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Dependency Court Is No Place for Truant Kids

Not surprisingly, what happens at school has a lot to do with why kids miss school. This is particularly true for students with disabilities and students who are victims of bullying and harassment. Pennsylvania's approach to absenteeism is ineffective for these students, who miss school due to issues at school.

By **Heather J. Hult** | June 19, 2019

According to the [U.S. Department of Education](https://www2.ed.gov/datastory/chronicabsenteeism.html) (<https://www2.ed.gov/datastory/chronicabsenteeism.html>), 1 in 6 students miss 15 days or more of school each year. The department has called chronic absenteeism "a hidden educational crisis." Pennsylvania, like many states, uses Children & Youth Services (CYS) and dependency court to address absenteeism. For over five years I practiced as a child advocate attorney with the Philadelphia Defender Association, representing children alleged to be dependent by Philadelphia's CYS agency, the Department of Human Services (DHS). In dependency court, a branch of family court, there are only three parties: the child, the parents and DHS. School districts are never part of the proceedings—even when the sole basis of the dependency petition is that a child is truant. In using CYS and dependency court to address

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absenteeism, the state overlooks the school's role in absenteeism. Not surprisingly, what happens at school has a lot to do with why kids miss school. This is particularly true for students with disabilities and students who are victims of bullying and harassment. Pennsylvania's approach to absenteeism is ineffective for these students, who miss school due to issues at school.

Students With Disabilities

One recent study.

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(<https://www.epi.org/files/pdf/152438.pdf>) analyzing absenteeism across gender, race, income and disability status found that, as a group, students with disabilities are far more likely than any other category of students to miss school. Further, according to the September 2018 issue of the National Health Statistics Report (<https://www.cdc.gov/nchs/data/nhsr/nhsr118.pdf>), children with an intellectual disability, autism, or ADHD are more likely than their nondisabled peers to experience chronic school absenteeism and having multiple disabilities further increases a child's chances of absenteeism.

In my current practice, I represent parents of students with disabilities. Under the Individuals with Disabilities Education Act (IDEA), schools must identify children who have disabilities and need specially designed education to make meaningful progress in school. After identifying a child under the IDEA, a school must craft an Individualized Education Program (IEP) that describes exactly how the school will

program for the child. Yet I often meet students with disabilities whose schools are failing to adequately program for them—a failure that frequently leads to school avoidance. Inadequate special education services lead to disengagement and school avoidance because they prevent students from benefiting from their educational instruction. School becomes pointless to them.

Bullying or Harassment

I speak with many parents whose children are bullied or harassed at school. One parent described a student harassing her high school daughter, calling her “fag” and “dyke,” and how the harassment snowballed into groups of students accosting her and throwing school items at her on the bus and in the cafeteria. Once her daughter started talking about suicide, the parent decided to enroll her in cyber school. Another parent pulled her daughter out of school after she began cutting herself and was hospitalized from the effects of being called “ugly,” “fat,” and “loser” every day by her classmates. A third parent described how her 12-year-old daughter physically resists attending school due to daily bullying and harassment. But the parent sends her anyway because she is concerned about DHS removing her daughter from her home. Each of these parents reported the bullying and harassment to the school but received no help.

According to a [survey](https://www.cdc.gov/healthyouth/data/yrbs/pdf/2017/ss6708.pdf)

(<https://www.cdc.gov/healthyouth/data/yrbs/pdf/2017/ss6708.pdf>) by the Center for Disease Control, in 2017, 19% of high school students reported being bullied on school grounds and 14.9% reported being bullied online. Additionally, 6.7% reported missing school because they felt unsafe there. If that percentage holds true for the School District of Philadelphia where there are 202,538 students, then the predicted number of students missing school equals almost 14,000 students.

What the Law Requires

The U.S. Department of Education has concluded that when a student has a disability and is being bullied, schools must address the bullying in the child's IEP. But they often fail to do so. According to Act 138, the 2016 Pennsylvania law governing school absences and truancy, a child is considered truant after three unexcused absences. At that point, schools must send a truancy notice to the parent. After six unexcused absences, a child is considered habitually absent and the school must hold an attendance improvement conference to address the reasons for the absences. If the truancy continues, schools can file a citation against the parent. And for students under 15 years old, schools must either refer the student directly to CYS for services or to a community-based attendance improvement program. For students over 15, schools can seek to have a petition filed asking the court to adjudicate the student dependent on account of truancy.

