

PENNSYLVANIA'S NEW TRUANCY LAW

November 2016

Governor Wolf signed new truancy legislation into law on Thursday, November 3, 2016. The new provisions take effect at the beginning of the 2017-18 school year. Here is an overview of key provisions. A more detailed analysis can be found at www.elc-pa.org/truancy.

Purpose of the new law.

The law expressly states that its purpose is to improve school attendance and deter truancy through a “comprehensive approach to consistently identify and address attendance issues as early as possible through credible interventions” that:

- Preserve the unity of the family whenever possible.
- Avoid the loss of housing, the possible entry of a child to foster care, and other unintended consequences of disrupting an intact family unit.
- Confine a parent or guardian of a child who is habitually truant *only as a last resort*.

Definition of “truant.”

The new law defines “truant” as “having three (3) or more school days of unexcused absence during the *current* school year by a child subject to [the] compulsory school attendance [law].”

Definition of “habitually truant.”

The new law defines “habitually truant” as “having six (6) or more school days of unexcused absences during the *current* school year by a child subject to [the] compulsory school attendance [law].”

Charter schools.

The law substantially changes the way in which charter and cyber charter schools address student attendance and *shifts responsibility from authorizing school districts to charters*:

- Every charter school, including cyber charters, must establish an attendance policy, which may differ from the policy of the school district in which the child resides.
- Charter and cyber charters must now report unexcused absences directly to the Pennsylvania Department of Education (PDE), regardless of whether charters also report such information to local school districts.
- Charters are now responsible for filing citations with magisterial district courts or referring truancy to the local Children and Youth Services agency. That is because the law makes the provisions regarding the filing of citations expressly binding on charter schools. This does not preclude charter and cyber charter schools from participating in truancy elimination and reduction programs operated by the local school district or Children and Youth Services agency.

Procedure when child is truant.

The new law creates two distinct “procedural” sections: (1) procedures schools must follow when a child is “truant” and (2) procedures schools must follow when a child is “habitually truant.”

- ✓ The law expressly requires schools to *notify parents or guardians in writing* within ten (10) school days of the child’s third unexcused absence that the child has been “truant.” This notice:
 - **Must** include a description of the consequences if the child becomes “habitually truant.”
 - **Must** be in the mode and language of communication preferred by the parent; and
 - **May** include the offer of an attendance improvement conference.

NOTE: If the child continues to incur additional absences after this notice has issued, the school **must offer a student attendance improvement conference**.

Procedure when child is habitually truant.

The procedure schools must follow when a child is habitually truant turns on whether the child is **fifteen (15)** years of age or older.

- ✔ Under fifteen (15) years of age.

The school **must** refer the child to **either**: (1) a school-based or community-based attendance improvement program or (2) the county children and youth agency (CYS) for *services* or possible disposition as a dependent child under the Juvenile Act. Additionally, the school **may** file a citation against the parent of a habitually truant child under fifteen (15) in a magisterial district court.

- ✔ Fifteen (15) 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 in a magisterial district court. If the child incurs additional absences after a school refers that child to an attendance improvement program **or** 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: In all cases, regardless of age, where a school refers a habitually truant child to a magisterial district court or CYS, the school **must** provide verification that it convened and held a student attendance improvement conference.

Mandatory attendance improvement conference before court referral.

Under the new law, schools **must** make meaningful attempts to encourage parent participation in attendance improvement conferences by *advance written notice and attempts to communicate via telephone*. The school **must hold the conference even if the parent declines to participate or fails to attend**. 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.

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.).

Students cannot be disciplined for truant behavior in a way that excludes them from the regular classroom.

Under the new law, schools **cannot** *expel, suspend, transfer, or reassign* a child to a disciplinary placement such as Alternative Education for Disruptive Youth (AEDY) for truant behavior.

The new law removes “habitual truancy” as a ground to re-assign a “disruptive student” to an AEDY program under 24 P.S. § 19-1901-C(5). Thus, school districts may no longer transfer students to AEDY programs for habitual truancy.

Discretion for judges.

The new law provides local judges with **considerable discretion** to impose appropriate penalties in individual cases. For instance, judges now have **discretion** on whether to forward a student’s conviction for truancy to the Department of Transportation (DOT) for automatic license suspension.

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 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** for the **second offense**; and (3) up to **\$750** for a **third** and any and all subsequent offenses.*

***Importantly**, 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.**”

Jail reduced to three days.

The new law reduces jail time from five days to *three days* and adds additional safeguards to ensure that poor families are not jailed for their inability to pay. A judge may jail a parent **only** if (1) the court makes specific findings that the parent had the **ability to pay** the fine or complete the community-service **and** (2) the court finds that parent's **non-compliance was willful**.

Restoration of driving privileges.

A student whose license has been suspended for truancy 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; (2) is subject to exception to the compulsory school attendance law; or (3) has graduated from school.

Occupational Limited License.

Youth who have been convicted of violating the compulsory school attendance law and had their licenses suspended may nonetheless apply for an occupational limited license pursuant to 75 Pa.C.S. § 1553, to get to and from work or school.

Expungement of truancy convictions.

A child who has been convicted of habitual truancy may apply for an expungement of that record. 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.

The Education Law Center-PA ("ELC") is a non-profit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, trainings, and policy advocacy, ELC advances the rights of vulnerable children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English language learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general idea of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact us for a referral or contact an attorney of your choice. Visit www.elc-pa.org/contact or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh).