

Brian B. v. Commonwealth of Pennsylvania
In the United States Court of Appeals for the Third Circuit
Appellate Docket No. 99-1576

STATEMENT OF IDENTITY, INTERESTS AND AUTHORITY

This Brief is being filed for *amici curiae* with the consent of all parties. The organizations and individual submitting this *amicus* brief are:

American Probation and Parole Association

Center for Children's Policy Practice and Research

Center for Health, Achievement, Neighborhood, Growth and Ethnic Studies
(CHANGES)

Center for Research and Evaluation in Social Policy

The Center on Juvenile & Criminal Justice

Citizens United for the Rehabilitation of Errants (CURE)

Council of Juvenile Correctional Administrators

Criminal Justice Center, The College of New Jersey

Dr. Barry Krisberg, President, National Council on Crime and Delinquency⁽¹⁾

National Center on Institutions and Alternatives

National Juvenile Detention Association

National Legal Aid and Defender Association

Pennsylvania Prison Society

The Sentencing Project

All work with disadvantaged youth. Some are engaged in research or advocacy for children and adolescents in the justice and education systems, some provide services directly to youths, and some are associations of professionals who work with youths. Their goal is to provide the Court with up-to-date social science data and developmental perspectives to assist the Court in understanding the importance of education to adolescents, and in evaluating the likelihood that Appellants will succeed in their claim that the Commonwealth's practice of denying them meaningful education deprives them of the equal protection of the law.

STATEMENT OF FACTS

The facts of this case have been set out succinctly in Appellants' Statement of Facts, which is adopted by *amici*.

ARGUMENT

I. Introduction

Appellants are youths who are being denied basic education while in the custody of the Commonwealth. They have made a strong argument that this deprivation merits genuine and searching scrutiny. *Amici* will argue in this Brief that the overwhelming weight of relevant research in human development, medicine, legal history, corrections, and economics, supports Appellants' argument that the Commonwealth cannot justify its policy, no matter what the constitutional standard is deemed to be.

The Commonwealth evidently agrees with this research about the value of education both to individuals and to our society. It assures that education is provided to almost all youths in its custody, including those incarcerated either in juvenile or adult institutions after adjudication or conviction, those awaiting trial in the same county jails with Appellants, and those with diagnosed learning disabilities in the same jails with Appellants. Only one, small class of adolescents, convicted as adults but unfortunate enough to be sentenced to county jails rather than state facilities, is deprived of a basic education. Those adolescents share characteristics with every other subgroup of incarcerated youths, but are singled out for this deprivation.

The following discussion, drawing upon current, reliable and respected research, will illustrate why the Commonwealth cannot defend its deprivation of education to this class of youths under the Court's controlling precedents.⁽²⁾ The value of education, both to society and to this class of youths, must weigh heavily in determining whether the Commonwealth has acted rationally or arbitrarily in denying this class of youths any meaningful access to education while in state custody. The question, as in City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 449 (1985), is "whether it is rational to treat [a subgroup of incarcerated adolescents] differently" from all other incarcerated youths who are entitled to education. *See also Plyler v. Doe*, 457 U.S. 202 (1982) (singling out children of illegal immigrants). As *amici* will demonstrate below, when untainted by bias or hostility toward "juvenile offenders," the answer from a developmental and educational perspective is, clearly, "No."

II. The Supreme Court has Long Recognized the Fundamental Importance of Education and has Repeatedly Emphasized its Constitutional Significance.

A. The Court has recognized education as a constitutionally significant value because it provides the foundation of meaningful participation in a democratic society.

Americans have traditionally "regarded education and the acquisition of knowledge as matters of supreme importance." Plyler v. Doe, 457 U.S. at 223 (*quoting Meyer v. Nebraska*, 262 U.S. 390, 400 (1923)). Nearly half a century ago, in Brown v. Board of Education, 347 U.S. 482, 491 (1954), the Court awakened the Nation to the importance of education as the foundation of meaningful participation in our society:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even in service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such a right, where the state has undertaken to provide it, must be available to all on equal terms.

While the Court has not, thus far, held that a public education is a fundamental right granted to individuals under the federal Constitution, it has acknowledged that "neither is it merely some 'governmental benefit' indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of a child, mark the distinction." Plyler, 457 U.S. at 221.

