accords with special education law which “encourages the use of individualized positive behavior supports to assist students with disabilities by improving behaviors that interfere with their learning” as well as the utilization of a Functional Behavior Assessment (FBA), where appropriate, “to determine the cause of behavior” and make accommodations or interventions. *Class, Not Court, supra*, at 72. Most students with disabilities who are in the court system due to truancy never benefitted from an FBA or an amendment to their IEP to address their nonattendance, despite the fact that “where schools utilize these tools, student attendance often improves without court intervention.” *See id.*

Here, the court below did not explore nor exhaust school and community-based interventions before removing J.L. from his home. While the school had conducted attendance improvement conferences, the court did not consider or assess what attempts were or were not made by the school to address J.L.’s truancy in the context of his disability—including whether the school conducted an FBA or attempted to amend his IEP. (*See* Dependency Pet. at 4 (alleging the school had conducted attendance improvement meetings but not detailing what interventions

the school did or did not implement as a result of those meetings); Tr. Disposition Hearing at 7–8 (J.L.’s counsel discussing a concern that perhaps his IEP team had not appropriately reconvened.)) At the time the court placed J.L. out of his parents’ home, J.L. had been complying with newly started in-home multisystemic therapy (MST), but the court placed J.L. in a shelter before J.L. could benefit from more than one appointment (two hours) with MST providers. (Tr. Adjudication Hearing at 7–8.) Both the juvenile court and Superior Court mischaracterized these critical facts.

By placing J.L. in an out-of-home placement and failing to pursue more intensive in-home services and school-based interventions, the court did not support J.L. to reengage with his school, but rather diverted J.L. away from his school to a placement offering a subpar alternative educational program unaligned with his home curriculum. (*See* Tr. Disposition Hearing at 4); Bethany Children’s Home, *Shelter Care*, [hereinafter *Shelter Care*], <https://www.bethanyhome.org/programs/shelter-care/> (last visited Mar. 8, 2019) (listing alternative education programming as one of the services offered at the shelter). Indeed, instead of improving J.L.’s attendance, the shelter offered J.L. *no educational programming whatsoever*. (*See* Appellant’s Concise Statement 2, 5 (stating J.L. received no educational services while at Bethany.)) Accordingly, it was not clearly necessary for the juvenile court to order J.L. separated from his family when he had not yet had the opportunity to benefit from community-based

MST services and school-based interventions focused on J.L.’s disability had not been explored or assessed by the court.

E. EVEN IF THE JUVENILE COURT PROPERLY APPLIED THE “BEST INTEREST” STANDARD, IT WAS NOT IN J.L.’S BEST INTEREST TO BE PLACED IN A RESIDENTIAL FACILITY.

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

Importantly, due to the impact of bias and systemic oppression on children and families, the harmful impacts of punitive truancy interventions and residential placements fall hardest on children and families of color, as well as poor families and children with disabilities. Children of color are less likely to have their

educational needs addressed in school and more likely to be targeted for misconduct. See *Race for Results Report of Annie E. Casey Foundation*, <https://www.aecf.org/resources/2017-race-for-results/>.

In order for attendance to improve, chronically truant students need a positive school environment that encourages attachment to the school community. See Robert Balfanz, et al., *Preventing Student Disengagement and Keeping Students on the Graduation Path in Urban Middle-Grades Schools: Early Identification and Effective Interventions*, 42 EDUC. PSYCHOL. 223, 223-24 (2007). When judges do not consider the information necessary to determine appropriate interventions, they fail to address the root causes of truancy, and therefore their ordered interventions, including placing a child in a residential setting, prove ineffective and not in the child's best interest. Judges need to consider and weigh the information necessary to order appropriate programming that takes into consideration common truancy-related factors such as "prior offenses, past or current trauma, special education needs, family obligations, or medical issues." *Id.*; JESSICA GUNDERSON ET AL., VERA INST. OF JUSTICE, RETHINKING EDUCATIONAL NEGLECT FOR TEENAGERS: NEW STRATEGIES FOR NEW YORK STATE, 10-11 (2009), http://ocfs.ny.gov/main/reports/Rethinking%20Educational%20Neglect_final.pdf (finding no research indicating that placing a teenager in foster care improved

attendance and explaining that the child protective system and the family court are ill-equipped to address barriers to school attendance).

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

By failing to adhere to its responsibility to place J.L. in the least restrictive, most family-like setting, 42 Pa.C.S.A. § 6301(b)(3)(i); 42 U.S.C. § 675(5)(A)(1), and instead placing J.L. immediately in a residential placement, the juvenile court unduly exposed J.L. to many new harms. *See UNSAFE AND UNEDUCATED*, 9-14.

