



**Education Law Center:  
Effective Approaches to Increasing Attendance**

*Testimony of Maura McInerney Before Senate Education Committee*

June 9, 2015

Thank you for this opportunity to speak to you today. My name is Maura McInerney and I am a Senior Staff Attorney at the Education Law Center (“ELC”), a statewide non-profit legal organization dedicated to ensuring that all of Pennsylvania’s children have access to a quality public education. ELC advocates on behalf of educationally at-risk children, including children living in poverty, children of color, children with disabilities, children in the foster care and juvenile justice systems, English language learners, and children experiencing homelessness. Over its 40-year history, ELC has handled hundreds of individual cases involving truancy and listened to concerns voiced by parents, teachers and administrators, students, caseworkers, juvenile probation officers, and judges, regarding the challenges of reducing and preventing truancy.

A primary focus of my practice is improving educational outcomes for educationally at-risk children, particularly children in the dependency system. I have observed truancy proceedings, provided advice to parents, and represented families in truancy proceedings. I have also worked at the local and statewide level to develop policy initiatives to prevent and reduce truancy. For the past five years, I have been an

active member of the **Pennsylvania State Roundtable on Educational Success and Truancy Prevention**.<sup>1</sup> With the support of the American Bar Association Center on Children and the Law, I also conduct cross-agency trainings on truancy across the state for schools, county children and youth offices, and courts. I have also provided technical assistance to school districts and county child welfare agencies seeking to develop effective countywide truancy policies and protocols. At a national level, ELC is involved in addressing truancy and improving attendance for children in the dependency system as a co-founder of the **Legal Center for Foster Care and Education**<sup>2</sup> along with the Juvenile Law Center and the ABA Center on Children and the Law. ELC is a founding member of the **National Working Group on Foster Care and Education**.<sup>3</sup> Through this national work, ELC is in frequent contact with organizations, government representatives, and individuals from around the country regarding legislative efforts, policies, and practices to address truancy and improve educational outcomes for children in the child welfare system.

My comments today grow out of ELC's extensive experience with this issue at the local, state, and national level; my direct work advocating for children and families; and collaborative efforts to work across systems with school administrators, judges and magistrates, and child welfare leaders and staff. It is also informed by national research on effective ways to address the nation's truancy crisis.

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<sup>1</sup> For more information regarding the State Roundtable on Educational Success and Truancy Prevention, go to <http://www.ocfcpcourts.us/about-ocfc/truancy>. Copies of all annual reports to the Pennsylvania State Roundtable are available at <http://www.ocfcpcourts.us/childrens-roundtable-initiative/state-roundtable-workgroups/educational-success-and-truancy-prevention>. A copy of the original report, *Truancy: A Call to Action – Report and Recommendations to the Pennsylvania State Roundtable* is available at <http://www.ocfcpcourts.us/assets/files/page-331/file-600.pdf>.

<sup>2</sup> See Legal Center for Foster Care and Education website at [www.fostercareandeducation.org](http://www.fostercareandeducation.org)

<sup>3</sup> See National Working Group on Foster Care and Education website at <http://www.fostercareandeducation.org/NationalWork/NationalWorkGroup.aspx>

### *Attendance Matters: The Impact of Truancy on Academic & Life Outcomes*

The importance of school attendance and establishing early patterns of attachment to school is well documented. *By 9<sup>th</sup> grade, missing 20% of school is a better predictor of dropping out than test scores.*<sup>4</sup> Chronic absence (missing 10% of school days) in kindergarten correlates to significantly lower academic performance in 1st grade. One study showed that only 17% of those children who are chronically absent in *both* kindergarten and first grade are able to read at grade level by the end of third grade, while 41% of those who are chronically absent in *either* kindergarten or first grade read at grade level.<sup>5</sup> In fact, the first day of a child's school career is critically important. A study in Pittsburgh Public Schools in 2009-2010 found that children who were *present* on the 1st day of Kindergarten on average missed 9 days of school while children who were *absent* on the first day on average missed a total of 18 days.<sup>6</sup>

It is equally well documented that truancy is associated with negative outcomes. Among truant 9<sup>th</sup> graders, two thirds are unlikely to graduate with their peers and

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<sup>4</sup> Allensworth, E. M., & Easton, J. Q., *What Matters for Staying On-track and Graduating in Chicago Public High Schools: A Close Look at Course Grades, Failures, and Attendance in the Freshman Year*, Chicago, IL: University of Chicago, Consortium on Chicago School Research, 2007. In this study of the freshman year of high school, researchers found that attendance in this pivotal transition year was a key indicator of whether students would finish high school. A high rate of absenteeism, described as missing 10 percent or more of the school year, was identified as a key warning sign for freshmen. The study also found attendance and studying more predictive of dropout than test scores or other student characteristics. In fact 9th grade attendance was a better predictor of dropout than 8th grade test scores.

<sup>5</sup> *Applied Survey Research. Attendance in Early Elementary Grades: Association with Student Characteristics, School Readiness and Third Grade Outcomes*. San Jose: May 2011.

<sup>6</sup> For more information, go to <http://www.readyfreddy.org/wp-content/uploads/2013/01/AlleghenyCountyTransitionConference.pdf>

nearly one third will be charged with a criminal offense within two years.<sup>7</sup> Over the past 20 years, there has been a significant expansion of research showing the link between truancy and the onset of delinquency, dropping out of school, first-time drug use as well as other at-risk behaviors, such as alcohol abuse and teenage pregnancy and adult negative outcomes such as unemployment and adult incarceration.<sup>8</sup>

But the question we must address today is what will effectively prevent and reduce truancy? The experience of other states as well as counties across Pennsylvania, and individual schools – and my personal experience working on this issue – consistently support the same conclusion: *Punitive measures, including the exclusion of students, imposition of fines and imprisonment of parents, are ineffectual and counterproductive in reducing truancy. What works, and what is ultimately more cost-effective, is a “proactive approach” to preventing and reducing truancy. This includes establishing strong attendance, particularly in the early grades; providing a positive school culture that promotes “attachment” to school and offering a meaningful curriculum that engages students. We need to focus on ensuring prompt, individualized interventions at the school level in response to absences and we must work across systems by improving collaborations, communications and data sharing among schools, county children and youth agencies, courts and community-based providers. We must also support targeted evidence-based programs that work based on track outcomes. In addition, we must make amendments to our School Code so that applicable laws are clear and consistently enforced across the state. This includes*

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<sup>7</sup> George, Thomas (2011). *Truancy in Washington State: Trends, Student Characteristics, and the Impact of Receiving a Truancy Petition*, p. 38. Olympia: Washington State Center for Court Research. Soder, Jeff (2011). 2009-10 Truancy Report, Chapter 28A.225 RCW: Report to the Legislature. Olympia: Office of the Superintendent of Public Instruction.

<sup>8</sup> See research cited in *Truancy Reduction: Keeping Students in School*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (Sept. 2001) available at <https://www.ncjrs.gov/pdffiles1/ojjdp/188947.pdf>

*clarifying the definitions of truancy and unexcused absences and clearly articulating the obligations of parents, students and schools. We must also consider eliminating laws that push students away from school and often lead to dropping out while developing new laws that support students to re-engage and stay in school.*

### **Punitive Approaches To Truancy Are Ineffectual and Counterproductive**

Across the nation, viewing truancy as criminal behaviour has generated a range of strategies such as issuing citations, police round-ups, formal adjudications, and assignments to correctional programs. Research shows that such punitive approaches are ineffective in reducing truancy and re-engaging students. This is true in part because truancy is often a symptom of complex socio-economic issues that may include entrenched family dynamics, unaddressed mental health and behavioural health needs, or drug abuse, which are not addressed by this remedy. Moreover, such responses exacerbate the problem. Research shows:

[O]verly punitive responses to truancy, including fines, actually exacerbate the problems that truancy alone creates. Additionally, court involvement, particularly for children who have had no previous experience with the criminal justice system, increases the likelihood of dropout. Court involvement also increases the likelihood that children will be funneled into the juvenile justice system and, eventually, into the adult criminal justice system for more serious offenses. Initial and subsequent escalating court involvement can also lead to negative feelings toward school, poor academic performance, and stress within families.

Deborah Fowler, *et al.*, *Executive Summary of Class, Not Court: Reconsidering Texas' Criminalization of Truancy*, Texas Appleseed at 7 (2015).

It is not possible to reduce truancy rates solely by relying on more parental prosecution, which does not have meaningful immediate or long-term impacts on truancy. We therefore should not rush towards the approach of reliance on more court cases, more fines or even more jailing of truants' parents in our efforts to combat truancy. In most non-attendance cases, absenteeism is just a symptom of various entrenched familial and domestic problems.

Ming Zhang, *Time to Change the Truancy Laws? Compulsory Education: Its Origin and Modern Dilemma*, 22 *Pastoral Care in Education: An International Journal of Personal, Social and Emotional Development* at 27 (2004).

Prosecuting parents for truancy disproportionately affects low-income, single parent families, attempts to impose a simple solution to a complex socioeconomic problem, and imposes an unfair burden on mothers, particularly single parent mothers.

