



Education Law Center Supports Proactive Approaches to Reducing Truancy

Testimony of Maura McNerney Before House Education Committee

September 22, 2014

My name is Maura McNerney and I am a Senior Staff Attorney at the Education Law Center (“ELC”), a statewide non-profit legal advocacy organization dedicated to ensuring that all of Pennsylvania’s students have access to a quality public education. ELC advocates on behalf of educationally at-risk children, including children of poverty, children of color, children with disabilities, English Language Learners, those in the child welfare system and students experiencing homelessness. We handle hundreds of individual cases and listen to the concerns voiced by parents, youth, caseworkers, juvenile probation officers, courts, school administrators and educators.

A primary focus of my practice is improving educational outcomes for educationally at-risk children and this includes addressing truancy issues. I have observed truancy proceedings, provided advice to parents and represented parents in truancy proceedings. I have also worked on 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.¹ With the support of the American Bar Association Center on Children and the Law, I also conduct cross-agency trainings on truancy in many counties for members of children and youth offices, courts and school district administrators. I have also provided technical assistance to school districts and county children & youth agencies seeking to develop effective countywide truancy policies and protocols. At a national level, ELC is also involved in addressing the needs of children in the dependency system more generally. Along with the Juvenile Law Center and the ABA Center on Children and the Law, ELC is also a co-founder of the **Legal Center for Foster Care and Education**² and a founding member of the **National Working Group on Foster Care and Education**.³ 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 improve educational outcomes for children involved in the child welfare system.

My comments today grow out of ELC's extensive experience with this issue and my direct work advocating for children and families and working with courts, magistrates, child welfare agencies and schools to support students to stay in school. It is also informed by national reform research on effective ways to address the nation's truancy crisis.

Attendance Matters: The Impact of Truancy

¹ For more information regarding the State Roundtable on Educational Success and Truancy Prevention go to <http://www.ocfpcourts.us/about-ocfc/truancy>. Copies of all annual reports to the Pennsylvania State Roundtable are available at <http://www.ocfpcourts.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.ocfpcourts.us/assets/files/page-331/file-600.pdf>.

² See Legal Center for Foster Care and Education website at www.fostercareandeducation.org

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

The importance of school attendance is well documented. *By 9th grade, missing 20% of school is a better predictor of dropping out than test scores.*⁴ 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 read at grade level by the end of third grade and 41% of those chronically absent in either kindergarten or first grade read at grade level.⁵ 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.⁶

It is equally well documented that truancy is associated with negative outcomes. Among truant 9th graders, two thirds are unlikely to graduate with their peers and nearly one third will be charged with a criminal offense within two years.⁷ 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

⁴ 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.

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

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

⁷ 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.

adult negative outcomes such as marital problems, unemployment and adult incarceration.⁸

But the question we must address is what will effectively prevent and reduce truancy: the research and my personal experience working on truancy matters leads to the same conclusion: *Punitive measures, including the imposition of fines and imprisonment of parents, are ineffectual and counterproductive in reducing truancy. Instead, we need to expand and support evidence-based school-based prevention and reduction strategies and train magistrates in addressing truancy issues. We should also consider amending our current school code to clarify common statewide definitions of what constitutes truancy so that all parents are on notice of the governing rules and obligations of parents and schools and the importance of this critical issue for their children.*

There is no evidence that fining and jailing parents effectively reduces truancy.

In fact, in my experience, many families go “underground” and are more likely to move and 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.⁹ 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.¹⁰ During the 2008-2009 school year, Lebanon School District fined parents over \$500,000 -- fines that were later challenged in a class-

⁸ 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>

⁹ 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>

¹⁰ Article entitled *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>.

action lawsuit as excessive and found to be imposed in violation of state law.¹¹ The imposition of fines led to parents being jailed, children being sent to foster care, and high dropout rates. **And there is no evidence that these policies actually reduced truancy.** In addition, most magistrate judges tell me that they believe fines are ineffectual and other measures, such as participation in targeted programs, are more effective.

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 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 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.

Attendance: We need to recognize that there are no common causes of truancy. It is a student-specific issue. Schools must make the first effort to determine the root causes of a student's truancy. Moreover, truancy rules must be clear and consistently enforced.

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

¹¹ *Judge rules against Lebanon School District in truancy lawsuit* available at http://www.1dnews.com/ci_22036769/lebanon-school-district-loses-truancy-lawsuit

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, subject to fines or have her drivers' license suspended. The 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 excused 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 has made a series of recommendations regarding truancy issues that need greater clarification.¹² These include recommendations that attendance rules, notice provisions, procedures, and penalties 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.

¹² 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>

Attachment: Impose sanctions for truancy that increase school attendance

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 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 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, not exclusion. Out-of-school suspensions or placements that remove students from positive educational settings actually decrease attendance. In addition, alternatives like Youth Court and Peer Mediation, or programs to engage parents who may have had a negative experience in school are also effective as are formal truancy prevention programs like “Check and Connect” and other evidence-based practices. These programs are highlighted in Pennsylvania’s Department of Education School Attendance and Truancy Prevention Toolkit.¹³

¹³ This resource can be accessed at <http://www.patruancytoolkit.info/providers/291/PrintToolkit-final.pdf>

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, mentoring programs, etc. 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.¹⁴ In the absence of sufficient resources to support school success, truancy 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

¹⁴ 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>

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. I greatly appreciate the time and attention you are devoting to this important issue.

CONTACT

Maura McInerney

Education Law Center

mmcinerney@elc-pa.org

215-238-6970 ext. 316