



**Act 138: Recommendations to Address Truancy,  
Increase Attendance, and Improve Academic Outcomes**

*Testimony of Maura McInerney, Esq. Before Joint State Government Commission  
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Thanks very much for this opportunity to speak to you today. My name is Maura McInerney and I am the Legal Director 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. I am here today with my wonderful colleague, Paige Joki, a Staff Attorney at ELC whose practice includes representing parents and students in truancy matters across the state.

**ELC’s Experience Regarding Truancy Laws in Pennsylvania**

ELC advocates on behalf of students who are most marginalized by our education system, including children living in poverty, Black and Brown students, children with disabilities, youth in the foster care and juvenile justice systems, multi-lingual learners, and children experiencing homelessness. These are the same children who are most impacted by Pennsylvania’s truancy laws because, as acknowledged by Joint State Government Commission’s report in 2015, “poverty and racism” are the likely drivers of the disparities in truancy rates.<sup>1</sup> Over its nearly 50-year history, ELC

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<sup>1</sup> See *Truancy and School Dropout Prevention: Report of the Truancy Advisory Committee* (Joint State Government Commission, 2015) at p. 35, available at <http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2015-10-27%202015%20TAC%20Final%20Report%2010-27-15%203pm.pdf>.

has handled hundreds of individual matters involving truancy issues and listened to concerns voiced by students, caregivers, teachers and administrators, , caseworkers, attorneys, and judges regarding the challenges of addressing, preventing, and reducing absenteeism. ELC attorneys have represented families in truancy proceedings before Magistrate District Judges (“MDJs”) and in Regional Truancy Court in Philadelphia. Each year, we advocate for families who are facing fines, fees, and sometimes jail time as a result of truancy proceedings and respond to calls regarding students who are facing possible adjudication as dependent children in matters referred to family court on the basis of truancy. In most cases, we represent families of color whose children have faced preventable school-based barriers to school attendance and/or have unaddressed needs most commonly relating to a student’s disabilities. In other cases, we have represented families of color whose children have faced barriers due to their experience of homelessness, bullying and harassment, or school climate issues.

ELC has participated as a member of the **Pennsylvania State Roundtable on Educational Success and Truancy Prevention**.<sup>2</sup> We are co-founders of the national **Legal Center for Foster Care and Education**<sup>3</sup> and have worked with the **American Bar Association Permanency Barriers Project**<sup>4</sup> on truancy issues in multiple counties across the Commonwealth. We also provide technical assistance to school districts and county child welfare agencies seeking to develop effective collaborative countywide truancy

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<sup>2</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>3</sup> See Legal Center for Foster Care and Education website at [www.fostercareandeducation.org](http://www.fostercareandeducation.org). ELC is also a founding member of the **National Working Group on Foster Care and Education**. Through this national work, ELC is in frequent contact with organizations, government representatives, and individuals from other states regarding legislative efforts, policies, and practices to address truancy and improve educational outcomes for children in the child welfare system.

<sup>4</sup> See Pennsylvania Permanency Barriers Project available at [https://www.americanbar.org/groups/public\\_interest/child\\_law/project-areas/permanencyproject/PaPermanency/](https://www.americanbar.org/groups/public_interest/child_law/project-areas/permanencyproject/PaPermanency/)

policies and protocols. We have also conducted trainings on truancy issues in nearly all 67 counties through the **Pennsylvania Child Welfare Resource Center** and conducted trainings for MDJs through the Office of Children & Families in the Courts (“OAPC”).

Finally, ELC staff worked with legislators and stakeholders to develop Act 138, advocated at the state level for its passage, and continue to work to implement the law. Our comments today stem from ELC’s extensive experience with this issue at the local, state, and national level; our direct work advocating for children and families since the passage of Act 138; and collaborative efforts to work across systems with school districts, judges and magistrates, and child welfare leaders and staff. Our comments are also informed by national research disclosing that positive and relationship-based engagement at the school level rather than punitive measures imposed by schools, judges, or child welfare agencies is far more effective in reducing truancy. We must recognize that there are three distinct systems involved in addressing truancy – schools, MDJs, and county children and youth agencies – that cannot operate in silos as currently occurs but must work collaboratively to effectively reduce truancy.

### **Summary Recommendations**

Overall, we urge the Commission to consider a recommendation to adopt regulations to further clarify the statute and ensure that it is consistently enforced across the state. This includes clarifying the definitions of unexcused absences, lateness, and clearly articulating the obligations of schools, County Children & Youth agencies and MDJs. We must eliminate punitive measures like fines and jail time which push students out of school all together and funnel them into child welfare system while developing new laws that support students to re-engage and stay in school. To this end, ELC proposes recommendations targeting each of the three agencies involved in addressing truancy. We have also attached two documents reflecting trends ELC is seeing in handling individual cases. The first is entitled *Examples of Truancy Issues and*

*Trends* and the second highlights *Sample School District Policies* which are antithetical to Act 138.

Here are ELC’s high-level recommendations to clarify, strengthen, and improve Act 138. First, school districts need more directive guidance, training, and access to expanded resources at the school level to accurately identify and address the root causes of systemic and individual barriers that prevent students from consistently attending school. In our experience, the most common reasons for truancy are (1) a child’s disability, which may be unidentified prior to the child’s absenteeism; (2) school climate related conditions arising from a lack of needed mental health services and other resources; (3) experiences of homelessness which are often unidentified, and (4) unaddressed bullying and harassment. Each of these issues are best addressed at the school building level and should be disclosed through an effective Student Attendance Improvement Plan (“SAIP”) process.

However, in many cases a district is not identifying the root causes of a child’s unexcused absences or reviewing the accuracy of student’s attendance records prior to referring the matter to an MDJ. In addition, many districts do not recognize or are unable to address the need for school-wide programmatic interventions such as school-based attendance improvement programs which are needed in schools with high percentages of absenteeism. One approach would be for districts to be required to maintain and analyze data regarding the underlying causes of unexcused absences to identify patterns. Another approach would be to impose a requirement that schools with a high percentage of children who are truant must be eligible for a Safe Schools grant to support a school-wide attendance improvement program such as Check and Connect<sup>5</sup> or mental health services in school. Regulations could also clarify that school

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<sup>5</sup> See e.g., Success Story: Check and Connect, available at <https://www.attendanceworks.org/check-connect/>.

districts are not authorized to impose fines on caregivers or students, cannot discipline or transfer a student as a punishment for truancy and that schools cannot refer any matter to an MDJ until the school has completed a SAIP and expressly considered specific attendance barriers related a child's disability status, allegations of bullying and harassment, mental health concerns, homelessness, transportation barriers etc.

Second, the role of county Children and Youth agencies ("CYA") must be redefined in the law. At present, students are referred to CYA "at the back end" following multiple unexcused absences. However, it is imperative that CYA partner with school staff in a proactive and collaborative manner to connect families to resources available in the community and to provide in-home supports *prior* to any citation being filed or a referral to family court. These supports include mentoring programs, behavioral and mental health supports, parent-child conflict resolution, etc.

Third, Act 138 should be revised to eliminate fines and fees as well as jail time. Alternatively, MDJs should utilize alternative school-based activities to support and maintain student attendance. In addition, the law must clarify that "inability to pay" hearings must be conducted in truancy matters and that families who receive "means-based public assistance" such as food stamps through the Supplemental Nutrition Assistance Program ("SNAP"), Medicaid, Supplemental Security Assistance ("SSI"), or Temporary Assistance for Needy Families ("TANF") are presumed indigent. In addition, all children and caregivers should considered is indigent if they cannot afford to meet their basic life needs.

### **I. What Research Shows**

#### ***Importance of Attendance, Impact of COVID, and Outcomes of Truancy***

The importance of addressing barriers to consistent 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 being pushed out of school before graduation than test scores.*<sup>6</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>7</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>8</sup>

It is equally well documented that frequently missing school is associated with negative outcomes. One study indicated that among 9<sup>th</sup> graders who were considered to be truant under law, two thirds are unlikely to graduate with their peers and nearly one third were charged with a criminal offense within two years.<sup>9</sup> School attendance is

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<sup>6</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>7</sup> *Applied Survey Research. Attendance in Early Elementary Grades: Association with Student Characteristics, School Readiness and Third Grade Outcomes.* San Jose: May 2011.

<sup>8</sup> For more information, go to <http://www.readyfreddy.org/wp-content/uploads/2013/01/AlleghenyCountyTransitionConference.pdf>

<sup>9</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.

an even better predictor of school performance than test scores.<sup>10</sup> Furthermore, the incidence of chronic absenteeism in 1 year between grades 8 and 12 is associated with a 7-fold increase in students being disconnected from school and more likely to drop out.<sup>11</sup> As a driver of academic outcomes, school absenteeism also has long-term implications for health and social functioning. Educational attainment shapes access to opportunities and basic needs across systems and is a key determinant of both personal and community health. Extensive research has shown an unequivocal association between low educational achievement and poor social and health outcomes, including unemployment and low-paying jobs, unhealthy habits such as smoking and lack of exercise, and increased mortality and lower life expectancy.<sup>12</sup> These outcomes arise due to interlocking systems of racial discrimination that span our social systems at every level as well as deprivations of needed economic and supportive resources. Proactively supporting children to attend school consistently is a necessary component of addressing these widespread harms.