In the long-term, students who experience court interventions for truancy are at an increased risk of accruing more absences, dropping out of school, and having contact with the criminal justice system, compared to truant students who escape court involvement. Dana Goldstein, *Inexcusable Absences*, THE NEW REPUBLIC (Mar. 6, 2015), <https://newrepublic.com/article/121186/truancy-laws-unfairly-attack-poor-children-and-parents>. This is due, in part, to court involvement leading to placements at residential facilities. Contrary to the intended behavioral consequences of this approach, punitive measures, or measures that feel punitive, only further disengage truant students from their school communities and undermine attendance—increasing students’ negative feelings toward school, poor academic performance, stress within families, and students’ risk of dropping out of school and involvement with the criminal justice system. *See, e.g., Class, Not Court, supra*, at 7, 18.

In addition, while students have the right to attend the local public school in the district where their residential placement is located,² too often, as here, they are directed to attend inferior on-grounds schools or alternative educational programs where they often languish and are placed on a trajectory to dropping out of school. As their peers attend public schools which must meet state educational standards, children attending separate schools on the campus of the residential facility (“on grounds schools”) typically receive a subpar education which undermines their ability to graduate from high school. *See UNSAFE & UNEDUCATED, supra*, at 19-20.

On-grounds schools generally provide limited curricula and fewer hours of instruction. *UNSAFE & UNEDUCATED, supra*, at 22; EDUCATIONAL SUCCESS & TRUANCY PREVENTION WORKGROUP, 2013 REPORT TO THE PENNSYLVANIA STATE ROUNDTABLE: EDUCATIONAL SUCCESS & TRUANCY PREVENTION 5-6 (2013) [hereinafter 2013 ROUNDTABLE REPORT], [http://www.ocfcpcourts.us/assets/upload/Resources/Documents/2013%20State%20ORT%20report%20on%20Educational%20Success%20and%20Truancy%20Prevention\(8\).pdf](http://www.ocfcpcourts.us/assets/upload/Resources/Documents/2013%20State%20ORT%20report%20on%20Educational%20Success%20and%20Truancy%20Prevention(8).pdf) (reporting that only 2.4% of respondents indicated that children attending on-grounds schools “always” received educational services and opportunities equal to that provided in the local public schools). On-grounds schools

² 24 P.S. § 13-1306(a). *See also* Pa.R.J.C.P. 1148(C).).

often place children of various ages in multi-grade classrooms, sometimes taught by uncertified or improperly certified teachers, and rely on worksheets or cyber-based credit-recovery programs, without live instruction provided by teachers. *Id.*, at 22. Consequently, upon return to school, students often find themselves lagging behind their peers and missing academic credits needed to graduate, increasing the chances that they will continue to be truant and ultimately disengage from school entirely. *See* ACHIEVE, ON TRACK OR FALLING BEHIND? HOW STATES INCLUDE MEASURES OF 9TH GRADE PERFORMANCE IN THEIR ESSA PLANS 1-2 (2018), <https://www.achieve.org/files/On-Track-Brief.pdf>. For this reason, among others, placing a child in a residential placement in response to truancy, is ineffectual.

Moreover, students with disabilities like J.L. are further harmed by attending on-grounds schools which fail to provide the differentiated instruction, individualized services, and the wide array of special education supports needed to address the disabilities of the children they serve. UNSAFE & UNEDUCATED, *supra*, at 23-24. Students with disabilities are over-represented in foster care and residential facilities. Many of these children with disabilities face significant delays in receiving appropriate education services because of delays in obtaining the child's Individualized Education Program (IEP) from the prior school. UNSAFE & UNEDUCATED, *supra*, at 23. In other instances, a facility fails to conduct timely evaluations to determine the child's actual needs or staff are untrained to modify

instructions and provide appropriate accommodations. *Id.* In sum, children with disabilities like J.L. often do not receive the special education services to which they are legally entitled and are thus unable to make meaningful progress. *See id.*

Rather than supporting his education, placing J.L. in a residential facility harmed him academically, as well as emotionally. Like many children placed in residential facilities, J.L. was relegated to attend school within the shelter where he was offered only “alternative education programming,” indicating that J.L.’s curriculum would be very different from his prior school and that he may not stay on track to earn credits towards graduation. (*See* Tr. Disposition Hearing at 4 (statement that J.L. was placed at shelter)); *Shelter Care, supra* (listing alternative education programming as one of the services offered at the shelter). While at the shelter, J.L. did not attend or reengage with his home school. In fact, J.L. did not attend any school and the shelter provided *no educational instruction* to J.L. while he was placed there. (Appellant’s Concise Statement 2.)

