

## TRUANCY & SCHOOL ATTENDANCE IN PENNSYLVANIA: FREQUENTLY ASKED QUESTIONS

August 2020

### WHO MUST ATTEND SCHOOL IN PENNSYLVANIA?

All students in Pennsylvania must now attend school no later than age 6 until age 18 or graduation, whichever occurs sooner.<sup>1</sup> This is called “compulsory school age.” Compulsory school age was recently changed, and the new law goes into effect this 2020-2021 school year.<sup>2</sup> The requirement does not apply to youth who have a certificate of graduation from a regularly accredited, licensed, registered, or approved high school.<sup>3</sup>

### COVID-19 Considerations

#### DOES MY CHILD STILL NEED TO ATTEND SCHOOL DURING COVID-19?

Yes. Compulsory school attendance still applies during COVID-19. Your child must continue to participate in school, even if your child’s school is not physically reopening. Check out your school district website or call your child’s school for up-to-date information about how education will be provided during the COVID-19 pandemic.

Your child’s school should also specify if any changes to attendance policies have been made to account for the impacts of COVID-19, such as applicable procedures in the event your family needs to quarantine, if your child or a person in your household is sick or might be sick, or when a student with a history of exposure can safely return to school.<sup>4</sup> The Pennsylvania Department of Education (PDE) has issued reopening guidance instructing schools to be flexible with regard to attendance policies to make sure that students and staff are protected and to allow for appropriate monitoring of students and staff who may have been exposed.<sup>5</sup>

There are no exceptions for students who are 17 and did not attend school last year, as was permitted under the prior law last school year. Under the new law, all students must attend school

<sup>1</sup> 24 P.S. § 13-1326

<sup>2</sup> *Id.* See Pa. Dep’t of Educ. [Compulsory School Attendance, Unlawful Absences, and School Attendance Improvement Conferences](#) (Feb. 2020).

<sup>3</sup> 24 P.S. § 13-1326

<sup>4</sup> Pa. Dep’t of Educ. Preliminary Guidance for Phased Reopening of Pre-K to 12 Sch., 6-7, (June 3, 2020).

<sup>5</sup> Pa. Dep’t of Educ. Preliminary Guidance for Phased Reopening of Pre-K to 12 Sch., 6-7, (June 3, 2020).

until their 18<sup>th</sup> birthday or graduation, whichever is sooner, unless they qualify for a limited exception, as explained below.

In addition, once you enroll your child in school, your child must attend school even if they have not yet reached age 6.<sup>6</sup> However, if you enroll your child in kindergarten and later decide that your child is not ready for school, you may formally withdraw your child from school, at which point your child is no longer required to attend school until their 6<sup>th</sup> birthday.<sup>7</sup>

### AM I COMPLYING WITH THE LAW IF MY CHILD ATTENDS A PRIVATE SCHOOL OR IS HOMESCHOoled?

Yes. A child must go to a regular public school, a charter school, a cyber charter school, a licensed private or religious school, or participate in an approved homeschooling program which has specific requirements under state law.<sup>8</sup>

### ARE THERE ANY EXCEPTIONS TO THESE ATTENDANCE REQUIREMENTS?

Yes. There are several limited exceptions generally for certain types of working students engaged in specific types of work. For example, students who are 16 or older and hold full-time jobs during school hours and obtain an employment certificate do not have to attend school.<sup>9</sup> The student must get an employment certificate (often called “working papers”) from their school district<sup>10</sup> and this must be completed by the parent, guardian, or legal custodian of the minor.<sup>11</sup>

### WHO IS RESPONSIBLE FOR ENSURING THAT A CHILD ATTENDS SCHOOL?

The person(s) “in parental relation to the child” — usually the child’s parent(s), but sometimes a guardian, relative, or foster parent — are legally responsible for making sure that the child attends school.<sup>12</sup> “Persons in parental relation” may be a biological or adoptive parent who has custody of the child; a biological or adoptive parent who does not have custody of the child; the child’s guardian; or a person with whom the child lives and who is acting in a parental role for the child.<sup>13</sup> This would include a non-parent who enrolls a child by submitting an affidavit to the school district. See ELC’s [fact sheet on how to enroll a child living with someone other than their parent](#).

Older students are also responsible for attending school. Once a child turns 15, the school may take your child to court if they are not attending school. Students who are 15 or older may face consequences such as fines, community service, and suspension of their driver’s license.

### ARE SCHOOLS SUPPOSED TO WORK WITH FAMILIES TO ENSURE STUDENTS CAN COME TO SCHOOL?

Yes. As reflected in PDE guidance, creating positive relationships between a family and a school is essential. Schools should work to establish positive relationships with families and clearly

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<sup>6</sup> *Id.* See *Commonwealth v. Kerstetter*, 62 A.3d 1065 (Pa. Commw. 2013)

<sup>7</sup> Pa. Dep’t of Educ. Compulsory School Attendance, Unlawful Absences, and School Attendance Improvement Conferences

<sup>8</sup> See generally 24 P.S. § 13-1327

<sup>9</sup> 24 P.S. § 13-1330(1)

<sup>10</sup> 43 P.S. § 49

<sup>11</sup> 43 P.S. § 51

<sup>12</sup> 24 P.S. §13-1326 (defining person in parental relation)

<sup>13</sup> *Id.*

communicate expectations around school attendance and how to provide timely proof that an absence is excused. Schools and families should also work together to resolve attendance barriers to make sure that students don't accrue absences.