Physical school closures during the COVID-19 pandemic deeply impacted students and school communities across the state and across the country, most acutely impacting communities of color due to historic and current disinvestments in their schools and inadequate access to medical care and resources. During the 2020-2021 school year, school attendance rates dropped significantly compared with previous

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<sup>10</sup> Allensworth EM, Easton JQ. What matters for staying on-track and graduating in Chicago public high schools. Published 2007 available at <https://consortium.uchicago.edu/publications/what-matters-staying-track-and-graduating-chicago-public-schools>

<sup>11</sup> US Department of Education. Chronic absenteeism in the nation's schools: a hidden crisis. Published 2022. Accessed May 6, 2022. <https://ed.gov/datastory/chronicabsenteeism.html>.

<sup>12</sup> Ross CE, Wu CL. The links between education and health. *Am Sociol Rev.* 1995;60(5):719-745. [[Google Scholar](#)]; Rogers RG, Hummer RA, Everett BG. Educational differentials in US adult mortality: an examination of mediating factors. *Soc Sci Res.* 2013;42(2):465-481. [[PMC free article](#)] [[PubMed](#)] [[Google Scholar](#)]; Lawrence EM, Rogers RG, Zajacova A. Educational attainment and mortality in the United States: effects of degrees, years of schooling, and certification. *Popul Res Policy Rev.* 2016;35(4):501-525. [[PMC free article](#)] [[PubMed](#)] [[Google Scholar](#)]

years, and absenteeism was more severe in underfunded school districts that closed for in-person instruction for longer times and lacked staff and resources than districts that remained open during the pandemic.<sup>13</sup> Black and Brown students – who disproportionately attend underfunded schools were most severely deprived of educational opportunities and suffered the most acute learning losses as a result.<sup>14</sup> Since the pandemic, school attendance has continued to remain below pre-pandemic levels.<sup>15</sup> This school attendance decrease poses a risk for negative outcomes in children, including health risks.<sup>16</sup> But the question we must address today is what will effectively prevent and reduce truancy?

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

Across the nation, viewing truancy as intentional and individual or family-based “criminal behaviour,” rather than a behaviour signalling a need for support, has generated a range of punitive and criminalizing 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 absenteeism and support student disengagement. 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,

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<sup>13</sup> Research Brief. National survey of public education’s response to COVID-19: student attendance and enrollment loss in 2020–21. Published 2021. Available at [https://www.air.org/sites/default/files/2021-07/research-brief-covid-survey-student-attendance-june-2021\\_0.pdf](https://www.air.org/sites/default/files/2021-07/research-brief-covid-survey-student-attendance-june-2021_0.pdf)

<sup>14</sup> Sarah Cohodes Et Al., Ctr. for Reinventing Public Ed., Student Achievement Gaps and the Pandemic : A New Review of Evidence From 2021-2022 6 (2022), [https://crpe.org/wp-content/uploads/final\\_Academic-consensus-panel-2022.pdf](https://crpe.org/wp-content/uploads/final_Academic-consensus-panel-2022.pdf).

<sup>15</sup> Research Brief. National survey of public education’s response to COVID-19: student attendance and enrollment loss in 2020–21. Published 2021. Available at [https://www.air.org/sites/default/files/2021-07/research-brief-covid-survey-student-attendance-june-2021\\_0.pdf](https://www.air.org/sites/default/files/2021-07/research-brief-covid-survey-student-attendance-june-2021_0.pdf)

<sup>16</sup> Allison MA, Attisha E, Council on School Health. The link between school attendance and good health. *Pediatrics*. 2019;143(2):e20183648. [[PubMed](#)] [[Google Scholar](#)]



which are not addressed by this remedy. Moreover, such responses exacerbate the problem and fail to account for systemic barriers to school attendance. 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 funnelled 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.

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).<sup>17</sup>

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<sup>17</sup> See also Deborah Fowler, *et al.*, *Executive Summary of Class, Not Court: Reconsidering Texas' Criminalization of Truancy*, Texas Appleseed at 7 (2015). 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); 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://jilp.law.ucdavis.edu/archives/vol-10-no-1/Truancy.pdf>; *The Legal and Economic Implications of Truancy*, National Center for School Engagement (September 2005) available at

In ELC’s experience, many families go “underground” and are less likely to send their students to school once fines are imposed because school no longer feels safe or supportive. The National Center for School Engagement and several other educational policy organizations have similarly concluded that *fines are ineffectual*.<sup>18</sup> Prior to enacting Act 138, we saw this play out in the history of truancy in Pennsylvania. 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>19</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>20</sup> The imposition of fines led to parents being jailed, children being sent to foster care, and high dropout rates. **There was no evidence that these policies actually reduced truancy.** In addition, many magistrate judges concede that fines are ineffectual and that other measures, such as participation in targeted programs, are more effective.