Jane Donoghue, *Truancy and the Prosecution of Parents: An Unfair Burden on Mothers?* 74 *The Modern Law Review* at 216 (March 2011).

See also: Annie Salsich and Jennifer Trone, *From Courts to Communities: The Right Response to Truancy, Running Away, and Other Status Offenses*, Vera Institute of Justice (December 2013); and Lorenzo A. Trujllio, *School Truancy: A Case Study of A Successful Truancy Reduction Model the Public Schools*, *Journal of Juvenile Law and Policy* (October 2006) available at <http://jjlp.law.ucdavis.edu/archives/vol-10-no-1/Truancy.pdf>.

In my experience, many families go “underground” and are less likely to send their students to school once fines are imposed. The National Center for School Engagement and several other educational policy organizations have similarly concluded that fines are ineffectual.<sup>9</sup> For example, according to newspaper reports from 2000-2013 over 1,600 people – mostly women – were imprisoned in Berks County for failing to pay truancy fines.<sup>10</sup> During the 2008-2009 school year, Lebanon School District fined parents over \$500,000 -- fines that were later challenged in a class-action lawsuit as excessive and found to be imposed in violation of state law.<sup>11</sup> The imposition of fines led to parents being jailed, children being sent to foster care, and high dropout rates.

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<sup>9</sup> See *The Legal and Economic Implications of Truancy*, National Center for School Engagement (September 2005) available at <http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/TheLegalandEconomicImplicationsofTruancyExecutiveSummary.pdf>

<sup>10</sup> *Woman in Berks County Prison for truancy found dead in her cell*, Reading Eagle, June 11, 2014 available at <http://readingeagle.com/news/article/woman-in-berks-county-prison-for-truancy-found-dead-in-her-cell#.VBcu8qPD-Uk>.

<sup>11</sup> *Judge rules against Lebanon School District in truancy lawsuit* available at [http://www.ldnews.com/ci\\_22036769/lebanon-school-district-loses-truancy-lawsuit](http://www.ldnews.com/ci_22036769/lebanon-school-district-loses-truancy-lawsuit)

**There was no evidence that these policies actually reduced truancy.** In addition, most magistrate judges tell me that they believe fines are ineffectual and that other measures, such as participation in targeted programs, are more effective.

Another approach that is counterproductive is excluding students from school through suspensions and expulsion or by transferring them to Alternative Education for Disruptive Youth programs (AEDY), as currently authorized by state law under 24 PS 19-1901-C. Placing a youth who has been truant in a more restrictive setting with a more limited curriculum and fewer hours of education does not encourage these students to re-engage in school and only fuels the drop-out rate. Accordingly, “habitual truancy” should be removed from the definition of disruptive youth in the statute.

In addition, a conviction for truancy should not negatively impact a youth’s ability to obtain future employment. Current law permits youth age 13 or over to be convicted of a summary offense. This can be a significant punishment for youth because it can impact employment. While a summary offense is the most minor type of criminal offense in Pennsylvania, a conviction is still considered a criminal conviction and hence, may appear on a criminal record when an employer runs a background check and would need to be reported if an employer asks whether the youth has any convictions. While employers should never consider summary offenses under Pennsylvania law, many employers do so. Increasing the chronological age to 16 significantly narrows the number of youth who can be adversely impacted and more accurately reflects the appropriate age that youth should held accountable.

### **What Does Work**

The National Center for School Engagement evaluated numerous National Truancy Prevention Demonstration programs funded by OJJDP over a six year period (1999- 2005) and concluded that “truancy” must be recognized as a school engagement issue to be addressed first through school-prevention strategies and then through court-

based practices that support truant students to re-engage in school. NCSE is built on a theory of change that posits that the combination of *Attendance*, *Attachment* and *Achievement* are essential to reducing truancy and promoting school success. In order to attend school, students must be in a positive school environment, feel attached to school, and believe they can achieve some success, or they will give up and leave. The following recommendations are drawn from this framework of attendance, attachment and achievement.<sup>12</sup>

### *Attendance Matters: Promoting Increased Awareness and School-Level Interventions*

We need to emphasize the importance of school attendance generally, particularly in the early years. Several cities have initiated “Attendance Matters” campaigns through public service announcements and billboards. Several school districts in Pennsylvania have accomplished this through district-wide campaigns, seminars and parent contracts at the beginning of the school year. We must also recognize that truancy is a student-specific issue and schools are best positioned to make the first effort to determine the root causes of a student’s truancy.

