EDUCATION LAW CENTER | FACT SHEET

SCHOOL ATTENDANCE AND TRUANCY: UNDERSTANDING THE BASICS

August 2024

WHO MUST ATTEND SCHOOL IN PENNSYLVANIA?

All students in Pennsylvania must attend school no later than age 6 until age 18 or graduation, whichever occurs sooner.[1] In general, rules for attending school do not apply to youth under 18 who have a certificate of graduation from a regularly accredited, licensed, registered, or approved high school.[2] Under the law, all students must attend school until their 18th birthday or graduation, whichever is sooner, unless they qualify for one of a few limited exceptions, as explained in this fact sheet. These rules apply to public schools, including charter schools. For more information on any of the topics in this fact sheet, see ELC's comprehensive fact sheet Addressing Attendance Barriers and School Attendance in PA: Frequently Asked Questions.

WHAT ADULTS ARE RESPONSIBLE FOR ENSURING THAT A CHILD ATTENDS SCHOOL?

The person(s) "in parental relation to the child" — usually the child's parent(s), but sometimes a guardian or relative — are legally responsible for making sure that the child attends school.[3]

CAN STUDENTS BE HELD LEGALLY RESPONSIBLE FOR NOT ATTENDING SCHOOL?

Yes. Students must attend school each school day if they are of compulsory school age. Once a child turns 15, the school may take your child to court if they are not attending school as required by law.[4] Students who are 15 or older may face a range of long-lasting consequences such as fines, community service, and suspension of their driver's license.[5]

WHAT IS 'TRUANCY' UNDER PENNSYLVANIA LAW?

Truancy means having three or more unexcused absences in the *current* school year, and **habitual truancy** means six or more absences.[6] These absences do not need to be in a row.

ARE THERE SYSTEMIC BARRIERS THAT MAY PREVENT STUDENTS FROM BEING ABLE TO ATTEND SCHOOL EACH DAY?

Yes. Students may face school-based and systemic barriers that prevent them from attending school. Sadly, attendance barriers both in Pennsylvania and across the nation have increased since the beginning of the COVID-19 pandemic.[7] The Pennsylvania Joint State Government Commission's 2024 report, *The Truancy Process: The Challenge of Improving Attendance in Pennsylvania Schools*, outlined a number of root-cause barriers to school attendance that students and caregivers identified.[8] These barriers include a lack of reliable transportation, unmet mental health needs, lack of access to basic food and housing, fear of school and community violence, the need to balance full-time employment with school, and caregivers' difficulty understanding school

attendance policies.[9] School officials also identified ongoing trauma resulting from the COVID-19 pandemic as well as bullying and harassment as key drivers of absenteeism.[10] School employees also noted that they were not able to provide adequate "individual support to families" to address barriers due to time pressures.[11] These same issues have also been acknowledged as barriers to attendance on a national level.[12]

The commission also found that to support student attendance, there need to be "more mental health resources and schools need more funding to provide better resources."[13] Research demonstrates the importance of such resources in improving attendance and academic outcomes, including the teaching of "engaging and culturally responsive curriculum and school-based supports" such as health and social services.[14] It is clear, as the commission has acknowledged, that "truancy is the result of root causes,"[15] and that "chronic absenteeism" is a "robust measure for school climate."[16] This reality makes addressing harmful conditions at the root-cause level paramount.

IS RACIAL DISCRIMINATION A FACTOR IN ADDRESSING ATTENDANCE ISSUES?