## II. *What Works To Address Truancy*

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

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<http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/TheLegalandEconomicImplicationsofTruancyExecutiveSummary.pdf>.

<sup>18</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>19</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>20</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)

issue to be addressed first through school-prevention strategies and then later 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. Creating positive, affirming, and supportive school environments are necessary elements to ensure schools can fulfill their social function as a purveyor of education, resources, and connections to specialized staff, all of which are protective factors for students. These types of conditions create climates which incentivize consistent attendance and communication between families and schools when attendance barriers do arise. ELC's recommendations are drawn from this framework of attendance, attachment, and achievement.<sup>21</sup>

Magistrates have commented that when a school fails to do an attendance improvement plan or 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 missing school or how to approach the matter or how to support the child to return to school and maintain consistent attendance. Is the school responding to reports that the student is being bullied or harassed? Are there academic challenges or unidentified special education issues that the school needs to address? For students who are already identified as having disabilities, is their IEP or 504 Plan affording the correct appropriate supports? Is the student experiencing homelessness? If the child is in cyber school, the magistrate is often questioning a cyber school district representative who has no knowledge of the child or the situation or who may not have interacted with the child at all. Magistrates also emphasize that many matters come to them late in the school year – after a child has missed over 50 days of school- when the barriers can and should have been addressed at the school level. No punitive tools that magistrates have

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<sup>21</sup> See e.g., National Center for School Engagement resources available at <http://schoolengagement.org/>

at their disposal can bring back the missed instruction time. Additionally, the impact of referrals late in the school year means that a family is often left to answer for absences caused by a school's failure to identify a child as needing legally required school-based supports, such as special education or McKinney-Vento supports for children experiencing homelessness.

**RECOMMENDATION I:  
Provide Additional Guidance to Schools Via Regulations**

In order to address these issues, we urge the Commission to consider a recommendation to provide more guidance to schools through regulations to address the components of a SAIP, including specific underlying issues that must be considered and how attendance will be encouraged and rewarded. In addition, regulations could specify how daily attendance should be recorded in a consistent way across districts.

There will be higher compliance by students and families if there are written rules regarding how lateness is calculated, how notice is provided to all families in a way that can be understood in the family's preferred language, and the rules are perceived as fair and fairly enforced in a manner that considers family's circumstances. 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" or excused absence. Instead, these rules are completely different in each school district and often vary even by school or school building. In reality, this means that children from the same family are subject to a complex web of attendance rules that are frequently enforced differently by each school. Utilizing common definitions of these terms and practices will eliminate confusion, help families to comply, and support school personnel to accurately track students' attendance.

Creating uniform and clear rules enables children and youth agencies to better 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. This also ensures that students are not improperly marked “unexcused” for absences that arise from experiencing homelessness, for example. The impact of homelessness remains a key and preventable pathway that students are diverted into truancy systems, instead of supported with legally required services.

In its 2010 Report, the Statewide Roundtable made a series of recommendations regarding truancy issues that need greater clarification through legislation.<sup>22</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.

Regulations in the School Code, 22 Pa Code Chapter 13 could provide these needed definitions and also specify that school entities cannot impose fines, discipline students, and clarify that students cannot be dropped from the rolls prior to addressing absenteeism, including any disability-related needs. In addition, regulations should direct that data be collected regarding reasons for truancy and define a clear process to ensure that SAIPs are developed with fidelity through a collaborative approach that involves family and school staff who know the child. Regulations can also address the need to identify and accommodate students with disabilities, students experiencing bullying and harassment, and those experiencing homelessness or are system involved.

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<sup>22</sup> See 2010 Report of the State Roundtable on Educational Success and Truancy Prevention at pages 3-6, available at <http://www.ocfcpacourts.us/assets/files/page-331/file-812.pdf>

## **RECOMMENDATION II: Clarify MDJ Role Through Rulemaking**

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. Currently, 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.

ELC categorically opposes the use of fines, fees, and jail time to address attendance, given the documented and profound harm it imposes on parents, students, and communities. These strategies are also ineffective to change behavior and non-attendance. As long as these punitive responses continue to be permitted under the law, additional judicial rules should be adopted to clarify and specify that MDJs cannot: (1) fine both the parent and the student (over age 15) for the same truancy referral incident; (2) require schools to file citations against both parents and children and require schools to keep filing multiple truancy citations which could result in higher fines against the parent or student; (3) fine “per day” rather than per citation or (4) force parents to enroll their child in a new school. In addition, regulations should address inability to pay standards and procedures in the truancy context.