### WHAT IS TRUANCY?

Truancy means having three or more unexcused absences in the current school year.<sup>14</sup> These absences do not need to be in a row.

### WHAT IS HABITUAL TRUANCY?

Habitual truancy means having six or more unexcused absences in the current school year. These absences do not need to be in a row.

### WHAT IS AN EXCUSED ABSENCE?

Pennsylvania law broadly defines absences as excused when a student is prevented from attending school due to physical or mental conditions or "other urgent reasons."<sup>15</sup> An absence is lawful when a student is dismissed during school hours by a nurse, school administrator, or designee or if the student is absent to obtain professional health care or therapy provided by a licensed practitioner. Schools should consider illness, family emergency, death of a family member, medical or dental appointments, authorized school activities, and educational travel with prior approval as lawful absences.<sup>16</sup>

### ARE THERE ADDITIONAL PROTECTIONS IF MY CHILD IS EXPERIENCING HOMELESSNESS OR A CHILD IS IN FOSTER CARE?

Yes. Experiencing homelessness can cause a child to miss school. Schools cannot count absences that are caused by a student's housing status to be treated as an unexcused or "illegal" absence.<sup>17</sup> Such absences should be considered excused. Additionally, schools must work to remove barriers for students to attend school and revise school policies preventing this from happening.<sup>18</sup>

In addition, a child in foster care or the juvenile justice system must be excused for purposes of attending court hearings or conferences related to their involvement with a county children and youth agency or juvenile probation as well as for family visitations.<sup>19</sup>

### WHAT HAPPENS IF MY CHILD IS TRUANT?

Once your child has three or more unexcused absences in the current school year — meaning your child is "truant" — your child's school must send you written notice explaining that your child is

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<sup>14</sup> Id.

<sup>15</sup> 24 P.S. §13-1329

<sup>16</sup> Pa. Dep't of Educ. Compulsory School Attendance, Unlawful Absences, and School Attendance Improvement Conferences

<sup>17</sup> Pa. Dep't of Educ. Compulsory School Attendance, Unlawful Absences, and School Attendance Improvement Conferences, (Feb. 2020, stating "absences caused by homelessness must not be counted as unexcused absences.")

<sup>18</sup> 42 U.S.C. §11431(1)(requiring that McKinney-Vento eligible students have "equal access to the same free, appropriate public education . . . as provided to other children."); 42 U.S.C. §11433(d)(16) (requiring schools to remove barriers to make sure that eligible students can "attend school and participate fully in school activities").

<sup>19</sup> 24

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truant. The school **must** send this notice within 10 days of your child's third unexcused absence. The notice **must** be in the language of communication that you prefer, as you indicated on the Home Language Survey when you first enrolled your child in school.

The notice **must** describe what will happen if your child becomes "habitually truant." The notice **may** also include an offer to meet to discuss the reasons for your child's truancy and a plan to help your child overcome barriers to school attendance.

### WHAT HAPPENS IF MY CHILD IS "HABITUALLY TRUANT"?

Once your child has six or more unexcused absences in the *current* school year<sup>20</sup> – meaning your child is "habitually truant" – your child's school **must hold a conference** to discuss the reasons for your child's absences and create a plan to help your child overcome barriers to attendance. This meeting is called a "school attendance improvement conference."<sup>21</sup>

Before holding a conference, the school must let you know about the conference and try to get you to attend. The school **must** provide you with **advance written notice** of the time and date of the conference and **must** also make at least two attempts to reach you by phone.<sup>22</sup> Any attempts to contact or communicate with you must be in your preferred language.<sup>23</sup>

Once your child becomes habitually truant, the school must take certain actions, depending on whether your child is under 15 or is 15 or older. These actions include **referrals to attendance improvement programs, the county Children and Youth Services (CYS) agency, or court.**<sup>24</sup>

### WHAT IS A "SCHOOL ATTENDANCE IMPROVEMENT CONFERENCE"?

An attendance improvement conference is a meeting "where the child's absences and reasons for the absences are examined to improve attendance, with or without additional services." The purpose of the conference is to **identify the barriers** your child is facing to school attendance and **address them** by creating a plan to help your child attend school on a regular basis. Your child's school should consider all barriers that could be preventing your child from attending school. These barriers could include considering if your child is facing harassment or bullying at school, if your child needs special education to access or attend school, if school-provided transportation isn't coming, or if housing instability is preventing your child from coming to school. At the end of the conference, the school **must create a plan**, called a School Attendance Improvement Plan (SAIP) that will help your child attend school. You should ask for a copy of this plan.

### WHO MUST BE INVITED TO AN ATTENDANCE IMPROVEMENT CONFERENCE?

The school **must** invite the following people to the attendance improvement conference:

- The child.
- The person in parental relation to the child (you).

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<sup>20</sup> 24 P.S. § 13-1326(defining habitual truancy as 6+ absences in the current school year)

<sup>21</sup> 24 P.S. § 13-1333(b)

<sup>22</sup> 24 P.S. § 13-1333(b)(1)

<sup>23</sup> 24 P.S. § 13-1333(a)(2)

<sup>24</sup> 24 P.S. § 13-1333(1)(a)(ii) (describing referral procedure for students under 15 for CYS).