Yes. Studies show that in Pennsylvania, as in other states, families of color and families living in poverty are most likely to experience harmful responses, rather than support, as a result of attendance barriers they face. Harmful consequences for these families include citations, fines, and jail time for truancy. But the underlying issues are a variety of systemic barriers, including racism and unequal access to resources. The Pennsylvania Joint State Government Commission expressly determined that "poverty and racism" caused disparities in truancy rates.[17] It is also well documented that punishments imposed following nonattendance are disproportionately applied to Black and Brown students.[18]

Despite these important findings, school districts and courts continue to blame and punish individual families for systemic barriers to attendance. Racism, housing instability, and other systemic factors often lie at the root of attendance barriers, and in many cases the Education Law Center handles, students fail to receive the educational support and services they need. These issues must be confronted, because being cited for truancy can have negative, lifelong, and intergenerational consequences for students and their families, including the trauma of a child's removal from their home.[19]

WHAT IS AN EXCUSED ABSENCE?

Each school district has rules and policies about student attendance and absences, which must comply with state law.[20] **Check your school district's student handbook or website** for this information. An absence is lawful when a student is dismissed during school hours by a nurse, school administrator, or other designee. Under state law, school districts are authorized to excuse absences for illness, family emergency, death of a family member, medical or dental visits, school activities, educational travel with prior approval, or "other urgent reasons."[21]

Pennsylvania law permits temporary school absences for the following reasons:

- Religious holidays and religious instruction[22]
- Tutorial work for instruction in a field not offered by the district[23]

- Physical or mental health care provided by a Pennsylvania-licensed practitioner[24]
- Educational tours and trips that are not sponsored by the school district[25]

Check with your school ahead of time for their approval policies for all categories of absences.

WHAT ABOUT ABSENCES CAUSED BY DISABILITY, HOUSING, OR SYSTEM INVOLVEMENT?

Schools cannot treat absences caused by a student's housing status as an unexcused or "illegal" absence.[26] In addition, a child in foster care or the juvenile justice system must be excused for purposes of attending court hearings or conferences related to their involvement with a county children and youth agency or juvenile probation as well as for family visitations.[27]

If your child has a disability — meaning they have an individualized education plan (IEP) or Section 504/Chapter 15 accommodations plan — prior to being considered "truant" or "habitually truant," the school should bring together the IEP team to discuss how attendance barriers impact your child's educational program and how these barriers may be addressed.[28] The services in an IEP or Section 504 plan are legally binding, and you can hold the school accountable for failing to provide these agreed-upon services to your child.

Your child's school should **never** punish your child for behavior that causes absences that are related to your child's disability, including hospitalization or absences caused by their disability. If you receive a truancy citation from your child's school and your child has a disability, you should immediately contact the school's special education coordinator to request an IEP team meeting. For more information on your options, see ELC's fact sheet on Resolving Special Education Disagreements.

If your child's absence was improperly marked as unexcused, you can request that your child's attendance record be corrected and that any improper "unexcused absences" be expunged from your child's record. Under the Family Educational Rights and Privacy Act (FERPA), a parent or eligible student age 18 or older has the right to seek amendment or correction of the student's education records that they believe to be inaccurate, misleading, or in violation of the child's rights of privacy.[29] See ELC's Attendance Record Correction Self-Advocacy Tool.

WHAT HAPPENS IF MY CHILD IS CONSIDERED 'TRUANT' UNDER THE LAW?

Once your child is considered truant, their school must send you written notice within 10 days of your child's third unexcused absence.[30] This notice **must** be in your preferred language.[31]

The notice **must** describe what will happen if your child accrues six or more absences in the current school year and is considered to have the legal status of being habitually truant.[32] The notice **may** also include an offer to meet to discuss the reasons your child is encountering attendance barriers and a plan to help your child overcome barriers to school attendance.[33]

WHAT HAPPENS IF MY CHILD IS CONSIDERED TO BE 'HABITUALLY TRUANT' UNDER THE LAW?