## **RECOMMENDATION III: Adopt Regulations to Clarify CYA’s Role and Eliminate Truancy as a Basis for Dependency.**

ELC also recommends that Pennsylvania’s child welfare regulations, 55 Pa Code § 3130 *et. seq.* be amended to clarify the role of county children and youth agencies regarding truancy and how schools and MDJs can and cannot utilize county children and youth agencies to address truancy. Such regulations could expressly mandate

collaboration with schools to connect children to services and supports prior to a filing any citation.

In addition, ELC notes that we support eliminating “truancy” as a ground for adjudicating a child dependent.<sup>23</sup> Family separation often has devastating and lifelong consequences for children who are removed from their guardians.<sup>24</sup> The importance of keeping families together is at the heart of the Juvenile Act, whose purpose is to “preserve the unity of the family whenever possible.”<sup>25</sup> Our courts have acknowledged that family separation produces “emotional trauma.”<sup>26</sup> In recognition of this common-sense truth, the Juvenile Act favors family unity and permits courts to remove children from their guardians *only* in exceptional circumstances where there is a “clear necessity” to do so and it is in the child’s best interest.<sup>27</sup>

A child’s nonattendance in school does not, in and of itself, constitute such clear and convincing evidence justifying the drastic step of removing a child from his guardian. Moreover, placing a child in a highly restrictive residential facility as has occurred in many cases, is ineffective and counterproductive to addressing truancy. Placing children in residential placements away from home is traumatic and ignores the significant risks to a child’s health, development, educational progress, and future that placement in a residential facility poses.<sup>28</sup>

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<sup>23</sup> 42 Pa.C.S.A. § 6302.

<sup>24</sup> See, e.g., Annie E. Casey Foundation, *Every Kid Needs A Family Policy Report 5* (2015), <https://www.aecf.org/m/resourcedoc/aecf-EveryKidNeedsAFamily-2015.pdf>.

<sup>25</sup> 42 Pa.C.S.A. § 6301(b)(1).

<sup>26</sup> Office of Children & Families in the Courts, *Pennsylvania Dependency Benchbook* (2019) available at 3-6, available at <https://ocfcpacourts.us/wp-content/uploads/2020/05/2019-Pennsylvania-Dependency-Benchbook-3rd-Edition-Interactive-002427.pdf>.

<sup>27</sup> See 42 Pa.C.S.A. § 6301; *In Interest of S.S.*, 651 A.2d 174, 176 (Pa. Super. Ct. 1994).

<sup>28</sup> Children’s Rights, Inc. & Education Law Center, *Unsafe and Uneducated: Indifference to Dangers in Pennsylvania’s Residential Child Welfare Facilities* 19-20 (2018).

Importantly, in applying the clear necessity standard, Pennsylvania courts commonly consider truancy a contributing factor—not the sole factor—supporting removal. In such cases, truancy is recognized as a symptom of ongoing neglect and children are often adjudicated dependent based on neglect as a grounds for adjudication in addition to truancy.<sup>29</sup> ELC believes that it is contrary to the Juvenile Act’s purpose of preserving the unity of the family to remove a child from their parent based on truancy alone. In our view, as often occurs, a child’s nonattendance is *not* a reflection of underlying abuse or neglect but a reflection of a child’s unmet school-related needs. Yet racial bias often fuels an assumption that non-attendance is reflective of neglect. In the absence of sufficient other evidence of abuse or neglect, a finding of truancy should not be grounds for removing a child from their parent. This drastic step will only cause significant and sometimes irreparable trauma and is likely to have far-reaching harmful consequences for the child, including undermining their relationship with their parents. Removing a child from their home will also fail to address the child’s absenteeism. For these reasons, ELC believes that truancy should be removed as a basis for adjudicating a child dependent. At best, it is superfluous and unwarranted. At worst, as currently presented in the Juvenile Act, it is dangerous, leads to racialized decision making, and is clearly not in the best interest of children.<sup>30</sup>

#### **RECOMMENDATION IV: Expunge Records of Summary Offenses**

ELC firmly opposes responses to truancy which criminalize students and families for attendance-related behavior. However, in the absence of removing such consequences, a conviction for truancy should not negatively impact a youth’s ability to

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<sup>29</sup> See, e.g., *In re E.P.*, 841 A.2d 128, 130 (Pa. Super. Ct. 2003).

<sup>30</sup> Rubino, Laura L. Anderson, Valerie R. and Campbell, Christina A. *An Examination of Racial/Ethnic Disparities in Truancy Court* (May 8, 2019) available at <https://journals.sagepub.com/doi/full/10.1177/0011128719847456>.



obtain future employment. Current law permits youth age 15 or over to be convicted of a summary offense solely for truancy. This can be a significant punishment for youth because it creates a record which can impact employment and future educational opportunities. While a summary offense is considered to be 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 persist in doing so. Expunging summary citations from student’s records helps to address this predictable and often insurmountable barrier to future opportunities.

