

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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DOCKET NO. 2452 C.D. 1999

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COMMONWEALTH OF PENNSYLVANIA,  
TWELFTH JUDICIAL DISTRICT  
COURT OF COMMON PLEAS - DAUPHIN COUNTY,  
JUVENILE COURT DIVISION

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Appeal from the Administrative Order of the Dauphin County Juvenile Court,  
No. 576 of 1998, dated August 23, 1999.

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**BRIEF FOR *AMICI CURIAE* JUVENILE LAW CENTER  
AND EDUCATION LAW CENTER-PA  
IN SUPPORT OF APPELLANTS**

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## **INTEREST OF AMICI CURIAE**

The Juvenile Law Center (“JLC”) and Education Law Center-PA (“ELC-PA”) submit this brief as Amici Curiae on behalf of Appellant the Harrisburg School District.

JLC is a private, non-profit public interest law firm that has represented children since 1975 in cases involving Pennsylvania’s child welfare, juvenile justice, mental health and public health systems. JLC has worked to ensure, inter alia, that children’s constitutional and statutory rights are rigorously enforced throughout these systems. JLC’s publications are used by attorneys, judges, and child welfare professionals across the Commonwealth. They include A Guide to Judicial Decisions Affecting Dependent Children: A Pennsylvania Judicial Deskbook (Third Edition); Child Abuse and the Law (Fifth Edition), and the Children’s Rights Chronicle (a bi-monthly newsletter). JLC has participated as *amicus curiae* in the Pennsylvania Supreme and Superior Courts and the United States Supreme Court, as well as this Court.

ELC-PA is a private, non-profit public interest law firm and advocacy organization dedicated to helping Pennsylvania’s children obtain a quality education. ELC-PA focuses on the needs of children who are poor, of color, disabled, or otherwise disadvantaged. For more than twenty years, ELC-PA has

worked towards improving the quality of public education for students in Pennsylvania through the provision of advice, training, publications and technical assistance to attorneys and advocates, as well through co-counseling and representation of clients in the courts and before administrative and legislative bodies. ELC-PA has participated as *amicus curiae* in the Pennsylvania Supreme & Superior Courts, as well as this Court.

### **STATEMENT OF THE CASE**

*Amici* adopt the Statement of the Case set forth in the Brief of Appellant.

### **SUMMARY OF ARGUMENT**

The Dauphin County Juvenile Court and Juvenile Probation Department have overstepped their authority by insisting that Appellant Harrisburg School District (“HSD”) officials permit juvenile probation officers to enter schools with firearms routinely, notwithstanding an HSD policy prohibiting any person from carrying firearms on school property. The Juvenile Court’s Administrative Order is further illegal and misguided considering the paucity of evidence and authority justifying the presence of armed juvenile probation officers in school buildings. Guns will not improve academic performance or increase attendance, nor will they diminish the frequency of school referrals to juvenile court. The Harrisburg School District’s exercise of discretion in establishing conditions for visitation by

juvenile probation officers, specifically prohibiting weapons in schools, is valid and may only be challenged by juvenile probation's filing of a civil action for declaratory judgment in the Court of Common Pleas.

## ARGUMENT

### **I. SCHOOL DISTRICTS HAVE THE AUTHORITY TO REGULATE THE CONDUCT OF PERSONS WHO ENTER THEIR BUILDINGS**

#### **A. The General Assembly Has Granted School Districts General Authority to Manage School Affairs**

Appellees assert that Appellant Harrisburg Board of Education ("Board") exceeded its authority by expelling school-based juvenile probation officers from school district buildings and by promulgating protocols and procedures governing visits by juvenile probation officers.<sup>1</sup> According to the Juvenile Court, the Board's actions "obstruct or otherwise impede such Juvenile Probation Officers in the performance of their Court ordered duties and responsibilities." Excerpt from the August 23, 1999 Order. The Juvenile Court overestimates its authority.