Your child's school **must** hold a "school attendance improvement conference" to discuss the reasons for your child's absences and create a plan to address and remove attendance barriers.[34]

Before holding a conference, the school must let you know about the conference and should invite you to attend the meeting, as well as the child and any members of your child's IEP team, service

providers, and representatives of other support systems. The school **must** provide you with advance written notice of the time and date of the conference and must also make attempts to reach you by phone.[35] Any attempts to contact or communicate with you must be in your preferred language.[36]

Once your child is considered to be habitually truant, the school must take certain actions, depending on the child's age. These actions include referrals to attendance improvement programs, the county Children and Youth Services (CYS) agency, or court.[37]

CAN MY CHILD BE SUSPENDED, EXPELLED, OR SENT TO A DISCIPLINARY SCHOOL FOR HAVING UNEXCUSED ABSENCES OR FOR BEING CONSIDERED TO BE TRUANT OR HABITUALLY TRUANT?

No. No child may be suspended, expelled, or transferred to a disciplinary setting for having unexcused absences or because they are considered to be truant or habitually truant under the law.[38] No child should ever be told they cannot come to school because they had an unexcused absence, were tardy, or took an early dismissal. Similarly, no child should ever be transferred or reassigned to a disciplinary program or alternative school for having unexcused absences, tardies, or early dismissals. If your child has been suspended, expelled, or transferred for this reason, you should immediately contact the Education Law Center and/or the PA Department of Education's Office of Safe Schools at 717-787-4417.

WHAT DO I NEED TO KNOW ABOUT TRUANCY AND COURT?

In counties across Pennsylvania, truancy matters are handled by Magistrate District Courts (MDJs). These judges are responsible for implementing the truancy law, Act 138, with fidelity.

In Philadelphia, these matters are handled by Regional Truancy Court, a collaboration of the Philadelphia School District, Family Court, and the City of Philadelphia's Department of Human Services (DHS). The purpose of Regional Truancy Court in Philadelphia is to decrease the flow of truancy cases through the courts and address and eliminate truancy early on.[39]

If your child attends school within the Philadelphia School District and is unlawfully absent for **10 or more school days**, the district will cite you for truancy.[40] Once referred to Regional Truancy Court, families are required to appear for the hearing and comply with the truancy court order. In addition, the Department of Human Services (DHS), which is overseen by the Office of Children and Families in the City of Philadelphia, has contracted with truancy providers that will contact the family to arrange a meeting. The truancy provider will attempt to engage with the families and extend services to support students to help alleviate any identified barriers that are contributing to the truancy. The provider will work with the family until the case is discharged from truancy court. Each case is handled on an individual basis.[41]

At this hearing, the district will present evidence showing your child has at least six unexcused absences in the current school year and will confirm that a school attendance improvement conference took place. You should also be given the chance to respond and present evidence. The hearing officer will issue a truancy court order based on the outcome of the hearing. Usually, the hearing officer will order you to appear in Regional Truancy Court again to ensure your child is attending school.

In general, if attendance barriers have not been eliminated by the third listing or hearing before an MDJ or in Regional Truancy Court, your child may be deemed to be a dependent child under the Juvenile Act.[42] Once a dependent petition is filed, you will have to appear in Family Court. The

Family Court judge may order services in your home or may order your child removed from your home and placed into foster care, which may include placement with a foster family, with a kinship care provider/family member, or in a group home or residential setting. *Note: A child may not be placed in a highly restrictive environment like a residential placement except as a last resort.*[43]

You have the right to be represented by an attorney of your choice in truancy court proceedings. However, the court is not required to provide you with a lawyer as in criminal matters. If you or your child has been cited for truancy in a local district court, the court must provide you with written notice of the hearing in your preferred language.[44] Schools may cite children who are **15 or older** in a local district court.[45] The school has the burden of proving beyond a reasonable doubt[46] that you or your child was subject to compulsory school attendance, that the child has six or more unexcused absences in the current school year, and that the absences were without justification. If a judge convicts your child of violating the compulsory school attendance law, the judge may choose to sentence your child, but this is a matter of discretion and is not required.[47] Possible sentences include fines, community service, or completion of a program.[48] Under certain conditions, a student's driver's license may also be revoked.[49]