I have observed truancy matters in court and noticed how varied each student’s story is. In one case, a student came into the court pushing a stroller with a newborn baby. The solicitor for the school district read off the number of days the student had been “truant,” which was more than 60 days – but this included both unexcused AND excused absences. No one in the courtroom ever acknowledged or made any reference to the fact that the student was caring for a baby. No one asked about the arrangements for childcare. In fact, no one talked to the student at all or discussed a plan to ensure the student’s future attendance. Instead, there were threats that she could be placed in the dependency system, be subject to fines, or have her drivers’ license suspended. The

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<sup>12</sup> See resources available at <http://schoolengagement.org/>



student was never asked to speak nor did she have legal representation. She left the court with a series of warnings and no plan for how she would attend school for the rest of the year.

Magistrates have commented to me that when a school fails to do a truancy elimination plan or to undertake efforts to determine the causes of a student's truancy prior to a citation being filed, the magistrate has no record of why the child is truant or how to approach the matter or how to support the child to return to school. Is the student being bullied in school? Are there academic challenges or special education issues? Are there problems at home? If the child is in cyber school, the magistrate is often questioning a school district representative who has no knowledge of the child or the situation. Magistrates also emphasize that many matters come to them late in the school year – after a child has missed over 50 days of school. A few magistrates have responded to this issue by reaching out to school districts and asking to meet with students and families in schools before truancy issues arise.

In order to address these issues, we urge the Committee to consider amending our truancy laws to require that all schools complete a Truancy Elimination Plan for students with three unexcused absences prior to referring a matter to a magistrate. This is recognized as a best practice by the Pennsylvania Department of Education, but it is not currently required by law. Individualized truancy elimination plans work but must be enforced with fidelity. In addition, schools need to monitor daily attendance accurately.

Second, there will be higher compliance by students and families if the rules regarding truancy are clear, notice is provided to all families, and the rules are perceived as fair and fairly enforced. Under our current laws, we have no clear common definition of what constitutes an unlawful absence, tardiness, or what proof is required to document a legal absence. Instead, these rules are completely different in each school district. Part of what I do in my work is to develop protocols within a

county so that all school districts utilize common definitions of these terms. This permits children and youth agencies to assist families by applying the same rules across the county and supports highly mobile, often poorer families so that they are subject to the same rules as they move from one district to another. In its 2010 Report, the Statewide Roundtable made a series of recommendations regarding truancy issues that need greater clarification through legislation.<sup>13</sup> Those recommendations included addressing attendance rules, notice provisions, procedures, and penalties. The Report urged that truancy laws be codified into a single chapter of the School Code for clarity and that laws be revised to clearly define the terms truancy, habitual truancy, unlawful or unexcused absence, and number of days triggering truancy based on tardiness.

Third, in addressing attendance issues we need to provide greater training and support to magistrates on truancy issues, including the multiple resources available in their communities to support students. In addition, families need to be informed of their legal rights in truancy matters – including what will happen during a truancy proceeding, their right to appeal a decision, etc. As an attorney who has represented families in this context, I know how little information is provided to families which makes the truancy proceeding less likely to effectively address and resolve the underlying conduct and more likely to push parents and students away from school.

### **Attachment to School Prevents Truancy**

On one occasion a few years ago, I was speaking to administrators and building principals in a school district outside of Philadelphia. Principals were sharing stories of what they were seeing in their schools with regard to truancy. One principal was very quiet. Finally, he noted quietly that he did not have any real truancy problems. So I

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<sup>13</sup> See 2010 Report of the State Roundtable on Educational Success and Truancy Prevention at pages 3-6, available at <http://www.ocfcpcourts.us/assets/files/page-331/file-812.pdf>

decided to meet with him after the training to learn more. He told me that he had worked to create a culture in his school to make kids feel welcomed and “known” in school. He greeted each student by name in the morning. He required teachers to stand outside their classrooms and greet students and required that they know the names of all their students. He also eliminated a prior policy of suspending students who were truant or placing them in alternative education for disruptive youth programs. Instead, students who violated the school’s code of conduct by being truant received in-school suspensions with him. He emphasized the importance of schools offering a supportive environment with caring adults, academic support, and interesting and relevant classes.

What I learned from that principal has been echoed by other successful administrators. Creating a positive culture of attachment in school includes personalized attention towards students, identifying school-wide goals and expectations for its culture, and adopting school discipline policies that lead to inclusion, engagement and re-engagement, not exclusion. Out-of-school suspensions or placements that remove students from positive educational settings actually decrease attendance.