The Court has recognized public education as "a most vital civic institution for the preservation of a democratic system of government." Abington School District v. Schempp, 374 U.S. 203, 230 (1963)(Brennan, J. concurring). Education is the "primary vehicle" for conveying to our Nation's youth the values on which American society rests. *See Plyler*, 457 U.S. at 221 (*quoting Ambach v. Norwich*, 441 U.S. 68, 76 (1979)). When we deny youths a basic education, "we deny them the ability to live within the structure of our civic institutions, and foreclose the possibility that they will contribute in even the smallest way to the progress of our Nation." *Id.* at 223. Marginalizing the already marginalized by depriving them of the opportunity to absorb the values of the civic culture to which they will ultimately return is costly. "Education has a fundamental role in maintaining the fabric of our society," and ignoring the social costs associated with the denial of a complete education is both shortsighted and inhumane. *Id.*

B. The Court has recognized education as a constitutionally significant value because it provides the essential preparation required for individual self-sufficiency and autonomy.

Education provides the building blocks on which individuals can base economically and socially productive lives. Plyler, 457 U.S. at 221. The Court has acknowledged "the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests." *Id.* When an individual is deprived of a basic education, that deprivation works an "inestimable toll" on the "social,

economic, intellectual, and psychological well-being of the individual," and poses an "obstacle to individual achievement" that "makes it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause." *Id.* at 222.

The Court in *Plyler* realized that depriving young people of a free, public education would result in a bleak future for all. The Court's analysis is equally true when applied to denial of education to Appellants:

Under current laws and practices the [youths confined in local correctional facilities] today may well be the [citizens] of tomorrow and . . . without an education, these . . . [youths], already disadvantaged as a result of poverty, lack of English-speaking ability, and undeniable racial prejudices, will become permanently locked into the lowest socio-economic class.

457 U.S. at 207-208, (*quoting Plyler v. Doe*, 458 F. Supp. 569, 577 (E.D. Tex. 1978)(internal quotations omitted)). As in *Plyler*, the constitutional value of equality is clearly at stake when the inevitable result of denying education to a class of youths is the "creation of a subclass of illiterate persons . . . , adding to the problems and costs of both State and National Governments, attendant upon unemployment, welfare, and crime." *Id.* at 241 (Powell, J. concurring).

C. Since the landmark decisions discussed above, education has continued to gain in importance and will be increasingly crucial in the next millennium.

When *Brown* and *Plyler* were decided, a high school diploma still provided an adequate foundation for survival in the work force, and higher education was a luxury. This is no longer the case. "Twenty years ago, the average college graduate earned 38% more than the average high school graduate. Today, it is 71% more."⁽³⁾ "A high school diploma no longer is enough to get a good manufacturing job and earn a middle class living like it was in the 1950s and 1960s. Today that same worker is likely to need a college degree."⁽⁴⁾ Low-skilled workers face not only depressed wages but high rates of unemployment. According to the Department of Labor, "[a]s the number of high-paying jobs increases, well-paid, low-skilled jobs are becoming harder to find. Globalization has made it easier for businesses to choose low-skilled workers at lower pay in other parts of the world. Technology has rendered many jobs obsolete here at home."⁽⁵⁾

The past decades have seen a quantum jump in the importance of education to citizenship, personal growth and productivity. "Educational attainment plays a critical role in virtually every labor market outcome. On average, the more education people have, the more likely they are to seek and find jobs, earn higher wages, and retire with a pension."⁽⁶⁾ The Department of Labor reports that "[d]emand for skilled labor is a 50-year trend that has become increasingly important. Where strength and manual dexterity used to be enough to ensure employment and a comfortable standard of living, more jobs now and in the future will require verbal and mathematical, as well as organizational and

interpersonal, skills. Emerging technologies, globalization, and the information revolution are also increasing demand for high tech skills."⁽⁷⁾ The trend towards wage gaps between educated and unskilled workers cuts especially deeply at the lowest levels of education. "Over the past quarter century, wage gaps between workers with different educational levels have increased, largely due to falling real earnings for those with less education."⁽⁸⁾ Between 1979 and 1998, during a period when wages at the top were rising, real weekly earnings for workers who had not graduated from high school plummeted by about one third, from \$462 to \$337.⁽⁹⁾ One study of employers in four metropolitan regions found that a high school diploma was required in almost 4/5 of jobs and even those positions not requiring a high school diploma called for additional skills and/or experience.⁽¹⁰⁾ The Department of Labor has identified completion of high school as a key national priority, designating \$100,000,000 in its FY 2000 budget for programs aimed at reducing drop out rates.⁽¹¹⁾