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- Other people whom you or your child think may be a helpful resource (like an auntie, grandparent, sibling, family friend, advocate, community member, etc.).
- Appropriate school personnel. This should include members of the child's IEP or Section 504 Team, if the child is a student with disability.
- Recommended service providers (like case managers, behavioral health providers, probation officers, children and youth practitioners, etc.). If you do not approve of the participation of someone from outside the school, that person should *not* be permitted to attend the meeting.

### DO I HAVE TO ATTEND THE SCHOOL ATTENDANCE IMPROVEMENT CONFERENCE?

No. You are *not required* to attend the attendance improvement conference.<sup>25</sup> However, it is a good idea to attend because it is an opportunity to create a plan in collaboration with school officials that will help your child attend school. There are no consequences for not attending, but if a good plan is not in place, your child is likely more have more unexcused absences and may be subject to the filing of a truancy citation and court referral.

### IF I DO NOT ATTEND, DOES MY CHILD'S SCHOOL STILL HAVE TO HOLD A SCHOOL ATTENDANCE IMPROVEMENT CONFERENCE?

Yes. The school **must** hold a school attendance improvement conference, whether you attend or not. This is important because parents are often very busy, but the school must still do its job to help remove any barriers to attendance your child is facing.<sup>26</sup>

### WHAT HAPPENS AFTER THE SCHOOL ATTENDANCE IMPROVEMENT CONFERENCE?

After the conference, your child must attend school. The School Attendance Improvement Plan, which is created during the School Attendance Improvement Conference, should include action steps for all members of the team — you, your child, the school, and others — to help your child attend school.<sup>27</sup> Remember to ask for a copy of the SAIP. There is no set time that the plan must be in place before the school can take legal action against you and/or your child. While the school should allow some time to put the plan into place before taking legal action, once your child is habitually truant — meaning they have six or more unexcused absences — the school is obligated to take legal action.

### CAN THE SCHOOL TAKE LEGAL ACTION AGAINST ME OR MY CHILD IF IT HASN'T HAD A SCHOOL ATTENDANCE IMPROVEMENT CONFERENCE?

No. Schools **cannot** take legal action against you and/or your child until after the date of the school attendance improvement conference.<sup>28</sup> When referring a student and/or family to the county Children and Youth Services agency for habitual truancy, the school must provide CYS with **verification** (proof) that it held a school attendance improvement conference.<sup>29</sup> This means that

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<sup>25</sup> 24 P.S. § 13-1333(b)(1).

<sup>26</sup> 24 P.S. § 13-1333(b)(3) ("Further legal action may not be taken by the school to address unexcused absences by the child until after the date for the scheduled conference has passed").

<sup>27</sup> 24 P.S. § 13-1326 (defining school attendance improvement conference and who should be invited).

<sup>28</sup> 24 P.S. § 13-1333(b)(3) ("Further legal action may not be taken by the school to address unexcused absences by the child until after the date for the scheduled conference has passed").

<sup>29</sup> 24 P.S. § 13-1333.1(d).

the school must provide CYS with a copy of the attendance improvement plan. Similarly, when referring a student and/or parent to court for habitual truancy, the school must provide verification of the school attendance improvement plan to the court.<sup>30</sup>

If your child's school failed to hold a meeting to discuss your child's absences and did not create a school attendance improvement plan before referring you and/or your child to CYS or court, you should immediately let the CYS worker or court know. You should also notify the Pennsylvania Department of Education's Office for Safe Schools at 717-787-4417. The school must hold this meeting prior to taking any legal action against you and/or your child.<sup>31</sup>

### I HAVE A CHILD WITH A DISABILITY WHO IS STRUGGLING WITH SCHOOL ATTENDANCE. WHAT SHOULD I KNOW?

If your child has a disability — meaning they have an Individualized Education Plan (IEP) or Section 504/Chapter 15 Plan — and is truant or habitually truant, the school should bring together the IEP Team to discuss the truancy and how it impacts your child's educational program.<sup>32</sup> Because missing school obviously makes it difficult for your child to learn, the Team should discuss strategies to improve your child's attendance, as well as to make sure that your child receives an education even when they cannot attend school due to their disability. The Team should change the IEP or Section 504 Plan to offer appropriate services and supports that are unique to your child.

It is important that the school brings together your child's IEP or Section 504 Team instead of just having a school attendance improvement conference.<sup>33</sup> That is because the services and supports that go into an IEP or Section 504 Plan are legally binding, and you can hold the school accountable for failing to provide these services to your child. The school attendance improvement plan is not legally binding like an IEP or Section 504 Plan. While some of the people whom the school is required to invite to the school attendance improvement program may also be invited to the IEP or Section 504 Team Meeting, there are additional people who are required by law to be at the IEP Team meeting, like your child's special education teacher and a person at the school who is authorized to make decisions on behalf of the school.

Finally, your child's school should never punish your child for truant behavior that is related to or caused by your child's disability. This includes referrals to CYS and court, as well as suspension and expulsion. If you receive a truancy citation from your child's school and your child has a disability, you should immediately contact the school's special education coordinator to request an IEP Team meeting to discuss your child's absences. You can also file a complaint with Bureau of Special Education at the Pennsylvania Department of Education. For more information on this process, see ELC's fact sheet, [Resolving Special Education Disagreements](#).