Appellees plainly misapprehend that the General Assembly has explicitly

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<sup>1</sup> On June 21, 1999, the Harrisburg School Board voted to discontinue an agreement that had permitted Dauphin County juvenile probation officers entry onto district property to conduct supervision/monitoring of students on juvenile probation. ¶¶ 5-8 of Yates Affidavit (Exhibit to Brief of Appellant). Since then, the Board has not completely banned probation visits. On August 18, 1999 and September 15, 1999 the Harrisburg School Board established nine conditions for Dauphin County juvenile probation officers to visit clients in city schools. *Id.* ¶¶ 14-15, 19. The sixth condition, that juvenile probation officers not enter schools with guns, is the focus of this dispute.



authorized local school boards to establish reasonable visitation policies for non-school district personnel. The Juvenile Court's order improperly interferes with a traditional school domain and must be vacated.

The Pennsylvania Constitution entrusts to the legislature the responsibility for providing public education. Pa. Const. Art. III § 14. The General Assembly in turn has delegated power to the local school districts. See 24 P.S. § 2-201 et seq.; Pennsylvania Fed'n of Teachers v. School Dist., 506 Pa. 196, 484 A.2d 751, 753 (1984). Under this system, a local school district “is a creature or agency of the Legislature and has only the powers that are granted by statute, specifically or by necessary implication.” Barth v. School Dist. of Philadelphia, 393 Pa. 557, 562, 143 A.2d 909, 911 (1958) (emphasis added).

Although a school district's powers are limited to its statutory grant, this grant is broad. In the Public School Code of 1949, the Pennsylvania General Assembly granted local school districts the power to “establish, equip, furnish, and maintain [various schools and departments] for the education and recreation of persons residing in said district, and for the proper operation of its schools.” 24 P.S. § 5-502. Local school districts have a duty to “define the general policies of the school system” and to “legislate upon all matters concerning the conduct of the schools subject to the provisions of this Act.” 24 P.S. § 21-2013. State law gives

schools all power necessary to enable them to carry out the laws governing schools. 24 P.S. § 2-211 (stating “[t]he several school districts in this Commonwealth shall be, and hereby are vested ... with all the necessary powers to enable them to carry out the provisions of this act”). Under this broad grant of power, school districts have considerable control over school policies and activities. See, e.g., Chambersburg Area School Dist. v. Pennsylvania, 60 Pa. Comwth. 29, 430 A.2d 740, 743 (1981) (upholding school district policy which banned smoking in all school district buildings, citing 24 P.S. § 2-211).

Moreover, Pennsylvania’s School Code specifically provides that “[t]he board of directors in any school district may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper, regarding the management of school affairs.” 24 P.S. § 5-510. On two occasions the Pennsylvania Supreme Court has upheld this express delegation. In Girard School Dist. v. Pittenger, the Supreme Court, citing § 5-510, held that local school boards have substantial authority to enact policies and regulations related to student discipline, 481 Pa. 91, 392 A.2d 261 (1978). More recently, in Hamilton v. Unionville-Chadds Ford School, 552 Pa. 245, 249, 714 A. 2d 1012, 1014 (1998), the Court, citing § 5-510 and Girard School Dist., held that local school boards have broad discretion for determining school disciplinary policies.

Thus, these general and specific legislative provisions, standing alone, provide sufficient statutory authority for schools to establish visitation requirements governing non-school personnel. Schools are not open for all members of the public, including state officials, to visit and observe unannounced. Generally, non-school personnel are permitted access to school buildings and permitted to remain in the school only to the extent school officials determine that their presence does not conflict with the learning environment. See Commonwealth v. Downing, 511 Pa. 28, 511 A.2d 792, 795 (1986) (holding non-university and non-law school personnel gain access to the law library, not as invitees, but as mere guests, whose status was revocable at the law school's pleasure). The Board's decision to establish visitation requirements for juvenile probation officers was an exercise of statutory authority by the Board over its facilities with which the Juvenile Court cannot interfere.<sup>2</sup> Whether the Board's restrictions were wise or expedient, or whether its aim was worthy, is a matter the legislature has left solely to the discretion of the Board.