As these reports make clear, the cost of failure to complete high school has increased drastically. Lacking a high school education, even the most diligent worker can expect to face high rates of unemployment and to discover that a full time job, even when he can find it, fails to raise him and his family above the poverty line.⁽¹²⁾ Unskilled workers are less likely to have pensions and health insurance.⁽¹³⁾ Statistics from as early as 1988 showed that individuals who fail to complete high school were three and a half times more likely to be arrested than high school graduates, seven and a half times more likely to become dependent on welfare, and twice as likely to be unemployed and living in poverty.⁽¹⁴⁾ Recent changes in welfare eligibility magnify the consequences of education deprivation, leaving the unemployed high school drop out with few alternatives to criminal activity or life on the street.

Given the rising demands of our technology-based economy, education deprivation for those incarcerated during their high school years condemns them to a life time on the margins of the modern workforce and excludes them, most likely forever, from the new skills-hungry and information-based society.

III. The Lower Court Erred in Assuming that Continuity of Educational Interventions is more Important to Children than to Adolescents.

A. Education does not diminish in importance as children become adolescents nor do they suffer diminished harm when it is withheld during adolescence.

The trial court's fundamental error, both legal and factual, distinguished Appellants' claim from the claims in *Plyler*, relying on the assumption that education is more crucial in the primary years and diminishes in importance as children enter adolescence. The trial court believed that "[t]he structural significance of education may differ depending on the age group of the class denied access" and concluded that "over the course of the fifteen years during which a Pennsylvania resident is entitled to public education, the potential for a substantial curtailment of education near the end of that entitlement period does not seem . . . to warrant the application of heightened scrutiny." Op. at 28. Appellants have

explained that the trial court's belief is inconsistent with the decisions in cases where an educational deprivation was subjected to equal protection scrutiny. This supposed distinction between the harm to elementary aged children and to high school aged youths of educational deprivation is likewise not supported by either research or theory. Education plays a critical role at each stage in a youth's development. At one time, "the belief that the first few years of life were most critical to psychological development and that following this period, personality remained consistent dominated the field until challenged by longitudinal studies."⁽¹⁵⁾ Experts now understand that the surrounding context, including educational interventions or lack of such interventions, plays a crucial role throughout the life course and especially in adolescence. This section will use the work of scholars of education and of developmental psychology to provide a framework for understanding the crucial importance of education to incarcerated youths.

B. In evaluating the rationality of the Commonwealth's classification, it is critical to bear in mind that trying and convicting a youth as "an adult" does not make him an adult.

Although Appellants have been convicted of adult crimes, they are not, in fact, adults.⁽¹⁶⁾ Developmentally, legally, and educationally they remain adolescent youths.⁽¹⁷⁾ "Adolescence is a transitional stage in human development during which the individual undergoes marked physiological, psychological, and social change, in the process of growing from a child into an adult. . . . [Adolescence] roughly encompass[es] the second decade of life, or ages 12 to 19."⁽¹⁸⁾ Adolescence is marked by measurable neurological, as well as more obvious physiological, changes. Studies of brain function indicate that development of the frontal cortex continues through adolescence and "[a]dult levels of [neuronal] activity" are not reached until around age 20.⁽¹⁹⁾ Adolescence is also a critical stage of psycho-social development. The primary task of adolescence is "identity-formation" and "role experimentation is conducted, with a goal of finding a niche in society as adulthood begins."⁽²⁰⁾ The social and physical sciences confirm our common experience, that modern adolescence is fraught with stress and danger. "The lengthening of adolescence, disjunction between the attainment of social and biological maturity, . . . erosion of family and social support networks, along with access to life-threatening activities may combine to make modern adolescence more difficult than in the past."⁽²¹⁾

For Appellants, as for other school age youths, the years between age fourteen and high school graduation will be crucial in acquiring the skills necessary to make the transition to self sufficiency and productive citizenship. Eventually, Appellants will leave their cells and take up new roles as adult citizens. The Commonwealth's and the Nation's stake in these adolescents, and the importance of education to them, is undiminished by the fact that they have broken the law. In fact, all the data suggest that this group is, if anything, in greater need of focused, timely and effective educational intervention.