How Truancy Plays Out in Philadelphia

In Philadelphia, when schools refer students to DHS for services, this generally means the student is assigned a truancy case manager (http://dhs.phila.gov/intranet/pgintrahome_pub.nsf/Content/Truancy+Prevention+Se (TCM) and it almost always means a referral to one of four regional truancy courts. Theoretically, the TCM is tasked with meeting the family through home visits, identifying the attendance barriers, and working with the family to overcome the barriers. At regional truancy court, TCMs are also the main witnesses, reporting on their efforts to meet with the family and the family's progress in overcoming attendance barriers. Regional truancy court is a collaboration between family court, the Department of Human Services and the School District of Philadelphia.

Regional truancy court, however, is not equipped to effectively address student absenteeism. Truancy court masters lack training to ascertain whether a child has a disability, the child should have an IEP, the IEP is appropriate, and the school is addressing the school-based bullying and harassment. Despite that dearth of

training, the masters decide students' fate. They can, for example, refer students to dependency court. And once a child is referred to dependency court, a judge—who also lacks the relevant training as the truancy court masters—has the power to remove the child from his family.

It is also important to note that there is an overrepresentation of African American and Latino youth in truancy reporting. Some forms of bias may play a role in that discrepancy. For example, I have represented white students who have had excessive absences (with one even having 80-plus absences in a two-year period) who had not been referred for truancy earlier because their absences were marked as “excused.” In contrast, my African American clients were rarely afforded the same license. Because the students appearing in court for truancy are overwhelmingly students of color while the judges and masters deciding their fate are overwhelmingly white, families and students question whether there is bias at play. Additionally, many attorneys that I have spoken with have also expressed their belief that bias pervades every layer of the system—from reporting students as truant to referring students to dependency court and finally to removing students from their homes as a result of truancy.

While referrals to dependency court have decreased since Act 138 took effect, dozens of families are still referred from regional truancy court to dependency court. And because school districts do not participate in dependency proceedings, the inquiry into why a student is missing school is limited to determining whether the parent or the kid is to blame.

This limited inquiry is problematic. It does not consider whether the student has a disability that the school has failed to identify and program for through an IEP. Or whether a student is missing school due to the school's failure to implement her IEP.

Or because she is being harassed and threatened daily. More times than I can count, children and families came to court reporting that bullying caused the absenteeism and that “nothing was being done about it.”

Conclusion

The negative effects of truancy are well documented. As one would expect, excessive absences cause children to fall behind academically (<https://www.epi.org/files/pdf/152438.pdf>). It causes them to become more and more disengaged from school and raises their chances of dropping out altogether. Additionally, high absenteeism can lead to long-term (<https://www.theatlantic.com/education/archive/2016/09/long-term-consequences-of-missing-school/498599/>) struggles with higher education and employment.

Without question, truancy must be addressed. However, if the mechanism for doing so only looks at parents and children, without addressing the systemic issues at the schools themselves, it will not positively impact those populations of children most at risk for truancy—victims of bullying and harassment and children with disabilities. If anything, Pennsylvania’s approach causes more harm because it raises the risks that such students will be removed from their families and placed in facilities where they not only experience the trauma of being separated from their families but their education is of lower quality (https://www.childrensrights.org/wp-content/uploads/2018/12/2018_Pennsylvania-Residential-Facilities_Childrens-Rights_Education-Law-Center.pdf). If children and families are going to appear before a master or a judge due to excessive absences, then those decision-makers need to have extensive training in special education law. Additionally, they need to know what schools’ responsibilities are when they are on notice of bullying and harassment. Ultimately, rather than devoting resources to truancy court, our state

should direct resources to making schools safer for children and to improving the quality of their education so that kids with or without disabilities are able to actually learn.

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