B. Harrisburg School Officials Are Capable of Handling Disruptive Conduct

Appellees' insistence that the presence of armed juvenile probation officers

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<sup>2</sup> Similarly, the Board has the authority to ban any and all routine juvenile probation visits from occurring on school property. Admittedly, the Board has not adopted such a drastic position, but merely insisted that juvenile probation officers not enter schools armed with loaded or unloaded guns.

ensures the attendance, behavior and academic performance of juveniles on probation is unsupported.<sup>3</sup> To date, Appellees have submitted no evidence that regular visits from armed juvenile probation officers affects student performance, nor have appellees demonstrated that Harrisburg School District officials are incapable of managing student behavior.

School officials have a vested interest in managing their schools and classrooms, and are capable of imposing sanctions when students deviate from the course in a school setting. More than twenty years ago the Pennsylvania Supreme Court recognized that educators are capable of teaching children how to behave, to solve disputes non-violently, and to use reason instead of force:

One need not be a savant in the field of education to apprehend that standards of student conduct and discipline in the sense of punishment for misbehavior have traditionally been considered part and parcel of teaching. The conjunction of these two aspects of the learning process is recognized in the dictionary definition of education. Thus "education" is the "impartation or acquisition of knowledge, skill or discipline of character." (Citations omitted).

Girard School Dist. v. Pittenger, 481 Pa. 91, 98, 392 A.2d 261, 264 (1978). "The teacher uses instruction and discipline, or more likely, both simultaneously to

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<sup>3</sup> See Sept. 2, 1999 Letter from Chief Juvenile Probation Officer, Stephen J. Sukniac (Exhibit "D" to Brief of Appellant). "Our Court Ordered responsibility with each of these juveniles is to supervise them in their school setting, so as to ensure their attendance, behavior, and academic performance, and to receive input from their teachers, administrators and counselors."

achieve the school's objectives." Id.

Notwithstanding popular impressions, schools are not powerless in addressing student disruptions. This Court has acknowledged that under Sections 510, 1317 and 1318 of the Public School Code,<sup>4</sup> teachers and principals as well as school boards may adopt "reasonable rules and regulations" regarding the "conduct and deportment" of pupils while under the supervision of the board and teachers; that teachers may exercise certain authority "as to conduct and behavior;" that suspensions may be meted out to pupils for "disobedience or misconduct;" and that "in the absence of a gross abuse of discretion, courts will

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<sup>4</sup> 24 P.S. §§ 5-510, 13-1317, 13-1318.

“§ 13-1317.

Every teacher, vice principal and principal in the public schools shall have the right to exercise the same authority as to conduct and behavior over the pupils attending his school, during the time they are in attendance, including the time required in going to and from their homes, as the parents, guardians or persons in parental relation to such pupils may exercise over them.”

“§13-1318.

Every principal or teacher in charge of a public school may temporarily suspend any pupil on account of disobedience or misconduct, and any principal or teacher suspending any pupil shall promptly notify the district superintendent or secretary of the board of school directors. The board may, after a proper hearing, suspend such child for such time as it may determine, or may permanently expel him. Such hearings, suspension, or expulsion may be delegated to a duly authorized committee of the board.”

Additionally, the General Assembly has authorized, and in some instances required, schools to impose sanctions for instances of student disobedience or misbehavior. See 24 P.S. § 5-511; King v. Hempfield School Dist., 8 Pa. D. & C. 4<sup>th</sup> 48 (Pa. Comm. Pl. 1990) (holding school district has authority under § 5-511 to suspend students from extracurricular activities); See 24 P.S. § 13-1317.2 (requiring student expulsion for one year for weapons possession).

not second guess policies of the several boards of school directors," Katzman v. Cumberland Valley School Dist., 84 Pa. Cmwth. 474, 479 A.2d 671 (1984); Commonwealth v. Hall, 309 Pa. Superior Ct. 407, 412, 455 A.2d 674, 677 (1983).

Moreover, to the extent that school officials require the assistance of law enforcement, the General Assembly has authorized schools boards to employ school police officers “to enforce good order” in school districts. 24 P.S. § 7-778. When authorized by the court, such officials have the authority to issue summary citations and to detain individuals until local enforcement is notified. Id. Notably, school police, as employees of the school district, report to the Board or the Board’s designee. Id.