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<sup>30</sup> 24 P.S. § 13-1333.1(d) ("When referring a habitually truant child to the county children and youth agency or filing a citation with the court because a child has been habitually truant, the school shall provide verification that a school attendance improvement conferences was held.").

<sup>31</sup> 24 P.S. § 13-1333(b)(3).

<sup>32</sup> 24 P.S. § 13-1326 (defining invitees to school attendance improvement conference as "appropriate school personnel"); *In re C.M.T.*, 861 A.2d at 356.

<sup>33</sup> 24 P.S. § 13-1326 (defining invitees to school attendance improvement conference as "appropriate school personnel"); *In re C.M.T.*, 861 A.2d at 356.

## WHAT LEGAL ACTION CAN THE SCHOOL TAKE IF MY CHILD IS HABITUALLY TRUANT AND UNDER 15?

If your child is under 15 and is habitually truant — meaning they have six or more unexcused absences — the school **must** refer your child to either<sup>34</sup>:

- A school-based or community-based attendance improvement program **or**
- The county Children and Youth Services agency for services. CYS may also file a petition to adjudicate your child as a dependent of the state for being habitually truant. This means that your child might be placed on supervision or removed from your home and placed into foster care or a group home.

In addition, if your child is under 15 and is habitually truant, the school **may file a citation against you in district court**.<sup>35</sup>

## WHAT LEGAL ACTION CAN THE SCHOOL TAKE IF MY CHILD IS HABITUALLY TRUANT AND 15 OR OLDER?

If your child is **15 or older** and is habitually truant — meaning they have six or more unexcused absences — the school must either<sup>36</sup>:

- Refer your child to a school-based or community-based attendance improvement program, **or**
- File a citation against your child or you in the local district court.

In addition, if the school refers your child to a school-based or community-based attendance improvement program and your child does not attend the program or has more unexcused absences from school, the school may refer your child to the county Children and Youth Services agency.<sup>37</sup> CYS **may file a petition to adjudicate your child as a dependent of the state for being habitually truant**.<sup>38</sup> This means that your child could be placed on court supervision or removed from your home and placed into foster care or a group home.

## WHAT IS A SCHOOL-BASED OR COMMUNITY-BASED ATTENDANCE IMPROVEMENT PROGRAM?

A school-based or community-based attendance improvement program is a program designed to improve school attendance by seeking to **identify and address** all of the underlying reasons for a child's absences. Your school or community may or may not have program like this.

## WHAT IS THE COURT PROCESS IF MY CHILD OR I HAVE BEEN CITED FOR TRUANCY?

If you or your child has been cited for truancy in a local district court, the court **must** provide you with **written notice** of the hearing in your preferred language.<sup>39</sup> The notice should also include information about the availability of a pre-conviction diversionary program.<sup>40</sup>

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<sup>34</sup> 24 P.S. § 13-1333.1(a)(1).

<sup>35</sup> 24 P.S. § 13.1333.1(a)(2).

<sup>36</sup> 24 P.S. § 13.1333.1(b)(2).

<sup>37</sup> 24 P.S. § 13-1333.1(c).

<sup>38</sup> 24 P.S. § 13-1333.1(c)

<sup>39</sup> 24 P.S. § 13-1333(a)(2).

<sup>40</sup> 24 P.S. § 13-1333.2(b)(2).

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Once you receive notice of a hearing in a local district court, the first thing you should do is determine whether it is the correct court. If your child attends a public or charter school, the correct court will be the local district court based on the address of the school.<sup>41</sup> If your child attends a **cyber charter school**, the correct court will be local district court based on the address of the residence of your child.<sup>42</sup> If you or your child have been cited in the wrong court, you should make this argument to the judge and request a dismissal of the case.

At the hearing, the school will present its case against you or your child. Next, you and your child have the chance to present your case and defense. The school has the burden of proving **beyond a reasonable doubt**<sup>43</sup> that you or your child was:

- Subject to compulsory school attendance;
  - For the **2020-2021 school year** this means that your child is **aged 6 through 18** and has not yet graduated, or is younger, but enrolled in school, and does not qualify for one of the exceptions to mandatory school attendance.
- Habitually truant; **and**
  - This means that your child had six or more unexcused absences in the *current* school year.
- **Without justification.**
  - This means that the school **must** present evidence to the court that your child's absences were *not justified*. If the school fails to present this evidence, then the school has *failed to meet its burden*, and you or your child **must not be convicted for truancy**.

Next, you or your child have the chance to present your case. If you have been cited, you can present evidence that you took **every reasonable step** to make sure that your child attended school.<sup>44</sup> If you present strong evidence on this point, you should not be convicted.

**Tips:** If your child's absences were justified for any reason, you should present this evidence. For example, if your child's absences were legally excusable under your child's school's attendance policy, you should explain why. Bring any documentation you have to support any excuse you believe you or your child have.

One common reason that children are absent from school is for health reasons or reasons related to a child's disability. If this is the case, you should be sure to present this information to the court. As always, be prepared with any documentation you have that explains your child's health condition or disability.