C. Research on human development confirms that educational interventions during adolescence continue to impact the individual life trajectory.

Ecological Systems Theory, now widely accepted as the most complete theory of individual development, grew out of the work of authorities such as Erik Erikson and Urie Bronfenbrenner.⁽²²⁾ It stresses the relationship between the youth growing to adulthood and the environment and experiences surrounding him.⁽²³⁾ Ecological Systems Theory, as applied to adolescents, advances our understanding of how experiences impact the course of development throughout youth and young adulthood. Five components of this model underscore the salient features of the developmental process: (1) *risk contributors* are factors that may predispose individuals for adverse outcomes; they include documented risk factors such as poverty, disability, violent surroundings, inadequate medical care, and racial or ethnic discrimination; (2) *stress engagements* are actual experiences that challenge the individual's well-being; examples might include family break-up, victimization through abuse and neglect, exposure to violence, and other stressors; (3) *reactive coping methods* are methods employed by the individual to resolve stressful or "dissonance-producing" situations; these can be either adaptive or, as in the case of truancy, delinquency, and law-breaking, maladaptive. The development of coping strategies, coupled with a process of self appraisal, produce (4) *emergent identities*, which define how individuals view themselves within the context of their lives and communities. Most importantly, identity lays the foundation for future behavior, yielding (5) *life state outcomes*, which may be either adverse or productive. The model is not static, however. It is dynamic and recycles throughout the life course as individuals encounter new risks, experience new stressors, learn different coping strategies (adaptive or maladaptive), and redefine how they view themselves and how others view them. These five components of development continue whether or not a youth is incarcerated. Prison does not displace but instead intensifies this cycle.

These principles confirm a crucial element of this case. The Commonwealth's denial of education to youths incarcerated in county jails is not a neutral choice, merely preserving the individual's educational status quo. Rather, it adds an additional risk factor to the incarcerated adolescent's already risk-intensive situation. We know that education can promote adaptive coping methods, resilient identity development, and positive life outcomes. Not surprisingly, a large quantity of literature highlights the connection between lack of education and criminal behavior.⁽²⁴⁾ Educational failure or lack of education can expose the individual to a number of salient stressors by diminishing self esteem, reducing opportunities for employment, and stagnating personal development. Educational failure and deprivation yield maladaptive coping methods, including but not limited to criminal behavior, which have adverse impacts on identity formation and lead to adverse outcomes, such as incarceration. Once a youth is incarcerated, the criminal justice system itself poses additional risks, reflecting the cyclical nature of human development. This is especially true for youths incarcerated in adult institutions. Such youths are "five times more likely to be sexually assaulted by other inmates, twice as likely to be beaten by staff, and fifty percent more likely to be attacked with a weapon than their counterparts in juvenile institutions."⁽²⁵⁾ Such experiences reinforce the adolescent's maladaptive coping methods, leading to recidivism. Educational intervention can curb this pathway, and open others.

Failure to provide consistent and continuing educational intervention can also lead to loss of prior gains.⁽²⁶⁾ Youths left without stimulation or challenge, or exposed to negative

events, can experience an actual diminution of skills and capacities. However, given proper and effective education, incarcerated youths can learn to cope adaptively with stressors they encounter in high-risk environments.⁽²⁷⁾ Therefore, as a matter of developmental psychology, it is wrong to assume that education diminishes in importance as children reach adolescence and enter their high school years. The life trajectory of the individual can be changed as drastically by state action depriving him of access to education during adolescence as by a state's failure to provide him with education in the primary grades.

D. Incarcerated youths, contrary to the underlying assumption of the trial court, often reach adolescence without having received even a basic elementary education.