Necessity may occasionally require the presence of law enforcement in schools, but the circumstances for requesting such relief clearly remains with school officials. The General Assembly has only required school entities to develop a “memorandum of understanding . . . which sets forth procedures to be followed when an incident involving an act of violence or possession of a weapon by any person occurs on school property.” 24 P.S. § 13-1303-A(c) (emphasis added).<sup>5</sup> Ironically, the only school-based instance requiring schools to contact

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<sup>5</sup> But see 24 P.S. § 7-778(f) (stating “[s]chool districts and municipalities may enter cooperative police service agreements. . .to authorize the exercise of concurrent jurisdiction with

law enforcement is for possession of a weapon, but the presence of law enforcement on school grounds is not required. See 24 P.S. § 13-1317.2(f)(1) (stating “[school authorities] shall report the discovery of any weapon prohibited by this section to local law enforcement officials”).

There is no reason to think that school districts will cease from contacting Juvenile Court about a particular student’s progress. The challenged Administrative Order, directing the Dauphin County Sheriff<sup>6</sup> as well as juvenile probation to enter schools, was issued without regard to the Board’s traditional authority to address student behavior and must be vacated.

C. A Prohibition on Possession of Weapons On School Grounds is a Reasonable Policy that Should Be Accorded Deference

The Board’s decision to adopt policies and regulations prohibiting firearms in its school buildings is a valid exercise of discretionary authority and premised upon considerations of the best interests of students and faculty. The Board reasoned that possession of firearms in the school environment is a threat to the safety of students and staff. See Harrisburg School Board Policy 218.1, attached

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local law enforcement”).

<sup>6</sup> “The Sheriff of Dauphin County is hereby directed to aid and assist the juvenile probation officers of Dauphin County in the performance of their Court ordered duties and responsibilities. The Sheriff is also directed to utilize and employ any and all means, methods and law enforcement resources as he shall deem appropriate, necessary or advisable, so as to ensure the safety of said juvenile probation officers and the unrestricted and unhindered performance of their duties.” Portion of the August 23, 1999 Order.

as Exhibit “B” to Yates Affidavit.<sup>7</sup> The Board’s action mirrors the General Assembly’s response to the presence of weapons in schools. See 24 P.S. § 13-1317.2.<sup>8</sup> The legislature clearly intended to promote the policy of providing safe schools by prohibiting weapons from school grounds. And although Section 1317.2 is specifically directed at students, it is incongruous that the legislature believed that schools are safer if everyone but students were armed.

Appellees’ claim that the Board exceeded or abused its legal authority by requiring juvenile probation officers to enter schools without weapons fails. “As a general rule, courts should not interfere with the discretionary exercise of a school board’s power unless the board’s action was based upon (1) a ‘misconception of law’ which caused the school board to act outside its statutory authority, (2) ‘ignorance through lack of inquiry in to the facts necessary to form an intelligent judgement,’ or (3) arbitrary will or caprice.” Parents United for Better Schools v. School Dist. of Philadelphia, 978 F. Supp. 197, 205 (E.D. Pa. 1997) (quoting

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<sup>7</sup> Superintendent Yates’ affidavit additionally noted that permitting firearms to be carried in its school increases the chances that students could be injured or killed should the weapon be discharged accidentally or purposefully and that permitting firearms sends an erroneous message to students, i.e., that it is acceptable to arm oneself when there is a safety risk. ¶ 12 of Yates Affidavit.

<sup>8</sup> 24 P.S. 13-1317.2, commonly known as Act 26, was signed into law by the Governor in 1997. The Act requires that school districts and other educational agencies adopt written policies that impose, as a minimum, a penalty of a year expulsion from school upon any student who is found to have brought onto or is in possession of a “weapon” on school property. A weapon is defined broadly as “any knife, cutting instrument, cutting tool, nunchuku, firearm, shotgun, rifle and any tool, instrument or implement capable of inflicting serious bodily injury.” § 1317.2(g).