Make sure you attend the school attendance improvement conference. At the conference, you can advocate for services and supports from your child's school to help your child attend school. Then, bring the school attendance improvement plan to your court hearing to show the court what you have done to help your child attend the school, and what your child's school has done or not done to help your child.

<sup>41</sup> 24 P.S. § 13-1333.2(a).

<sup>42</sup> 24 P.S. § 13-1327.2(b).

<sup>43</sup> 24 P.S. § 13-1333.2(c). Note that, while the burden of proof on the Commonwealth under the Juvenile Act is clear and convincing evidence, the burden of proof under Act 138 for truancy is beyond a reasonable doubt.

<sup>44</sup> 24 P.S. § 13-1333.2(b) (outlining affirmative defense for parents who took every reasonable step to ensure attendance).

## WHAT CONSEQUENCES DOES MY CHILD FACE IF THEY ARE CONVICTED OF TRUANCY IN A LOCAL DISTRICT COURT?

First, schools may only cite children who are **15 or older** in a local district court.<sup>45</sup> No child under 15 should ever be cited in district court. If, after a hearing, a judge convicts your child of violating the compulsory school attendance law, then the judge has the discretion (choice) to sentence your child.<sup>46</sup> The judge **does not** have to sentence your child. However, if the judge decides to issue a sentence, the sentence may include<sup>47</sup>:

- **A fine:** Your child may be fined **up to \$300** for the first offense, **up to \$500** for the second offense, and **up to \$750** for the third and any subsequent offenses;
- **Community service;** or
- **Completion of a course or program designed to improvement school attendance.**

## CAN MY CHILD BE FINED FOR EVERY DAY OF UNEXCUSED ABSENCE THEY HAD DURING THE SCHOOL YEAR?

No. Your child may only be fined for each **offense**, which means each **citation** filed by the school, not each unexcused absence.<sup>48</sup> Therefore, if your child has 15 unexcused absences this school year, but was only cited **once** by the school, they can be fined only up to \$300 if they are convicted, not up to \$4,500, which is \$300 times 15 absences.

## IF MY CHILD STARTS ATTENDING SCHOOL, CAN THE COURT SUSPEND THEIR SENTENCE?

Yes. If your child attends school in accordance with a plan created by the court, the judge may suspend your child's sentence and may cancel or waive fines and court costs at any time.<sup>49</sup> If your child is doing better with school attendance, you should consider petitioning the court to suspend the sentence.

## WILL MY CHILD'S LICENSE BE SUSPENDED IF THEY ARE CONVICTED OF TRUANCY BY A LOCAL DISTRICT COURT?

**Not necessarily.** The judge has the **choice** to notify the Department of Transportation of your child's conviction — and only under certain conditions.<sup>50</sup> If your child (1) fails to comply with a lawful sentence ordered by the court, **and** (2) is not subject to an exception to the compulsory school attendance requirement, the judge **may** send the Department of Transportation a certified record of your child's conviction.<sup>51</sup> However, if the Department of Transportation receives a certified record of your child's conviction, it **must** suspend your child's driver's license for 90 days.<sup>52</sup> If the Department of Transportation receives a record of a second or subsequent conviction of your child for truancy, it **must** suspend your child's license for 6 months.<sup>53</sup>

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<sup>45</sup> 24 P.S. § 13-1333.1(b)(2).

<sup>46</sup> 24 P.S. § 13-1333.1(b)(2).

<sup>47</sup> 24 P.S. § 13-1333.3(a).

<sup>48</sup> 24 P.S. § 13-1326 ("Offense" shall mean each citation filed under section 1333.1[] for a violation of the requirement for compulsory school attendance)

<sup>49</sup> 24 P.S. § 13-1333.3(b).

<sup>50</sup> 24 P.S. § 13-1333.3(g)(1).

<sup>51</sup> 24 P.S. § 13-1333.3(g)(1).

<sup>52</sup> 24 P.S. § 13-1333.3(g)(2).

<sup>53</sup> 24 P.S. § 13-1333.3(g)(2).

## MY CHILD'S LICENSE WAS SUSPENDED, BUT MY CHILD NEEDS TO DRIVE TO GET TO WORK OR SCHOOL. WHAT CAN I DO?

Your child can apply for what is called an [occupational limited license](#) if it is essential for your child's occupation, work, trade, treatment, or study.

## CAN MY CHILD GET THEIR LICENSE RESTORED?

Yes. Your child may apply to have their license restored. The Department of Transportation has a [form](#) that your child must fill out. The form must contain a certified record from your child's school that proves that your child<sup>54</sup>:

- Has attended school for at least two months after their first conviction or four months after their second conviction *without an unexcused absence or unexcused tardy*;
- Is subject to an *exception* to compulsory school attendance; or
- Has *graduated*, legally withdrawn from school, received a general education diploma (GED), or enlisted in the military.

## CAN MY CHILD GET THEIR TRUANCY RECORD EXPUNGED? IF SO, HOW?

Yes. To get their record expunged, your child must petition the local district court. Your child's record must be expunged if all of the following apply<sup>55</sup>:

- Your child has *earned a high school diploma*, a Commonwealth secondary school diploma, or another equivalent approved by the Department of Education, or is subject to an *exception* to compulsory school attendance; and
- The child has *satisfied any sentence* imposed by the court related to your child's conviction, including payment of fines and court costs.

