

1-1-17

New Truancy Law as of 11-3-16

Truant is defined: 3 or more days of unexcused absences during the current school year

New procedural requirements:

- I. Requires schools to notify in writing the parent within 10 school days of the child's third unexcused absence
 - a) Describe consequences
 - b) Language of parent
 - c) May offer attendance conference unexcused
- II. Continues unexcused absences, the school **must** offer the student and parent a student attendance improvement conference
- III. Habitual truant is defined as six unexcused absences
 - a) Habitually truant children under fifteen years of age must refer the child to either
 1. School based or community-based attendance improvement program
 2. County Children and Youth Agency
 3. The school district may file a citation against parent of a habitually truant under fifteen
 - b) Habitually truant children fifteen years of age and older. The school must either
 1. Refer the child to a school-based or community based attendance improvement program -or-
 2. File a citation against the student or parent of a magisterial district court

If a habitually truant child aged fifteen or older incurs additional absences after a school refer that child to an attendance improvement program or the child refuses to participate in an attendance improvement program, the school may refer the child to the local CYS agency for possible disposition as a dependent child.

Note: May refer to alternate education program, but not Alternative Education for Disruptive Youth (AEDY). The I.U. offers a Drop-out Prevention Program for students who are not attending school.

Note: **Schools must create attendance improvement plans prior to referring truancy to the courts.** See attached list of Possible Attendance Improvement Plans.

The new law defines “school attendance improvement conference” as a “conference where the child’s absences and reasons for the absences are examined in an effort to improve attendance, with or without additional services.” The law requires schools to invite the following individuals to the conference:

- The child.
- The person in parental relation to the child
- Other individuals identified by the person in parental relation who may be a resource (e.g. a grandparent, sibling, family friend, advocate, community member, etc.).
- Appropriate school personnel
- Recommended service providers (e.g. case managers, behavioral health providers, probation officers, children and youth practitioners, etc.).

The school **must** hold the conference even if the parent declines to participate or fails to attend after the school provides **advance written notice** and **makes attempts to communicate via telephone**. There is no legal requirement for either the child or parent to attend an attendance improvement conference. The school must document the outcome of any attendance improvement conference in a written attendance improvement plan. Schools may not take further legal action to address unexcused absences until after the date of the scheduled attendance improvement conference has passed.

Attendance improvement conferences must not be perfunctory warnings that further absences will result in legal action against the student or parent. **Schools must create attendance improvement plans in conformity with the overriding purposes of the law as set forth in the preamble, discussed *supra*.**

Note: Schools cannot impose discipline for truant behavior that excludes the student from classroom. The new law forbids schools from imposing discipline that excludes a student from the classroom on a student for truant behavior. Specifically, the law states "schools shall not expel or impose out-of-school suspension, disciplinary reassignment or transfer for truant behavior." *This is a critical change that will not only reduce schools' over-reliance on punitive and exclusionary discipline measures, but will end the practice of pushing truant students further away from school through ineffective exclusions.*

Procedures in Magisterial District Courts (See pg 4 of Education Law Center document dated November 15, 2016)

Burden of proof. *The new law substantially alters and clarifies the burden of proof that applies at a trial on a truancy citation. At the trial with respect to the citation, the burden, at all times, is on the school to prove **beyond a reasonable doubt** the following:*

Burden of proof on the school to prove beyond a reasonable doubt in presentation to judge in court

- a) The child was habitually truant
- b) While subject to the compulsory attendance law
- c) Burden on school to prove there is evidence of justification for habitual truancy. There is no burden on a student or parent to put forth evidence that habitual truancy was justified.

The standard aligns with the definition of habitual truancy in the Juvenile Act. The Superior Court has held that **the Juvenile Act places the burden on the Government to prove each of these three elements.** This means that *the school must prove each of these elements*, including that the habitual truancy was *not justified*. There is no burden on a student or parent to put forth evidence that the habitual truancy was justified. **If the school fails to prove that the habitual truancy was not justified, the school cannot carry its burden.**

Procedure in magisterial district courts. The new law clarifies the procedure that must be followed when schools refer cases of habitual truancy to the magisterial district courts. *Such explicit procedures were not delineated in the prior law.*

◆ **Venue** is determined based on the location of the school in which the child is enrolled.

◆ **Notices.** A magisterial district court must provide notice of the hearing to the following:

- The school.
- The person in parental relation.
- The local CYS agency.

◆ **Burden of proof.** *The new law substantially alters and clarifies the burden of proof that applies at a trial on a truancy citation. At the trial with respect to the citation, the burden, at all times, is on the school to prove beyond a reasonable doubt the following:*

- The child was habitually truant
- while subject to the compulsory attendance law
- without “justification”

This standard aligns with the definition of habitual truancy in the Juvenile Act. The Superior Court has held that the **Juvenile Act places the burden on the Government to prove each of these three elements.**² This means that *the school must prove each of these elements*, including that the habitual truancy was *not justified*. There is no burden on a student or parent to put forth evidence that the habitual truancy was justified. Of course, a student or parent may still put forth evidence that the habitual truancy was justified. **If the school fails to prove that the habitual truancy was not justified, the school cannot carry its burden.**

◆ **Affirmative defenses.** Student and parent-respondents may put forth evidence of an “affirmative defense” that justifies the habitual truancy. For example, at least one court has held that a student has a right to present evidence of her disability to justify her habitual truancy.³ Additionally, the law continues to permit parents to present an affirmative defense that he or she took every reasonable step to ensure the child’s attendance at school. Affirmative defenses must be proven by a preponderance of the evidence.