### **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 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. We greatly appreciate the time and attention you are devoting to this important issue and we would welcome the opportunity to discuss these recommendations in greater detail.

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**Testimony to Joint State Government Commission:**

***Examples of Improper School District Policies***

**District Policies Indicating Imposition of Fines Without Due Process or Student Attendance Improvement Plan**

- **Gateway School District**

- “When a student has accumulated three (3) days of unlawful absences, a first offense notice will be sent to the parents. After the first notice is resolved, the next day during the school term that the student is unlawfully absent becomes the second offense. ***This offense is subject to a fine***, according to the compulsory school attendance law.” (emphasis added).

- Gateway School District, *Elementary Parent Student Handbook 2022-2023*, 10, <https://campussuite-storage.s3.amazonaws.com/prod/1559121/d2bcaafa-c567-11ec-99ff-0a546a416bf5/2455350/33f15016-1417-11ed-a208-02801c9d72c7/file/Elementary%20Handbook.pdf> (emphasis added).

- **Jim Thorpe Area School District**

- “Parents and students can be fined following their child’s third day of unexcused or illegal absence from school, and they are therefore urged to send an excuse with the student on the day following the student absence.” (emphasis added).

- Jim Thorpe Area High School, *Handbook 2022-2023*, 41, [https://core-docs.s3.amazonaws.com/documents/asset/uploaded\\_file/2793/JT\\_AHS/2395279/JTAHS\\_Handbook\\_2022-23\\_.pdf](https://core-docs.s3.amazonaws.com/documents/asset/uploaded_file/2793/JT_AHS/2395279/JTAHS_Handbook_2022-23_.pdf) (emphasis added).

- **Valley Grove School District**

- “When three (3) such absences have accumulated, the parents or guardians are notified and the School Attendance Improvement process begins, ***additional unlawful absences will result in legal action in the form of a citation to the local magistrate (typically leading to a fine)*** for a violation of the Pennsylvania Compulsory Attendance Laws. The Venango County Truancy Protocol addresses tardiness to school by ***using the accumulation of three (3) unexcused tardies as the equivalent to one unlawful absence.***” (emphasis added)

- Valley Grove School District, *Handbook 2022-23*, 19, <https://www.vgsd.org/Page/85> (emphasis added).

- **Juniata County School District**

- “To allow flexibility in the enforcement of compulsory (required) school attendance, the school code provides that any child may incur three unlawful days each school year without penalty; however, when this point is reached, ***the school will notify the parent that further unlawful absence will result in prosecution and possibly a fine.*** . . . After four illegal absences have been accumulated, students will be scheduled for a Truancy Elimination Plan meeting. Letters of concern are also sent home when absences begin to accumulate. ***Four unexcused tardies equal one-half day of an unlawful absence and may result in a fine.***” (emphasis added)

- Juniata County School District, *Elementary Student Rights and Responsibilities Handbook 2023-2024*, 7-8, [https://core-docs.s3.amazonaws.com/documents/asset/uploaded\\_file/1454/JES/3351052/2023-2024\\_Elementary\\_Student\\_Handbook.pdf](https://core-docs.s3.amazonaws.com/documents/asset/uploaded_file/1454/JES/3351052/2023-2024_Elementary_Student_Handbook.pdf) (emphasis added).

**Unlawful Use of Disciplinary Transfer Due to Unexcused Absences**

- **Chester Upland School District (STEM Academy)**

- “After ten (10) days of cumulative unexcused absences, the student will be placed on academic probation at STEM Academy. If the student does not meet the improvement goals during academic probation, he/she may be recommended for reassignment to another educational program.” (emphasis added)

- STEM Academy at Showalter, *The Student Source: Parent and Student Handbook, 2022-2023 Academic Year*, 7, <https://www.chesteruplandsd.org/cms/lib/PA50000718/Centricity/Domain/318/STEM%20Academy%20Student%20and%20Parent%20Handbook%2020222023.pdf>.

- **Mathematics, Science, and Technology Community Charter School (MaST)**

- MaST’s handbook lists expulsion as a possible consequence for students attending the “Alternative Education Program” in response to “disinterest, attendance, or unwillingness to participate in the Alternate Education Program.” (emphasis added)

- MaST Schools, *Family Handbook & Code of Conduct*, 31, <https://docs.google.com/document/d/1Cz4uF6GttXIPemj0Bknt30WKRLvgVU2BmaIO254YjuI/edit> (last updated Aug. 2022) (emphasis added).