As Johns Hopkins University’s Robert Blum of the Bloomberg School of Public Health explained in describing the 40-60% of students who were chronically “disengaged” from schools nationwide:

*This culture of detachment decreases their prospects for academic success and promotes a variety of high-risk behaviors. Rather than engaging students and helping them feel a sense of belonging, essentially, we’re telling kids: ‘You’re on your own.’*

Journal of School Health, *School Connectedness: Strengthening Health and Education Outcomes for Teenagers* Vol. 74 No. 7 at 231 (Baltimore, 2004).

This is why we recommend that our School Code be amended to eliminate “habitual truancy” as a basis for referring students to AEDY programs and to

specifically eliminate truancy as grounds for suspension or expulsion. In our experience and based on research, placing a youth who has been habitually absent in a more restrictive setting with a more limited curriculum does not result in the youth attending school.

Alternatives like Youth Court and Peer Mediation, Restorative Justice Practices and programs that engage students and parents who may have had a negative experience in school are effective in promoting re-engagement and attachment, as are several formal truancy prevention programs like “Check and Connect” and other evidence-based practices and programs highlighted in Pennsylvania’s Department of Education School Attendance Improvement and Truancy Reduction Toolkit.<sup>14</sup>

But we must give our schools the resources they need to sustain these evidenced-based strategies and truancy prevention programs that track student outcomes based on real data and yield concrete positive results of keeping students in school and completing school. This might be accomplished through competitive grant funding to school districts.

**Achievement: Students will stay in school if they can be successful.**

Achievement is the third leg of the stool. Every year, there are waiting lists of students who cannot access accelerated programs for under-credited students. There are also waiting lists for vocational programs. Many students give up and drop out because their schools have few options for them. In order for older students to remain in school or re-engage, students need expanded educational options.

In addition, students need the support of remedial programs, truancy prevention programs, guidance counselors, school-based behavioral health, and mentoring

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<sup>14</sup> This resource can be accessed at [http://www.portal.state.pa.us/portal/server.pt/community/office\\_of\\_elementary\\_secondary\\_education/7209/pa\\_school\\_attendance\\_improvement\\_and\\_truancy\\_reduction\\_toolkit/2009825](http://www.portal.state.pa.us/portal/server.pt/community/office_of_elementary_secondary_education/7209/pa_school_attendance_improvement_and_truancy_reduction_toolkit/2009825).

programs which have a proven track record of success.<sup>15</sup> Instead, we have seen significant reductions in these areas. For example, the American School Counselor Association recommends one counselor for every 250 students. In 2002, public high schools employed one counselor for every 284 students. Large schools (1,200+ students) employed one counselor for every 335 students. In 2013, South Philadelphia High School employed two guidance counselors for 1,500 students and Northeast High School in Philadelphia employed one counselor for 3,000 students.<sup>16</sup> In the absence of sufficient resources to support school success, truancy and drop out increases.

### Conclusion

Truancy is not a problem to be solved, but a symptom to be understood and addressed. Our truancy laws need to be clarified for families to know the rules of the road. Our schools must serve as the first line of defense in identifying and addressing the individual root causes of a student's truancy. Schools need to adopt policies and practices that support attachment to school. And schools need to have the resources to

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<sup>15</sup> For example, a three-year project in New York City paired specially trained "Success Mentors" (City Year participants, social work students, or retired professionals) with 10,000 students who had been chronically absent. Mentors were matched with 10-15 students who they saw in school at least three times a week. They called students every day that an absence occurred and connected them to services. Previously chronically absent high school students with Success Mentors were 52% more likely to remain in school the following year than equivalent comparison students who did not receive mentors. Students who stopped being chronically absent saw academic improvement and were more likely to stay in school in the three years following intervention. Robert Balfanz, *Meeting the Challenge of Combating Chronic Absenteeism* (2013) available at <http://new.every1graduates.org/new-york-city-finds-success-in-cutting-chronic-absenteeism-in-school/>.

<sup>16</sup> NewsWorks, *In Philly schools, when students with dreams or traumas seek counseling, the office is often empty* (September 18, 2013) available at <http://www.newsworks.org/index.php/local/education/59927-in-philly-when-students-with-dreams-or-traumas-seek-counseling-the-office-is-often-empty>

support student success. When this happens, we see reductions in truancy, increases in on-time graduation rates, and decreases in the filing of dependency petitions, imposition of fines, and parent imprisonment. Clearly, this is in the best interest of our students, families, and schools, and it is also a cost-effective investment in our society. By supporting students to graduate, we enhance our communities, grow our state's economy, and heighten civic engagement.

Thank you for the opportunity to share this testimony today. I greatly appreciate the time and attention you are devoting to this important issue.

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