◆ **Relevant evidence.** The new law explicitly states that, at sentencing, the judge must permit the school, parent, or student to present relevant information that will assist the judge in making an informed decision regarding the appropriate sentence. This is important because, as discussed *infra*, the new law affords considerable discretion to local judges in determining the most appropriate penalty in conformity with the purposes of the law.

² *In re C.M.T.*, 861 A.2d 348, 352-55 (Pa. Super. Ct. 2004).

³ *Id.* at 355-57.

Provides discretion to local magistrates to choose the appropriate punishment. *The new law reforms the penalty provisions of the statute to provide local judges with **considerable discretion** to impose appropriate penalties in individual cases. Penalties should, of course, be imposed in accordance with the principles of the law as set forth in the preamble, discussed *supra*.*

Changes in the penalty scheme: Increased fines and reduced jail tail for truancy. *The new law substantially changes the penalties that judges may impose on students and parents for violating the compulsory school attendance law by imposing new progressive fines and reducing jail time.*

◆ **Increased fines up to \$750.** *The new law significantly increases the amount of money a judge **may** fine a student or parent for habitual truancy. The old law permitted a magistrate to fine a student or parent up to \$300 per offense. The new law states that a person convicted of habitual truancy **may** be fined: (1) up to \$300 per offense, with court costs, for the first offense; (2) up to \$500 per offense, with court costs, for the second offense; and (3) up to \$750 per offense, with court costs, for a third and any and all subsequent offenses.*

HOWEVER, the new law defines "offense" as "each **citation** filed under Section 1333.1 for a violation of the requirement for compulsory school attendance . . . **regardless of the number of unexcused absences averred in the citation.**" *This is an important clarification absent in the old law. This means that fines must be limited to the citation, not the number of unexcused absences alleged in the citation. For instance, if a school files a citation against a parent alleging that in the month of October, the parent's child was illegally absent ten (10) days, and the magistrate finds that the parent violated the compulsory school attendance law, the magistrate may only fine the parent up to \$300, if it is the parent's first offense. In the past, because of ambiguity in the law, some magistrates assumed that they had authority to fine a parent up to \$3000 in that situation (\$300 per illegal absence). This is an important clarification that limits the imposition of excessive and crippling fines on poor families.*

****It is critical that magistrates responsibly exercise the discretion afforded to them under the law in imposing penalties. In meting out punishment for truancy in accordance with the guiding principles of the law, discussed *supra*, magistrates should rarely and uncommonly fine students and parents at the statutory maximum. Such fines not only have devastating collateral consequences for poor families, but are contraindicated to reduce truancy.***

◆ **Jail reduced to three days.** *The new law reduces jail time to three days, from five days, and adds additional safeguards to ensure that poor families are not jailed for their inability to pay. The new law states that a court **may** jail a parent who fails to pay a fine or completed court-ordered community service for a period not to exceed three days in any one case. That means that no matter what a parent should never be in jail for more than three days.*

*A judge may jail a parent only if (1) the court makes a specific finding that the parent had the **ability to pay the fine or complete the community-service** and (2) that parent's **non-compliance was willful**. These safeguards seek to ensure that poor families, who face obstacles to compliance with fines and community service, are not jailed for their poverty, a practice that is not only oppressive but contraindicated by evidence-based research on truancy reduction best practices. **NOTE: The failure of a***

student to comply with a fine or costs associated with court must not be considered a “delinquent act” under the Juvenile Act.

◆ **Referral to CYS for second conviction in three years.** Under the new law, if a parent or student is convicted a second time for habitual truancy within three years, the court must refer the child to CYS for services or possible disposition as a dependent child under the Juvenile Act.

◆ **Provides judges with discretion on whether to send the Department of Transportation a certified record of a student’s conviction for license suspension.** The prior law required magistrates to send a record of a student’s certified conviction to the Department of Transportation (DOT); *the new law provides local judges with discretion on whether to forward a student’s conviction to DOT.* While the law still requires DOT to suspend a child’s license, *the discretion the new law affords to magistrates should limit the number of students whose licenses are suspended for truancy.*

Restoration of driving privileges is more fair to students. Where a student’s license has been suspended, he or she may seek to have his or her eligibility restored by providing DOT with a form that indicates that (1) the child has attended school for a period of at least two months after the first conviction or four months after the second conviction without an unexcused absence or tardy; or (2) is subject to exception to the compulsory school attendance law; or (3) has graduated from school. *The prior law did not provide students with an opportunity to seek license restoration.* The new law’s restoration option provides an incentive to students to increase attendance.

All students are eligible for an occupational limited license. *In contrast to the prior law, the new law provides that students who have been convicted of violating the compulsory school attendance laws and had their licenses suspended may apply for an occupational limited license pursuant to 75 Pa.C.S. § 1553 in order to get to and from work or school.* Thus, even a student whose license has been suspended may drive to school if he or she applies for and receives an occupational limited license. This removes a potential barrier to school attendance.

Streamlined process for expungement. *The prior law simply did not provide for the expungement of records. Under the new law, a child who has been convicted of habitual truancy may apply for an expungement. The court must grant a child’s application if (1) the child has earned a high school diploma, a Commonwealth secondary diploma, or another PDE-approved equivalent, or is subject to an exception to compulsory school attendance and (2) the child has satisfied any sentence imposed by the court with respect to the conviction, including payment of fines and costs.* If a court grants an expungement application, the court must also order DOT to expunge all administrative records related to the convictions. Courts should make students aware of the opportunity to seek an expungement throughout the dispositional process.