**Improper Automatic Disenrollment After 10 Unexcused Absences**

- **Mastery Charter Schools**

- “Please note: After ten (10) consecutive ‘unexcused’ absences, students will be dropped from Mastery’s enrollment.” (emphasis added)

- Mastery Charter Schools, *Parent-Student Handbook 2023-2024*, 21, <https://masterycharter.org/app/uploads/2018/08/2023-2024-PA-Student-Parent-Handbook-v3.pdf> (emphasis added).

- **Southwest Leadership Academy Charter School**

- “After 10 consecutive absences, the principal is permitted to drop the child from Southwest Leadership Academy.” (emphasis added)

- Southwest Leadership Academy Charter School, *Parent and Student Handbook 2022-2023*, 21, <https://core->

[docs.s3.amazonaws.com/documents/asset/uploaded\\_file/1749/S  
LACS/3316200/2022-2023-Parent-and-Student-Handbook-  
7.9.2022.pdf](https://docs.s3.amazonaws.com/documents/asset/uploaded_file/1749/S_LACS/3316200/2022-2023-Parent-and-Student-Handbook-7.9.2022.pdf) (emphasis added).

**Testimony to Joint State Government Commission:**

*Examples of Truancy Issues and Trends*

**August 17, 2023**

**MDJ Issues: Imposition of Fines and Mandatory Transfers to New Schools**

1. MDJs across the state [REDACTED] have been **fining both the parent and the student** (over age 15) for the same truancy referral incident. This is contrary to the law's plain language. Moreover, this often occurs in matters when neither the parent nor the student can afford to pay the fine.
2. Some MDJs are **requiring schools to file citations against both parents and children** and requiring schools to keep filing multiple truancy citations which could result in higher fines against the parent or student.
3. Ability to pay determinations/hearings must be conducted prior to imposing fines under Act 138. However, several MDJs are **subjecting indigent families to a payment plan despite their inability to pay** and documentation that fall far below income guidelines.
4. We have had several cases where **MDJs have forced parents to switch the enrollment of students** to a new school.
  - a. In one case ELC handled the Magistrate threatened a parent who was experiencing homelessness with fines unless she disenrolled her son (with a 504 Plan for sickle cell anemia) from his current school of origin and enrolled him in an entirely different school located closer to his home. When the Parent could not secure enrollment confirmation documentation from the new school within one week, the Parent was fined anyway.

- b. In another example emanating from a case in [REDACTED], a student/parent was referred to truancy court by the school district and the parent enrolled the student in [REDACTED] before the hearing. The mom brought evidence that the student was attending [REDACTED] and the school district argued that it was a waste of taxpayer money for this student to be in cyber because she has a history of not doing well in cyber. The judge ordered the parent to unenroll her daughter from [REDACTED] and enroll her again in the school district or face fines.
5. In other cases, MDJs order parents to enroll their children in cyber schools even if the children have a disability and even though IEP Teams are legally required to make these decisions under the IDEA or there is evidence that a student will struggle in a virtual learning environment.

**School District Issues: Need For Guidance Regarding Attendance Policies, Identifying Truancy, the Rights of Students with Disabilities, Bullying Investigations, and Investing in Prevention Strategies**

*We have seen several significant trends regarding truancy as described below. These trends indicated the need for more specific objective statewide policies regarding the need for (1) clearly defined attendance policies; how to apply truancy laws to students with disabilities, students experiencing homelessness and system-involved youth, how to protect students from bullying and harassment and the need for investments in guidance counselors and mentors.*

**Identifying Truancy, Exclusionary Policies**

1. School districts, including [REDACTED] has sent children home for the day if they are tardy and then marked them truant for the full day. This policy was reflected in some of their school building handbooks. DHS challenged this practice. While the District claimed it removed the policy from their handbooks, parents report that many [REDACTED] schools have continued this practice of sending kids home for the whole day if they are tardy and marked them absent for the entire day.



2. Some districts adopt policies or practices that impose “unexcused” absences. For example, in the [REDACTED], a school sent a student home with a note stating that the student needed to return an outstanding Chromebook or the child could not return to school and attend classes. The Parent informed the school that her son never possessed a Chromebook and the student had not attended any other [REDACTED] school prior to enrolling in that school. The mother was instructed to attend a parent meeting to address truancy issues. However, when she alerted the school that she still did not have a computer to return, she was told that she too could not enter the school and the child remained out of school for a week, missing [REDACTED] days of instruction until ELC intervened.
3. In many instances, student absences are deemed “unexcused” due to the failure to provide sufficient documentation to support an excused absence within a short 3-day or 6-day time period or because a medical excuse note was not completed by a medical doctor.

