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Textualism, the Supreme Court and Truant Kindergartners

When it comes to kindergarten students, Pennsylvania's compulsory attendance laws are far from a model of clarity. Ambiguities and contradictions in the laws and their implementing regulations have created significant confusion as to whether kindergarten students can be found truant.



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On one hand, Section 13-1326 of the Pennsylvania School Code defines compulsory school age as: “The period of a child’s life from the time the child’s parents elect to have the child enter school, which shall be not later than at the age of 8 years, until the age of 17 years.”

This language appears relatively clear: Parents do not need to enroll their children in school until after kindergarten, but if they do enroll their children in kindergarten, the children are subject to compulsory attendance laws and may be found truant.

On the other hand, the state regulation interpreting Section 13-1326 and a second provision of the School Code defines compulsory school age as “the period of the child’s life from the time the child enters school as a beginner,” with “beginner” being defined as the “district’s lowest elementary grade … above kindergarten.” Thus, according to one provision of the School Code, compulsory attendance starts in kindergarten. However, under the regulations, which take into account multiple provisions of the code, compulsory attendance laws do not apply until the child is enrolled in at least first grade. The Pennsylvania Supreme Court recently attempted to reconcile this confusion in *Commonwealth v. Kerstetter*, No. 381 MDA 2014.

In *Kerstetter*, a parent enrolled her children in kindergarten for the 2011-12 school year. The parent had recently regained custody of the children, who were under the supervision of Children and Youth Services for a period of time. Despite the parent’s efforts, she had difficulty getting the children to school and they each accrued three unexcused absences during the year, thereby violating the compulsory attendance laws. Relying on the Department of Education’s website, which reprinted the state regulations on compulsory attendance, the parent did not believe that her children were subject to truancy. Nonetheless, relying upon Section 13-1326 of the code, the state filed truancy charges against her.

In addressing the question of whether the compulsory attendance laws applied to the parent’s children, the state Supreme Court took a strict textualist approach. The court’s analysis was driven by the structure and “plain meaning” of the School Code’s text; it did not include any examination of the legislature’s purpose in enacting the laws.

The court’s analysis proceeded in three steps. First, it reviewed the School Code to determine whether the term “beginners” should be considered, as the regulations appear to do, when interpreting the definition of compulsory school age. The compulsory school-age definition is included in a part of the School Code that addresses the responsibilities of parents, whereas the only part of the code that references “beginners” concerns the responsibilities of school districts. Therefore, in contrast to the regulations, the court found that the “beginners” term is irrelevant to the definition of compulsory school age.

Second, in light of this finding, the court determined that the plain meaning of the School Code’s language on compulsory attendance laws is clear: Once a student is enrolled in kindergarten, compulsory attendance laws apply.

Finally, relying on the plain meaning of the School Code's text, the court rejected the parent's countervailing arguments. For example, the parent asserted that compelling parents to ensure their kindergartners' attendance would place a hypocritical burden on parents since, under state law, school districts are not obliged to offer kindergarten programs and parents are not even obliged to send their children to kindergarten. In response, the court stated, "The perceived 'hypocrisy' affords no basis in law for failing to enforce the statute as written." As a result, the court ruled against the parent, holding that compulsory attendance laws applied to her children once she enrolled them in kindergarten.

At a superficial level, the court's strict textualist approach may appear reasonable since it is grounded on the plain meaning of the statute, 1 Pa.C.S.A. Sections 1901 and 1903 (mandating that courts give plain meaning to the words in a statute). But, when the purpose of the state's compulsory attendance laws is taken into account, the court's decision appears to violate another basic canon of statutory interpretation - a law may not be interpreted in a way that leads to an absurd or unreasonable outcome. The goal of compulsory attendance laws is straightforward: to maximize student participation in school by discouraging unexcused absenteeism. However, the court's decision contravenes this goal; it will likely deter school enrollment more than it deters truancy. Accordingly, the court's interpretation leads to an absurd result.

The unique characteristics of kindergartners and their parents make compulsory attendance laws an ineffective tool for deterring truancy among this population. In contrast to older children, kindergartners are unlikely to engage in truancy behaviors. Therefore, absenteeism among kindergartners is usually attributable to issues involving their parents. But, given that parents voluntarily enroll their children in kindergarten, thereby demonstrating that they are committed to their children participating in school, the forces that cause kindergartners to miss school are likely outside of parents' control. For example, a parent may have transportation issues, poor health, or a rigid work schedule that interferes with her ability to get her children to school. This appeared to be the case in *Kerstetter* - the parent clearly wanted her children to attend school, but various barriers prevented consistent attendance. As a result of this dynamic, the threat of truancy will only have a marginal effect on the attendance of kindergarten students; the threat of punishment cannot deter behaviors outside a person's control.

In contrast, the threat of truancy is likely to have a significant impact on parents' decision to enroll their children in kindergarten. If a family faces barriers to consistent school attendance and they know there is a high probability that they will be subjected to truancy charges should they choose to enroll their children in kindergarten, they will likely elect not to do so. Given the significant costs associated with violating compulsory attendance laws (i.e., court fines, monetary penalties, lawyer fees, missed work due to court), such a decision would be rational for many families. Due to these skewed incentives, *Kerstetter* will undermine participation in kindergarten by deterring enrollment.

Furthermore, as a result of *Kerstetter's* likely effects, it will have a disparate impact on lower-income families. According to a recent study from Johns Hopkins University, parents facing difficult socioeconomic circumstances are most affected by compulsory attendance laws. Hence, the perverse incentives created by *Kerstetter* will disproportionately impact lower-income families.

Moving forward, *Kerstetter* should act as a reminder to courts of the pitfalls of relying too heavily on a single approach to statutory interpretation. In addition, given the purpose behind compulsory attendance laws, our legislature should take a close look at *Kerstetter* and its consequences.

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