The assumption that education diminishes in importance after childhood is especially flawed when applied to incarcerated youths, many of whom have never acquired basic educational skills. Even in mid-adolescence, many youths enter the criminal justice system with

significant educational deficiencies. Most incarcerated juveniles are raised in low-income, urban communities that are also the most likely to be under-served in terms of basic educational programs.⁽²⁸⁾

The practical experience of teachers provides perhaps the most dramatic support for this proposition. According to one national survey, "[n]inety percent of teachers providing reading instruction in juvenile correctional facilities reported that they had students who could not read material composed of words from their own oral vocabularies."⁽²⁹⁾ A study by Project READ--a national group devoted to improving literacy skills--found that "youth that are confined to correctional facilities at the median age of 15.5 years and in the ninth grade read, on average, at the fourth-grade level [while m]ore than one third of all juvenile offenders read *below* the fourth-grade level."⁽³⁰⁾ Many juvenile offenders in the latter group are deemed functionally illiterate.⁽³¹⁾ Still more data show that "school failure and poor performance . . . truancy, poor achievement . . . and the failure to master school skills throughout schooling are among the most reliable predictors of delinquency and other 'adolescent rotten outcomes.'"⁽³²⁾ A study comparing delinquents with non-delinquents offers graphic evidence of the link between education and delinquency. The study showed that children who later engaged in delinquent behavior had a significantly greater prevalence of school problems as early as kindergarten. By the second grade, 45% were already delayed in reading while only 14% of the "non-delinquent" children experienced such delays.⁽³³⁾ The Commonwealth's refusal to provide education services only exacerbates the likelihood of poor outcomes for these youths and for society.

E. Data show that adolescents whose education is interrupted by incarceration will suffer life-long consequences as a result.

When the Commonwealth decides to economize by denying incarcerated adolescents access to education, it imposes a penalty that is far more severe and lasting than incarceration itself. Young persons who fail to graduate from high school are

handicapped in virtually every aspect of their adult lives. In the majority of cases, "once juveniles are incarcerated, even for a short period of time, their line to education is forever broken."⁽³⁴⁾ In a Wisconsin study, only 1.6% of youths returned to public schools after their release from an institution. Realistically, "a correctional facility may well represent [the adolescent's] last educational experience."⁽³⁵⁾ A 1994 Department of Justice study confirms, "[t]he majority of delinquents age 16 and older do not return to school after release from a correctional setting or do not graduate from high school."⁽³⁶⁾

The reasons for this phenomenon are many, but all point to a learned hopelessness, which the Commonwealth's policy exacerbates. As Ecological Systems Theory illustrates, the prison environment can either ameliorate or exacerbate prior maladaptive behavior and have a positive or negative effect on the adolescent's identity formation. Many youths enter incarceration convinced that school has failed them. The experience of incarceration, without any educational interventions, chills any incentive to return to school. By denying them education, the Commonwealth sends a clear signal to youths incarcerated in county facilities that they are not worthy of being educated and they cannot learn. Thus, even if presented with opportunities for further education after release, they are disabled from seizing these opportunities. These youths will continue to view themselves as incapable of learning and/or rehabilitation. They lose not only the opportunity to obtain basic educational skills, but also opportunities to develop important social and vocational skills, which they could extract from a learning environment. At release, Appellants will face a host of social, occupational and personal challenges, all of which are compounded by the Commonwealth's policy of denying them education while they are in the Commonwealth's custody. The facts belie any claim of rationality behind the Commonwealth's policy. With one hand the Commonwealth spends substantial state and federal resources to prevent high school students from "dropping out," while with the other it withdraws access to education from Appellants, denying them what is likely their last chance at educational attainment.⁽³⁷⁾

IV. Educating Youthful Offenders In County Prisons Ultimately Saves Money, Space, and Lives.

As former Supreme Court Chief Justice Warren Burger observed, "[w]e must accept the reality that to confine offenders behind walls without trying to change them is an expensive folly with short-term benefits-winning battles and losing the war."⁽³⁸⁾ Educating adolescents convicted as adults does not cost more money, it saves money by reducing recidivism. It does not create space problems, it frees up prison space by discouraging repeat offenses. "If we are serious about preventing and reducing crime, it is critical to adopt the most effective, humane, and cost-efficient means of doing so. As a reasonably priced, highly efficient and continually beneficial method of crime prevention, education is clearly one of the most successful means we have."⁽³⁹⁾