### **Students with Disabilities Are Often Discriminated Against in the Truancy Context**

- For students with disabilities, attendance is often related to their disabilities and these students are often discriminated against in the truancy context due to their disability. This often occurs in the following ways:
  - Absences are caused by a student’s disability but they are not recognized as such;
  - Students do not attend school due to a district’s failure to evaluate and serve them;
  - Students are absent due to the failure to receive transportation as a related service;
  - Absences are related to new physical or mental health needs which have not been addressed.

#### ***A. Failure to Evaluate Students For Special Education Services***

- A common theme in several cases ELC has handled concerns students who have disengaged from school due to academic failure and/or unaddressed behavioral needs emanating from a

district's failure to evaluate children for eligibility for special education services. For example:

- Two students in the [REDACTED] were not evaluated for over two years and failed to attend school during COVID-19. One child had transitioned to kindergarten after receiving early intervention services. Although PTEs were issued in April 2020, no evaluations occurred. In December 2020, an IEP Team determined that the students could not complete virtual evaluations and would need in-person evaluations. Because evaluations were not undertaken, the students remained out of school with no support.
- A student diagnosed with ADHD and depression in [REDACTED] was not accessing virtual learning and did not participate in in-school learning. The parent requested an evaluation for an IEP and the school psychologist discontinued the evaluation because the child was not participating in the evaluation. Instead of providing services, the school referred him to truancy court.
- A Student diagnosed with ADHD and ODD whose evaluation was pending prior to the COVID pandemic was not logging onto the virtual classroom. He was withdrawn and would not engage with staff or other students. Instead of completing the evaluation, the District initiated the SAIP process. The student remained without services all school year.

***B. Failure to Accommodate Children with Disabilities***

- During COVID-19, many students with disabilities received unexcused absences or truancy citations due to their inability to engage in virtual learning and to return to in-person learning due to increased risks. For example:

- In [REDACTED], a student with ADHD disengaged from school and struggled with participating in virtual classes and completing assignments. The IEP team stated that unless student started attending, the District would initiate truancy prosecution against the student.
- In another example, a Student received instruction in an autism support class prior to COVID-19. The District never connected with parents to address log-in issues and the inability of the child to engage in online learning. The student re-enrolled in the [REDACTED] in May 2020. and then disenrolled the Student in September. Even after re-enrolling student, student was not able to log on to join his classes until January 2021.
- During COVID-19, a student in [REDACTED] who was diagnosed with schizophrenia and under the treatment of a psychologist and psychiatrist sought an excused absence because she believed that virtual learning was a trigger for greater psychiatric crisis. The parent was threatened with truancy referrals and a Student Attendance Improvement Plan was created despite multiple letters from doctors explaining that the student could not access virtual learning at that time.
- A student who attended [REDACTED] was diagnosed with severe asthma and received over 20+ unexcused absences even if she was fully participating in virtual class while resting in bed. The school failed to identify her as eligible for a Section 504 Accommodations Plan despite administering the student's asthma medications, receiving documentation of both diagnosed disabilities from her doctor. The record was clear that the absences should have been medically excused due to two diagnosed disabilities. A 504 Plan was belatedly put into place, but the student is still being

threatened with being marked absent if she is resting or eating, despite her 504 Plan. Absences marked as “unexcused” absences were never expunged from her records.

### **Students Experiencing Homelessness and System Involved Youth Are Improperly Subject to Truancy Penalties**

- Students experiencing homelessness are often absent due to long commutes to attend their school of origin, lack of access to documentation, IDs, etc. and delays associated with complying with shelter rules.
- Students residing in a local emergency shelter, including many with IEPs, have been relegated to classroom waiting rooms or ejected from class because they are completing virtual school in shared spaces with other children that the school characterized as “too noisy.” Students living in the shelter continued to face this barrier because families are all required to stay in a single room, and parents must be with their children at all times- which means many people will also be in common spaces for virtual learning time.
- Students in the dependency and juvenile justice system are often subject to court orders which require them to meet with case workers, attend family meetings and court hearings but are marked as “unexcused absences.”

#### ***Promising Practices***

Several districts are addressing truancy well by increasing school counselors and ensuring the full support of school administrators. **Woodland Hills SD** has family visitors are doing it well and **West Mifflin SD** has been successful in getting families to engage.

#### ***Ineffectual Strategies***

It is NOT sufficient to send a letter to the parent regarding attendance and provide the date of the SAIP meeting. Many parents simply can't take off

from work – especially with short notice. Parents don't realize that they could ask the school to reschedule nor do they understand that the school may connect them to non-punitive

Some schools hold off in addressing truancy and then file hundreds of citations in May and June with no hope of addressing the root causes of truancy for that year. This results in punitive responses only to truancy and fails to address absenteeism which may then continue the following year.