If the court grants your child's petition for expungement, the court **must** also order the Department of Transportation to expunge all administrative records related to your child's conviction(s).<sup>56</sup>

## WHAT CONSEQUENCE DO I FACE IF I AM CONVICTED OF TRUANCY IN A LOCAL DISTRICT COURT?

As a parent or guardian, you may be cited in a local district court by your child's school if your child has six or more unexcused absences during the current school year, regardless of your child's age. That means that you can be forced to go to court if your child who is under 15 is "habitually truant," or if your child who is 15 or older is "habitually truant."<sup>57</sup> If, after a hearing, a judge convicts you of violating the compulsory school attendance law, then the judge has the discretion (choice) to sentence you.<sup>58</sup> The judge *does not* have to sentence you.

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<sup>54</sup> 24 P.S. § 13-1333.3(g)(4).

<sup>55</sup> 24 P.S. § 13-1333.3(h).

<sup>56</sup> 24 P.S. § 13-1333.3(h)(2).

<sup>57</sup> 24 P.S. § 13-1333.1(b)(2).

<sup>58</sup> 24 § 13-1333.3(a).

However, if the judge decides to issue a sentence, the sentence may include<sup>59</sup>:

- A fine: You may be fined up to \$300 for the first offense, up to \$500 for the second offense, and up to \$750 for the third and any subsequent offenses.
- Community service; or
- Completion of a course or program designed to improve school attendance.

### CAN THE COURT FINE ME FOR EVERY DAY OF UNEXCUSED ABSENCE MY CHILD HAD DURING THE SCHOOL YEAR?

No. The court may fine you only for each offense, which means each citation filed by the school, not each unexcused absence.<sup>60</sup> Therefore, if your child has 15 unexcused absences this school year, but you were only cited once by the school, they the court can only fine you up to \$300 if you are convicted, not up to \$4,500, which is \$300 times 15 absences.

### IF MY CHILD STARTS ATTENDING SCHOOL, CAN THE COURT SUSPEND MY SENTENCE?

Yes. If your child attends school in accordance with a plan created by the court, the judge may suspend your sentence and may cancel or waive fines and court costs at any time.<sup>61</sup> If your child is doing better with school attendance, you should consider petitioning the court to suspend the sentence.

### CAN I BE SENT TO JAIL FOR MY CHILD'S TRUANCY?

Yes, but *only if* you (1) fail to comply with a lawful sentence ordered by the judge, (2) had the ability to comply with the penalty imposed, and (3) *willfully* failed to comply with the sentence.<sup>62</sup> For example, if the judge orders you to pay a fine or do community service, but you fail to do so, the judge may hold you “in contempt” of court and jail you for up to three days. However, the judge can **only** order you to be jailed if the judge holds a court hearing and makes specific findings that (1) you failed to pay the fine or do the community service, (2) you had the reasonable ability to pay the fine or do the community service, and (3) you willfully failed to pay the fine or do the community service.<sup>63</sup>

**TIP:** If a court is trying to hold you in contempt of court and put you in jail for failing to comply with a sentence ordered in a truancy case, you should contact your local public defender’s office. To show that you did not have the ability to pay fines ordered by a judge, you should bring documents that demonstrate your income. You should also present evidence that you tried to pay the fines but were unable. If the judge ordered you to take a course or complete community service, but you were unable because of other obligations, like work or caregiving, you should bring documents to present to the judge that show that you were working or were required to be a caregiver. You should also present evidence that you tried to complete the course or community service.

<sup>59</sup> 24 P.S. § 13-1333.3(a).

<sup>60</sup> 24 P.S. § 13-1326 (“Offense” shall mean each citation filed under section 1333.1[] for a violation of the requirement for compulsory school attendance)

<sup>61</sup> 24 P.S. § 13-1333.3(b).

<sup>62</sup> 24 P.S. § 13-1333.3(f).

<sup>63</sup> *Id.*

## MAY I BRING AN ATTORNEY TO MY TRUANCY COURT HEARING?

Yes. Persons appearing before magisterial district courts have the right to be represented by an attorney. Indeed, it is helpful to bring an attorney or an advocate to a truancy hearing. Some legal services centers may provide free legal representation to eligible parents and students in truancy hearings. To find your local legal services center, call 1-800-322-7572 or go to <https://palegalaid.net/find-legal-help>.

## CAN I APPEAL A FINE OR OTHER COURT ORDER?

Yes. You or your child may appeal a sentence for truancy to the local county Court of Common Pleas.<sup>64</sup> You must make this appeal within 30 days of the court's order.<sup>65</sup> To appeal, you must post a bond equal to twice the original fine and court costs. For more information about your local Court of Common Pleas (which should be able to tell you how to appeal a truancy fine or other penalty), visit <http://www.pacourts.us/T/CommonPleas>.

If you appeal, you have the right to a new trial before a judge in Common Pleas Court.<sup>66</sup> This means that the school will have to present its case all over again, and that you will be able to present your case again, too. If you appeal, we recommend that you contact an attorney of your choice for representation.