A. Correctional education effectively and efficiently reduces recidivism, netting a cost savings of money and space.

The Commonwealth's policy is not merely penny wise and pound foolish; it is flatly irrational. According to a 1998 study conducted by Dr. Mark Cohen, a respected economist specializing in youth policy, a high-school dropout who enters a lifetime of crime incurs major costs to society. These costs include not only the direct costs associated with incarceration, but external, marginal costs as well. Based on an analysis of productivity losses and other nonmarket losses, Dr. Cohen found that the total cost to society of foregoing the benefits of an education to one youth over the span of his/her lifetime comes out to be \$243,000-\$388,000.⁽⁴⁰⁾ To put these statistics in perspective, the most recent Office of Juvenile Justice and Delinquency Prevention statistics for the state of Pennsylvania show that in 1996, there were 76 youths newly admitted to adult prisons. Assuming every youthful offender re-entered the adult system, the cost of denying all 76 youths an education would be \$18.5- \$29.5 million over the span of their lifetimes. If only 25% reenter the adult system, the cost to society is reduced to \$4.6- \$7.4 million.⁽⁴¹⁾

The most direct cost savings of education are those realized through reductions in recidivism. Not surprisingly, few studies have focused on documenting the value of education to incarcerated school age youths, since the unanimous policy of corrections experts has been to expand, not to contract educational opportunities for all incarcerated persons. "The political realities of today, however, are making it necessary to address head-on the issue of education's effect on recidivism."⁽⁴²⁾ The data from studies of adult prisoners consistently shows that education during incarceration reduces the chance that an inmate will re-offend.⁽⁴³⁾ Miles D. Harer of the Federal Bureau of Prisons conducted a study which confirmed that participation in educational programs during prison reduces an inmate's chances of re-offending, and also that the more classes a prisoner takes, the lower his chances of recidivism will be.⁽⁴⁴⁾ Inmates who took the most classes, one or more in a six-month period, showed a 35.5% recidivism rate. The rate of recidivism was higher for inmates who took fewer classes, and reached its highest point of 44.1% among inmates who received no education at all.⁽⁴⁵⁾ In light of this data, Harer concludes that "education program participation counters the forces of prisonization and inculcates law-abiding norms. This result provides support for the continuance and possible expansion of education programs as a way or increasing post-release success."⁽⁴⁶⁾

Another study, which traced the effectiveness of educational programs in Texas under the Texas Department of Criminal Justice Institutional Division reached similar results.⁽⁴⁷⁾ The data showed a similar recidivism discrepancy between those who received education in prison and those who did not. Inmates with limited involvement in educational programs, less than 100 hours, were re-incarcerated at a rate of 25%, whereas those who had received the most education, more than 300 hours, were only re-incarcerated at a rate of 16.6%.⁽⁴⁸⁾

The Department of Justice has stressed that the beneficial effects of education apply even more forcefully to incarcerated youths:

A child's involvement in the criminal justice system can be a critical intervention point to prevent future criminal activity. Because we do know that education can be a catalyst for change, it is essential to provide appropriate programs . . . to juvenile offenders. *Particular attention must be paid to juveniles housed in adult correctional facilities, and programs designed to assist juveniles in their transition from incarceration into the*

community must be supported and evaluated to ensure the best possible opportunities for successful reintegration upon release." ⁽⁴⁹⁾

Of course, no data is necessary to show that reductions in recidivism lead to reductions in prison crowding. For every inmate who does not re-offend, a prison has that much more available space for the instruction of students. The inverse relationship between education and recidivism proves that the Commonwealth's arguments based on limited space are specious. The efficiency and effectiveness of education compared to the projected long terms consequences to the individuals and ultimately the community of failing to educate these youths confined in local facilities confirms Appellants' claim that the Commonwealth's policy is simply irrational.

B. Education has a positive and stabilizing influence on the institutional environment.

Education also has a significant impact on the lives of all inmates and a correctional facility's administration and staff while the youths remain incarcerated. Inmate students are better behaved, less likely to engage in violent behavior, and more likely to have a positive effect on the general population of the facility. ⁽⁵⁰⁾ Indeed, "educated inmates can be a stabilizing influence in an often chaotic environment, enhancing the safety and security of all who live and work in the correctional facility." ⁽⁵¹⁾ A 1993 survey conducted by the Judiciary Committee of the United States Senate showed that 93% of prison wardens surveyed strongly supported both educational and vocational programming in adult correctional facilities. ⁽⁵²⁾ Facility administrators in juvenile facilities regard education as "the most important component of the rehabilitation process," and view educational and vocational training as a priorities that complement, not compete with, other institutional programs. ⁽⁵³⁾