Roberts v. Board of Directors of the School Dist., 462 Pa. 464, 341 A.2d 475, 480 n.4 (1975).) As discussed above, the Board acted within its statutory authority. Nor is there evidence that the Board acted out of either ignorance or caprice. To the contrary, the Board held public hearings on August 18, 1999 and September 15, 1999 and which it conducted a thorough examination of the reasons for prohibiting firearms in school buildings and establishing a visitation protocol for juvenile probation.

## **II THE JUVENILE ACT DOES NOT AUTHORIZE THE JUVENILE COURT'S DIRECTIVE THAT ARMED JUVENILE PROBATION OFFICERS ROUTINELY ENTER SCHOOLS**

The Dauphin County Juvenile Court had neither implicit nor explicit authority under the Juvenile Act to issue a directive that does not further the objectives and purposes of the Juvenile Act. Rather than directing probation officers to address the behavior and needs of children under court supervision, the challenged Juvenile Court Order seems directed at the behavior of the Harrisburg School Board. In the absence of any evidence that juvenile probation officers armed with .40 caliber Glock semi-automatic weapons help children meet the conditions of their probation, the Juvenile Court exceeded its jurisdiction by imposing such a far-reaching<sup>9</sup> edict and, therefore, its August 23<sup>rd</sup> Administrative

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<sup>9</sup> Moreover, in its zeal to extend control over the Harrisburg School Board, the Juvenile Court improperly requisitioned the Sheriff of Dauphin County to “utilize and employ any and all

Order must be vacated.

A. Armed Juvenile Probation Officers Do Not Further the Purposes of the Juvenile Act

The Juvenile Court and its agents plainly have jurisdiction to monitor and supervise delinquent youth. 42 Pa. Cons. Stat. § 6303. However, the Juvenile Court’s authority is not unbridled. “Consistent with the protection of the public interest,” the state intervenes “to provide children committing delinquent acts programs of supervision, care and rehabilitation ... to enable children to become responsible and productive members of the community.” 42 Pa. Cons. Stat. § 6301(b)(2) (emphasis added). Moreover, the Juvenile Court may only make disposition orders that are “best suited to the child’s treatment, supervision, rehabilitation and welfare” and “appropriate to the individual child’s circumstance.” 42 Pa. Cons. Stat. § 6352(a)(2). Because the touchstone of the Juvenile Act remains rehabilitation, it is difficult to imagine any individual child’s circumstance that necessitates directing a school to allow armed probation officers and sheriffs to enter the school freely. Directing that such coercive tactics be applied to all court supervised children in all schools is not within the language or spirit of the Juvenile Act. Ordering weapons for all juvenile probation officers in

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means, methods and law enforcement resources as he shall deem appropriate. . .so as to ensure the safety of said juvenile probation officers and the unrestricted and unimpeded performance of their duties.” Excerpt from August 23, 1999 Order.

school is akin to using a shotgun to slay an insect.

B. Weapons Do Not Further the Powers And Duties of Juvenile Probation Officers

Juvenile probation officers are explicitly empowered to carry out “the objectives and purposes” of the Juvenile Act. 42 Pa. Cons. Stat. § 6304. Their duties include “making investigations, reports, and recommendations to the court,” “receiving complaints and charges of delinquency or dependency of a child,” “supervising and assisting “ children placed on probation, and “making appropriate referrals” to other agencies on the child’s behalf. § 6304(a)(1)-(4). Upon reasonable cause, juvenile probation officers are also empowered to take into custody and detain dependent or delinquent children when a child is in imminent danger or absconded or violated the conditions of his probation. § 6301(a)(5).

Traditionally, juvenile probation officers in Pennsylvania have been based in county offices, often located in the county’s courthouse. David Metzger, **SCHOOL-BASED PROBATION IN PENNSYLVANIA: FINAL REPORT**, p. 8 (University of Pennsylvania, 1997) [hereinafter “Metzger Report”]. Under this traditional model, juveniles are seen by their probation officers in the county office, periodic home visits, or visits to the school and various community locations. Consequently, contact and “supervision” most often occurs in brief

planned encounters with defined purposes. School-Based Probation is an approach to the supervision of youth which shifts the primary location of primary operations to the school environment. Metzger Report at 9. The objectives of School-Based Probation include reducing disciplinary referrals and the frequency and length of in-school detentions, improving attendance and academic performance, and lowering school drop-out rates. Id.

Under either juvenile probation model, the objectives of juvenile probation are not advanced by arming juvenile probation officers. Though appellees express concern about the safety of juvenile probation officers and the public's protection, the absence of any record below leaves appellees with no support for this argument that juvenile probation officers are unsafe in schools or that armed juvenile probation officers are likely to produce better investigations, reports and/or recommendations, or that weapons allows officers to better supervise children or make more appropriate referrals.

Moreover, arming juvenile probation officers only serves to confuse the above-referenced objectives of juvenile probation. Indeed, it is even beyond the scope of what school based juvenile probation officers themselves envision as their job. The authors of the state-wide study of school-based probation recently concluded that the majority of school-based probation officers viewed their role as

“insuring the delivery of needed services to their assigned cases,” not to act as enforcers of the law. Metzger Report at 8. Additionally, recently released state-wide standards for school-based juvenile probation released by the Pennsylvania Juvenile Court Judges Commission emphasize the importance of accessing school records and meeting with students in confidential school settings. Possessing weapons and policing school hallways were not referenced. See Juvenile Court Judges Commission, **STANDARDS FOR SCHOOL-BASED PROBATION** (1999).

**III. WHETHER APPELLEE HAS THE AUTHORITY TO ORDER THAT ARMED JUVENILE PROBATION OFFICERS ENTER SCHOOLS IS ESSENTIALLY A CIVIL DISPUTE BETWEEN DAUPHIN COUNTY JUVENILE PROBATION AND THE HARRISBURG SCHOOL DISTRICT THAT SHOULD BE RESOLVED IN ACCORDANCE WITH THE RULES OF CIVIL PROCEDURE; NO AUTHORITY EXISTS FOR THE ISSUANCE OF THE EX PARTE ORDER BELOW**

The Juvenile Court was without jurisdiction to issue its August 23, 1999 Administrative Order requiring the Harrisburg School District to allow armed juvenile probation officers into school buildings. To the extent that Juvenile Probation sought to challenge the legality of the Harrisburg School Board’s actions, a civil action requesting a declaratory judgement should have been filed in the Court of Common Pleas of Dauphin County. See 42 Pa. Cons. Stat. § 7532 (“Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or

could be claimed”); Pa.R.Civ.Pro. 1601 (“Action for Declaratory Relief); See also Parents United for Better School, Inc. v. School Dist. of Phila., 978 F.Supp. 197 (E.D. Pa. 1997) (Parents group who challenged the legality of school board policies sought a declaratory judgement by filing a complaint in Court of Common Pleas).

In the instant case, rather than engaging in an *ex parte* communication with the Juvenile Court, Juvenile Probation should have filed a civil complaint in the Dauphin County Court of Common Pleas against the Harrisburg Board of Education, the Board’s President, and/or the Superintendent of Schools. The Juvenile Court compounded Juvenile Probation’s procedural error by issuing its August 23<sup>rd</sup> directive without affording the Board an opportunity to be heard. To the extent that Juvenile Probation believe there is authority for the Juvenile Court to order armed juvenile probation officers in schools, and that arming juvenile probation officers furthers both the objectives of the Juvenile Act and the role assigned to probation officers under the Juvenile Act, the Court of Common Pleas can decide whether there is such authority, and, if there is, its scope. However, because the Juvenile Court’s Administrative Order resulted in the deprivation of the Board’s interest in promulgating administrative policies, as specifically granted by the School Code, without affording the Board an opportunity to present

evidence and cross-examine witnesses, this Court should reverse and vacate.

**CONCLUSION**

**WHEREFORE**, the Juvenile Law Center and Education Law Center-PA respectfully request that this Court reverse and vacate the August 23, 1999 Administrative Order of the Dauphin County Juvenile Court.

Respectfully submitted on this 20<sup>th</sup> day of January, 2000.

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on January 20, 2000, she personally caused to be served a copy of the foregoing Brief of *Amici Curiae* In Support of Appellants's Appeal, via first class mail, postage pre-paid, upon:

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