That J.L. received no education whatsoever only reinforces the conclusion it was not clearly necessary for the juvenile court to remove J.L. from his home and that remaining at home with appropriate interventions and support would have better served his interests.

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

Compounding the negative educational outcomes described above, placing a child in a residential facility, as opposed to with their parents or in a family-like setting, is highly traumatic and detrimental to normal adolescent development. Indeed, it is well documented that separation from family is extremely traumatizing to children. *See, e.g.,* Vivek Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than 30 Days in Foster Care*, 19 U. PA. J. L. & SOC. CHANGE 205, 210-213 (examining the serious harms to children of short-term emergency removals into foster care).

Group care compounds this trauma, and further disrupts attachment with a consistent, nurturing adult—attachment that is key to helping youth develop positive social-emotional skills, including: relationship-building skills, appropriate risk-taking, and instilling a sense of security and self-worth. CASEY FAMILY PROGRAMS, WHAT ARE THE OUTCOMES FOR YOUTH PLACED IN CONGREGATE CARE SETTINGS? 2 (2018), https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF_CC-Outcomes-Resource.pdf; *Reducing Congregate Care: Worth the Fight*, THE ANNIE E. CASEY FOUNDATION (Apr. 4, 2012). Youth in Pennsylvania child welfare residential facilities are particularly at risk of harm—including physical, verbal, and sexual abuse from staff; assaults from other youth due to a lack of staff supervision; and inappropriate restraints. UNSAFE & UNEDUCATED, *supra*, at 9-14.

F. THE REMOVAL OF J.L. TO A RESIDENTIAL FACILITY WAS CONTRARY TO PUBLIC POLICY.

Federal and state law have long required that youth be placed in the least restrictive, most family-like setting. *See* 42 U.S.C. § 675(5)(A)(1); 42 Pa.C.S.A. § 6301(b)(3)(i). In recognition of the particular harms outlined above, in 2018, the United States Congress adopted the Family First Prevention Services Act (FFPSA), which financially incentivizes states to reduce reliance on congregate care.³ The Pennsylvania State Roundtable’s Congregate Care Workgroup recently adopted recommendations to reduce referrals to residential placements⁴ and an Executive Order issued by Governor Wolf, focuses on examining the placement of youth in residential facilities.⁵ However, judicial guidance is needed to inform effective decision making by family courts. As made clear in language in the new edition of the *Pennsylvania Dependency Benchbook*,⁶ “[c]ourts must be conscious of the fact that youth placed in congregate care facilities are the neediest and most traumatized youth in the dependency system. Further isolation from family and kin and its resulting trauma should be avoided and prevented whenever possible.”

³ *See* P.L. 115-123, § 50741 (*to be codified at* 42 U.S.C.A. § 672(k)), eff. Oct. 1, 2019).

⁴ *See* OFFICE OF CHILDREN AND FAMILIES IN THE COURTS (“OCFC”) 2019 STATE ROUNDTABLE REPORT [ON] CONGREGATE CARE, 16-18 <http://www.ocfcpcourts.us/assets/files/page-547/file-2390.pdf>.

⁵ *See* Executive Order 2019-5, issued July 31, 2019, *inter alia*, establishing the Office of Advocacy and Reform (the “Office”).

⁶ *Pennsylvania Dependency Benchbook*, 3rd Edition (2019), OCFC, Harrisburg, PA (the “*Benchbook*”) (advising to “order congregate care only when all other placement options have been considered and ruled out with supporting reasons why each was ruled out.” *Benchbook*, 20-23, *citing* Pa.R.J.C.P. 1242(C)(3)(c)).

Benchbook at p. 8-7. To avoid harmful family separations, this Court must establish clear guidance that requires courts to apply a high standard and ensures that courts consider all relevant evidence and alternatives before removing a child from his home and placing the child in a residential setting. Moreover, because truancy is best addressed in a child's home school and community, juvenile courts should not order children removed from home or placed in residential facilities for truancy absent a well-supported finding of clear necessity. The *Benchbook* specifically states that where a finding of dependency is based solely on truancy, courts must exercise particular scrutiny to identify the underlying causes of the child's conduct. This must occur with regard to both adjudication and placement of a child.⁷

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court grant allocatur, and reverse the decision of the Superior Court in this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Maura McInerney". The signature is written in dark ink and includes a stylized flourish at the end of the last name.

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⁷ *Benchbook*, 7-14 (Adjudication Hearing – Summary of Key Questions/Determinations)

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing Appellant's brief complies with the requirement of Pennsylvania Rule of Appellate Procedure 531 that the *Amicus* Brief in Support of the Petition for Allowance of Appeal shall not exceed 4,500 words. In preparing this certificate, the word count feature of Microsoft Word was relied upon.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

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