CONCLUSION

The Commonwealth embraces the value of universal education for all its youth. It expends massive resources to ensure that a free public education be provided to every child or youth under twenty-one who seeks to complete his or her high school education. The Commonwealth educates all youths in its juvenile institutions and state prisons, as well as youths awaiting trial and youths with diagnosed learning disabilities in its local jails. It has singled out for differential treatment a narrow group of the children in its custody-the unlucky class at issue here, who are singled out for stigmatizing treatment by state law, are unprotected by federal legislation, and are especially vulnerable to the consequences of their educational deprivation. In order to sustain its burden, the Commonwealth must show, at the very least, that this classification is rationally related to a legitimate state interest and designed to further that interest. The research discussed herein establishes that the Commonwealth's rationale is not

merely foolish or dismissive of informed correctional and educational policies-it defies the scientific evidence. Meanwhile, Appellants continue unjustly to suffer irreparable harm.

Respectfully submitted,

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1. Organization listed for affiliation purposes only.
2. *Amici* concur with Appellants that the heightened scrutiny articulated in Plyler must be applied here, where a total denial of education to a discrete class of youths has been imposed by the Commonwealth. *Amici* also concur that, even if a rational basis test is applied, it must involve the same thorough and "careful consideration" employed by the Court in Romer v. Evans, 517 U.S. 620, 633 (1996) and Cleburne.
3. U.S. Dep't of Labor, Futurework, Trends and Challenges for Work in the 21st Century, (Sept. 15, 1999)
<<http://www.dol.gov/dol/asp/public/futurework/report/chapter2/main.htm>>.
4. Prepared Statement of Shirely Hughes, Ceridian Corp., National Association of Manufacturers, Section 127 Coalition, Before Senate Finance Committee, Federal News Service, March 3, 1999.
5. Futurework, *supra*,
<<http://www.dol.gov/dol/asp/public/futurework/report/execsum.htm>>.
6. Futurework, *supra*,
<<http://www.dol.gov/dol/asp/public/futurework/report/chapter1/main.htm>>.
7. Futurework, *supra*,
<<http://www.dol.gov/dol/asp/public/futurework/report/chapter7/main.htm>>
8. Futurework, *supra*,
<<http://www.dol.gov/dol/asp/public/futurework/report/chapter2/main.htm>>.
9. *Id.*
10. Henry J. Holzer, Employer Skill Demands and Labor Market Outcomes of Blacks and Women, 52 *Indus. & Lab. Rel. Rev.* 82 (1998).
11. Closing the Gaps: Labor Department Proposes Budget Increases to Close Skill and Pay Gaps, FDCH, Federal Department and Agency Documents, Feb 1, 1999.
12. A full time minimum wage worker earns approximately \$10,700, which is \$2,900 below the poverty level for a family of three. Prepared Statement of Alexis M. Herman, Sec. of Labor, Before House Appropriations Committee, Labor, Health and Human Services & Education Subcommittee, Federal News Service, Mar. 16, 1999.

13. Peter T. Kilbourne, Low Wage Businesses Add to Numbers of Uninsured Workers, New York Times, May 3, 1999, at A1 (reporting on study by John Gabel published in Journal of Health Affairs).
14. Osa D. Coffey & Maria G. Gemignani, Effective Practices in Juvenile Correctional Education: A Study of Literature and Research 1980-1992, at 12, Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice (August 1994).
15. III Handbook of Child and Adolescent Psychiatry 21 (Lois T. Flaherty & Richard M. Sarles, eds., 1997).
16. "With more juveniles facing long adult sentences, it is more important than ever that courts recognize the offense does not make them adults." Marty Beyer, Expert Evaluations of Juveniles at Risk of Adult Sentences, 18 A.B.A. Child Law Practice 17 (April 1999).
17. Scientists studying human development have adopted the term "youth" to refer to all persons who are not yet adults. "Children" typically refers to the group under age twelve.
18. Flaherty, *supra*, at 15.
19. *Id.* at 37.
20. *Id.* at 151.
21. *Id.* at 16.
22. *See, e.g.*, Erik Erikson, Identity, Youth, and Crisis (1968); Urie Bronfenbrenner, "Ecological Systems Theory," in Annals of Child Development 187-249 (1989); Flaherty, *supra*, at 15 (describing human development as a transactional system, with normal behavior being the end result of interacting systems that change over time).
23. Dr. Margaret Beale Spencer, of the University of Pennsylvania School of Education, building on Bronfenbrenner's work, has developed a "Phenomenological Variant of Ecological Systems Theory" that illustrates the implications of life course development for positive or adverse outcomes. *See* M.B. Spencer & C. Ashford, "Old Issues and New Theorizing about African American Youth: A Phenomenological Variant of Ecological Systems Theory," in Black Youth: Perspectives on their Status in the United States 37-70 (1995).
24. *See, e.g.*, T. W. Lane & J. Murakami, "School Programs for Delinquency Prevention and Intervention," in Behavioral Approaches to Crime and Delinquency: A Handbook 305-326 (1987); Dennis B. Anderson & Sarah Long Anderson, Educational Needs of Juvenile Offenders, 23 J. of Offender Rehab. 153-166 (1996); K. L. Hellriegel & J. R. Yates, Collaboration between Correctional and Public School Systems for Juvenile Offenders: A Case Study, ERIC Document Reproduction Service No. ED 408 396 (Paper presented at 1997 meeting of Educational Research Association).
25. Coffey & Gemignani, *supra*, at 5.