## CAN MY CHILD BE SUSPENDED, EXPELLED, OR SENT TO A DISCIPLINARY SCHOOL FOR TRUANCY?

No. No child may be suspended, expelled, or transferred for truant behavior.<sup>67</sup> No child should ever be told they cannot come to school because they had an unexcused absence, tardy, or early dismissal. Similarly, no child should ever be transferred or reassigned to a disciplinary program or alternative school for having unexcused absences, tardies, or early dismissals. If your child has been suspended, expelled, or transferred for truancy, you should immediately contact the Education Law Center and/or the Pennsylvania Department of Education's Office of Safe Schools at 717-787-4417.

## ARE THESE RULES DIFFERENT IF MY CHILD GOES TO A CHARTER SCHOOL?

No. Charter schools are subject to the same rules and must follow compulsory school attendance laws. If your child is habitually truant, the charter school must hold a school attendance improvement conference and create a plan.<sup>68</sup> The only difference is that if your child goes to a cyber charter school, the proper court is based on where your child lives, not where the school is located because many cyber charter schools are located far away from where children live.<sup>69</sup> This makes it easier for families to attend court. Cyber charter schools are allowed to participate in court hearings through teleconferencing if they are unable to appear in person.<sup>70</sup>

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<sup>64</sup> 24 P.S. § 13-1333.3(c).

<sup>65</sup> *Id.*

<sup>66</sup> Pa.R.Crim.P. 462; see also 24 P.S. § 13-1333.3(c).

<sup>67</sup> 24 P.S. § 13-1333(c) ("Schools shall not expel or impose out of school suspension, disciplinary reassignment or transfer for truant behavior").

<sup>68</sup> 24 P.S. § 13-1333(b); P.L. 241, No. 39, § 425(d).

<sup>69</sup> 24 P.S. § 13-1327.2(b).

<sup>70</sup> *Id.*

## WHAT IS A VALID EXCUSE FOR AN ABSENCE FROM SCHOOL?

Each school district has rules and policies about student attendance and absences.<sup>71</sup> Check your school district's student handbook or website for this information. Many school districts will excuse absences only for illness, family emergency, death of a family member, medical or dental appointments, school activities, and educational travel with prior approval. Pennsylvania law specifically permits temporary absences from school for the following reasons:

### Religious Holidays and Religious Instruction<sup>72</sup>

Schools may excuse students from attending school for religious holidays. You must make a written request to your school's principal before the holiday for the absence to be excused.

Additionally, your child may also be excused from school for religious *instruction* by making a written request to the superintendent. Excused absences for religious instruction cannot equal more than 36 hours in a single school year.<sup>73</sup> Following each absence, you *should* provide the superintendent with a written statement confirming that your child did in fact attend the instruction, as well as the date and time of the instruction.

### Tutorial Work<sup>74</sup>

Schools may excuse children from attending school for the purpose of receiving tutorial instruction in a field not offered in the district's curricula, but *only if* the following requirements are met:

- The absence does not interfere with the student's regular program of studies; and
- The qualifications of the instructor are approved by the district's superintendent.

### Physical or Mental Health Care<sup>75</sup>

Schools may excuse children from attending school for the purpose of obtaining professional health care or therapy service, but *only if* the following requirements are met:

- The health or therapeutic services are delivered by a doctor or therapist who is licensed by the Commonwealth of Pennsylvania;
- It is not practical or possible for the student to receive the health care or therapy services outside of school hours; and
- The absence has as small amount of interference with the child's regular program of study as possible.

### Educational Tours and Trips That Are Not Sponsored by the School District<sup>76</sup>

Schools may excuse a child from attending school to participate in an educational tour or trip even if the trip is not sponsored by the school district, but *only if* the following conditions are met:

- You submit a written request prior to the tour or trip to the school district;
- Your child's participation on the tour or trip has been approved by the school district's superintendent; and

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<sup>71</sup> 24 P.S. § 13-1329(a).

<sup>72</sup> 22 P.A. Code § 11.21(b).

<sup>73</sup> Id.

<sup>74</sup> 22 P.A. Code § 11.22(a)

<sup>75</sup> 24 P.S. § 13-1329(c-d); 22 P.A. Code § 11.25(a).

<sup>76</sup> 24 P.S. § 13-1329(a.1).

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- There is an adult who is directing and supervising your child during the tour or trip who is acceptable to both you and the school district's superintendent.

**TIP:** Even if your child is absent for just one day, you should always provide your child's teacher or principal with a note explaining the absence. Send the note right away and keep a copy for your records. You should consider emailing the excuse note to the school so that there is a record that the school received it. If you submit a note in person, you should keep a copy for yourself and get it stamped by the school so that you can prove that the school received it. If your child's absence was due to illness, send a doctor's note, if possible (and keep a copy). If the school district does not receive a note explaining the absence within three days of the absence, the absence can be permanently marked as unlawful.

### WHAT IF MY CHILD IS AFRAID TO GO TO SCHOOL?

If your child becomes upset or fearful about attending school, you should ask to meet with school personnel to develop a **school attendance improvement plan**, with or without additional services. You may also wish to talk with a mental health professional. In addition, if you are concerned that your child may have an unidentified disability that is affecting your child's learning and ability to attend school, you can ask for a **special education evaluation** to find out whether your child has a need that is not being addressed at school. See ELC's [Right to Special Education in Pennsylvania](#) for more information. If your child is already receiving special education, you should request an Individualized Education Program (IEP) Team meeting to discuss the causes of non-attendance and whether your child needs additional help or a modified IEP to address school phobia.