You cannot be fined for every day of unexcused absence; you may only be fined for each "citation" filed by the school, and only up to $300 plus court costs for the first offense, $500 plus costs for the second offense, and $750 plus costs for the third offense. Each of these maximum fines may be imposed against a person in parental relation or a student 15 or older but only if the amount is within their ability to pay.[50] **Schools do not have the authority under Act 138 to fine students for violating compulsory school attendance law. Only judges can do this.**[51]

If your child is "convicted" of truancy, they still may be able to have the conviction taken off their record. You can appeal a sentence for truancy to the local county Court of Common Pleas within 30 days of the court's order.[52]

If you as a parent or guardian are cited in a local district court for your child's habitual truancy, the judge has the choice not to sentence you — or to impose a fine, community service, or completion of a program.[53] You can be sent to jail only if you (1) failed to comply with a lawful sentence ordered by the judge, (2) had the ability to comply with the penalty imposed, **and** (3) *willfully* failed to comply with the sentence.[54]

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice — visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) — or contact another attorney of your choice.

[1] 24 P.S. § 13-1326.
[2] *Id.* § 13-1326.
[3] *Id.* § 13-1326 (defining person in parental relation).
[4] *Id.* § 13-1333.1(c).
[5] *Id.* § 13-1333.3.
[6] *Id.* 3.
[7] Sarah Mervosh & Francesca Paris, *Why School Absences have 'Exploded' Almost Everywhere*, N.Y. TIMES, Mar. 29, 2024, https://www.nytimes.com/interactive/2024/03/29/us/chronic-absences.html (explaining the crisis of chronic absenteeism, missing at least 10% of the school year, in the United States); Attendance Works, State Trend Chart 2017-2022, https://docs.google.com/spreadsheets/d/15yNTUUNwHzhFjQRCYgY5o7KE5pGoVFtk/edit?gid=1137911798#gid=1137911798 (last visited July 10, 2024).
[8] JOINT STATE GOV'T COMM'N OF THE GEN. ASSEMBLY OF PA, THE TRUANCY PROCESS: THE CHALLENGE OF IMPROVING ATTENDANCE IN PENNSYLVANIA SCHOOLS (2024), http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2024-04-09%20(Act138)%20Truancy%20Web%204.9.24%20930am.pdf.
[9] *Id.* at 11-12.
[10] *Id.* at 20.
[11] *Id.* at 11.
[12] Thomas S. Dee, *Higher Chronic Absenteeism Threatens Academic Recovery from the COVID-19 Pandemic* 2 (Aug. 10, 2023), https://osf.io/preprints/osf/bfg3p.
[13] JOINT STATE GOV'T COMM'N OF THE GEN. ASSEMBLY OF PA, *supra* note 20, at 15.
[14] *Dee*, supra note 25, at 5.
[15] JOINT STATE GOV'T COMM'N OF THE GEN. ASSEMBLY OF PA, *supra* note 20, at 19.
[16] *Id.* at 134.
[17] Truancy Advisory Comm'n, Joint State Gov't Comm'n, Truancy and School Dropout Prevention at p. 35 (2015), http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2015-10-27%202015%20TAC%20Final%20Report%2010-27-15%203pm.pdf.
[18] 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 (*e.g.*, Black youth are twice as likely to be adjudicated dependent for not attending school as their white peers).
[19] See 42 Pa.C.S.A. § 6302 (listing truancy as grounds for adjudicating a child dependent).
[20] 24 P.S. § 13-1329(a).
[21] *Id.* § 13-1329.
[22] 22 PA. CODE § 11.21(b).
[23] *Id.* § 11.22(a).
[24] 24 P.S. § 13-1329(c)-(d); 22 PA. CODE § 11.25(a).
[25] 24 P.S. § 13-1329(a)(1).
[26] *Id.* (stating that "absences caused by homelessness must not be counted as unexcused absences").
[27] PA. DEP'T OF EDUC., *Compulsory School Attendance, Unlawful Absences, and School Attendance Improvement Conferences* (Feb. 2020), https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CompulsorySchoolAttendance.aspx ("[A]n absence that requires a student to leave school for the purposes of attending court hearings related to their involvement with a county children and youth agency or juvenile probation may not be categorized as unlawful.").
[28] *Id.* § 13-1326 (defining invitees to school attendance improvement conference as "appropriate school personnel"); *In re C.M.T.*, 861 A.2d 348, 356 (2004).
[29] 20 U.S.C. 1232g(a)(2)); 34 CFR Part 99.20. Notably, while a school is not required to amend an education record in accordance with a parent's request, a school is required to consider the request for amendment, to inform the parent of its decision, and, if the request is denied, to advise the parent of his or her right to a hearing on the matter. See The Family Educational Rights and Privacy Act Guidance for Eligible Students April 2020, available at https://studentprivacy.ed.gov/resources/parent-guide-family-educational-rights-and-privacy-act-ferpa
[30] 24 P.S. § 13-1333(a).
[31] *Id.* § 13-1333(a)(2).
[32] *Id.* § 13-1333(a)(1).
[33] *Id.* § 13-1333(a)(3).
[34] *Id.* § 13-1333(b); *Id.* § 13-1326.
[35] *Id.* § 13-1333(b)(1).
[36] *Id.* § 13-1333(a)(2).