26. *Cf.*, Lane & Murakami, *supra*, at 323 (in studies of education for delinquency prevention, continuing intervention during high school was necessary to maintain gains achieved during junior high school).
27. See B.M. Carnes, Keynote Address, The National Correctional Education Conference, 36 J. Correctional Educ. 128-131 (1985); P. Rider-Hankins, Review of the Research: The Educational Process in Juvenile Correctional Schools, A.B.A. Special Committee on Youth Education for Citizenship, ERIC Document Reproduction Service No. ED 349 436 (1992); Anderson & Anderson, *supra*; Hellriegel & Yates, *supra*.
28. The Center on Crime, Communities & Culture, Education as Crime Prevention at 1 (Research Brief, Occasional Paper Series No. 2, September 1997)("Research Brief"); Appendix II at 445a.
29. Research Brief, *supra*, at 2; Appendix II at 446a.
30. *Id.*
31. Janes Hodges et al., Improving Literacy Skills of Juvenile Detainees, Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice (October 1994) at 1; *cf.*, Anderson & Anderson, *supra*, at 154 (estimates that 90% of those incarcerated as adults have not finished high school and 29% are functionally illiterate); Charles M. Borduin, Ph.D., Multisystemic Treatment of Criminality and Violence in Adolescents, 38:3 J. Am. Acad. Child Adolesc. Psychiatry 242-249 (1999)
32. Coffey & Gemigriani, *supra*, at 16 (*quoting* Lisbeth Schorr (1988)).
33. *Id.*
34. Research Brief, *supra*, at 3 (footnote omitted); Appendix II at 447a.
35. Anderson & Anderson, *supra*, at 154.
36. Hodges et al., *supra*, at 1.
37. In 1997-98, for example, the Commonwealth's budget contained a line item of \$1,073,000 for Dropout Prevention.
38. Research Brief, *supra*, at 1 (footnote omitted); Appendix II at 445a.
39. *Id.* at 9; Appendix II at 453a.
40. Mark Cohen, The Monetary Value of Saving a High-risk Youth, J. of Quantitative Criminology, 14(1) 5-33 (1998), *cited in* Howard N. Snyder & Melissa Sickmund, Juvenile Offenders and Victims: 1999 National Report 82, Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice (Sept. 1999).
41. Snyder & Sickmund, *supra*, at 82.
42. Alice Tracy et al., Standing Up for Education, Corrections Today 144-156 (April 1998).

43. *Id.* at 145.

44. Miles D. Harer, Recidivism Among Federal Prison Releasees in 1987: A Preliminary Report, Office of Research & Evaluation, Federal Bureau of Prisons (1994).

45. *Id.* at 24.

46. *Id.* at 73.

47. Kenneth Adams, et al., A Large-Scale Multidimensional Test of the Effect of Prison Education Programs in Offenders' Behavior, 74:4 *The Prison Journal* 433-449 (1994).

48. *Id.* at 442.

49. Research Brief, *supra*, at 8 (emphasis added); Appendix II at 452a.

50. *Id.* at 5; Appendix II at 449a.

51. *Id.* at 5.

52. *Id.* at 5.

53. Robert J. Gemignani, Juvenile Correctional Education: A Time for Change 1, *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice (October 1994).