More information about **school phobia** from the American Academy of Pediatrics and the American Academy of Family Physicians can be found at:

- <http://www.aafp.org/afp/2003/1015/p1555.html>
- <https://www.healthychildren.org/English/health-issues/conditions/emotional-problems/Pages/School-Avoidance.aspx>

### WHAT IF MY CHILD IS IN DANGER OR BEING HARASSED OR BULLIED AT SCHOOL?

The Education Law Center receives many calls from parents who fear for their children's safety at school due to harassment or bullying. Despite such real concerns of parents and significant long-lasting negative impacts on children, the law does not expressly excuse children from attending school in these situations. However, every school must have harassment and bullying prevention and response policies that permit students and parents to report harassment and bullying, and there are certain protections for students with disabilities. If you suspect that your child is being harassed or bullied, **you should immediately notify your child's school in writing about your concerns. You should ask the school to promptly investigate the allegations.**

Additionally, if your child is missing school due to harassment or bullying, you should ask the school to have a **school attendance improvement conference** to address this and other barriers to school attendance. At this meeting, you should raise your concerns about harassment or bullying and ask the school what steps it can take to make sure your child is able to learn in a safe school environment. You should also provide a doctor's note if the absence relates to a mental health issue.

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If your child has a disability and is being harassed or bullied, federal law requires that your child's school address the harassment or bullying, as well as convene your child's IEP Team or Section 504/Chapter 15 Team to discuss the harassment or bullying and whether any changes need to be made to your child's educational program to eliminate the harassment or bullying and its effects on your child's ability to learn, and whether your child was denied a free appropriate public education due to the school's failure to address the harassment or bullying and its effects on educational progress.

If your child attends the School District of Philadelphia, you can call the Bullying & Safety Hotline at 215-400-SAFE (7233) or submit a complaint at [www.philasd.org/bullying/programs-and-services/reporting-bullying-and-harassment](http://www.philasd.org/bullying/programs-and-services/reporting-bullying-and-harassment).

For suggestions about how to handle bullying at school, see our guide on [What to Do When Your Child Is Being Bullied or Harassed: A Parent's Guide to Advocacy in Pennsylvania Public Schools](#).

### CAN MY CHILD BE ARRESTED IF THEY ARE NOT ATTENDING SCHOOL?

Yes. An attendance officer, a home and school visitor, or a law enforcement officer may arrest a child who is truant.<sup>77</sup> When the child is arrested, the person arresting the child must promptly notify the parents. Usually, the arresting officer will then take the child to school.<sup>78</sup>

### IS THERE ANYTHING UNIQUE ABOUT THE TRUANCY PROCESS IN PHILADELPHIA?

Yes. In Philadelphia, the School District of Philadelphia (School District), the Family Court of Philadelphia, and the City of Philadelphia's Department of Human Services (DHS), have partnered to create a collaborative truancy court, called Regional Truancy Court, to decrease the flow of truancy cases through the courts as well as to eliminate truancy at its earliest stages. These courts are located at School District properties in North Philadelphia, Southwest Philadelphia, Northeast Philadelphia, and Northwest Philadelphia. If your child goes to a school within the School District and is unlawfully absent for 10 days during the school year or more, the School District will cite you for truancy.<sup>79</sup>

The District should provide this notice to you through the mail.

If your child is in grades K-3, the School District will automatically refer you to DHS, who will visit your home and offer services designed to reduce your child's truancy.<sup>80</sup> If you accept services, DHS will open a case and provide services in your home to help eliminate your child's truancy.

If your child is in grades 4-11, the School District will send you a notice in the mail to attend a truancy hearing at one of the four Regional Truancy Courts.<sup>81</sup> You will be assigned a court based on where your child attends school. A judicial officer, called a hearing officer, presides over the hearing. Each hearing officer is appointed by the administrative judge of Family Court. You and your child are required to appear.

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<sup>77</sup> 24 P.S. § 1341(a)

<sup>78</sup> 24 P.S. § 1343

<sup>79</sup> 24 P.S. § 13-1333(a).

<sup>80</sup> Sch. Dist. Of Philadelphia, [Code of Conduct 2019-2020](#), 12 (2019; last modified July 7, 2020).

<sup>81</sup> *Id.*

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At this hearing, the School District will present evidence of your child's truancy. You should also be given the chance to respond and to present evidence. The hearing officer will issue a Truancy Court Order based on the outcome of the hearing.

Usually, the hearing officer will order you to appear in Regional Truancy Court again to make sure your child is attending school. Generally, if the truancy is not eliminated by the third listing or hearing in the Regional Truancy Court, the hearing officer will refer the case to DHS, and the City of Philadelphia will file a petition in Family Court, alleging your child to be a dependent child under the Juvenile Act. Once a dependent petition is filed, you will have to appear in Family Court. The Family Court judge may order services in your home or may order your child removed from your home and placed into foster care or a group home.

**CHARTER SCHOOLS:** If your child attends a charter school in Philadelphia, their school may or may not participate in the Regional Truancy Court collaborative. Some charter schools participate in the Regional Truancy Courts. Others rely on the District Attorney's Project Go program to enforce truancy. In any event, charter schools are still subject to the same laws explained throughout this fact sheet.

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

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.