[37] *Id.* § 13-1333(1)(a)(ii) (describing referral procedure for students under 15 for CYS).
[38] *Id.* § 13-1333(c) ("Schools shall not expel or impose out of school suspension, disciplinary reassignment or transfer for truant behavior.").
[39] Truancy Protocol 22-23 SY for District Students and Families, School District of Philadelphia (2022), https://www.philasd.org/studentrights/wp-content/uploads/sites/67/2023/01/Truancy-Protocol-22-23-SY_-Parent_Student-version-1.6.23.pdf.
[40] *Id.* § 13-1333(a).
[41] THE SCHOOL DISTRICT OF PHILADELPHIA, District's Response to Truancy 23-24 SY Protocol for District Students and Families (July 2023), available at https://drive.google.com/file/d/17DYNYr95mCQlpdTxR6SwCePDvA3Indj8/view. See also School District of Philadelphia Code of Conduct 2023-24 at p. 8-9, available at https://moore.philasd.org/wp-content/uploads/sites/528/2023/08/Code-of-Conduct-2023-2024.pdf.
[42] *Compulsory School Attendance, Unlawful Absences, and School Attendance Improvement Conferences*, Pa. Dep't of Educ. (2020), https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CompulsorySchoolAttendance.aspx; 24 P.S. §§ 13-1326 – 1354.
[43] *See* 55 Pa. Code § 3130.67(b)(7)(i))(a child's placement should be the most family-like setting available for the child, consistent with the best interests and needs of each child); Pennsylvania Dependency Benchbook (2019), available at https://ocfcpacourts.us/wp-content/uploads/2020/05/2019-Pennsylvania-Dependency-Benchbook-3rd-Edition-Interactive-002427.pdf.
[44] 24 P.S. § § 13-1333(a)(2).
[45] *Id.* § 13-1333.1(b)(2).
[46] *Id.* § 13-1333.2(c). Note that while the burden of proof on the Commonwealth under the Juvenile Act is "clear and convincing evidence," the burden of proof under Act 138 for truancy is "beyond a reasonable doubt."
[47] *Id.*
[48] *Id.* § 13-1333.3(a).
[49] *Id.* § 13-1333.3(g)(1).
[50] *Id.* § 13-1326 ("'Offense' shall mean each citation filed under section 1333.1[] for a violation of the requirement for compulsory school attendance.). See also 24 P.S. § 13-1333.3(a)(1), *Penalties for violating compulsory school attendance requirements.*
[51] *Id.* § 13-1333.3(a).
[52] *Id.* § 13-1333.3(c).
[53] *Id.*
[54] *Id.* § 13-1333.3(f).