



CHILDREN'S
LAW OFFICE

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School of Law
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Truancy and Educational Neglect

This information packet is designed for professionals who work with youth. Child protection staff, guardians ad litem, foster parents, mental health professionals, and others are often involved with children who have educational problems related to excessive school absences. These professionals may participate in the intervention plan developed by the school or become involved in other ways to assist the child. This packet provides an overview of the handling of school absenteeism related to truancy or educational neglect, and will enable community professionals to support school and agency efforts to improve the child's attendance.

Education and court professionals who have specific responsibilities related to truancy should request a copy of the *Truancy Guide*, which provides a more detailed review of the processing of these cases.

I. Introduction

Children usually begin their school careers very excited and eager to learn. School is an exciting place to be, and children's social lives often revolve around school, school friends, and school activities. When children do not attend school regularly or are chronically tardy in elementary school, patterns are set that are difficult to break. Attachment to school may not occur, leading to student apathy. As these children grow up and attend middle school, the temptation to skip school may increase.

Not only are these children at risk academically, but truancy is often the first precursor to future juvenile delinquency. A lack of commitment to school is a risk factor for multiple problems such as substance abuse, teen pregnancy, and dropping out of school.

South Carolina law requires regular school attendance for every child who is at least five years old on or before the first day of September of a particular school year, until the child turns 17 years old. There are several, limited exceptions to this requirement which are listed in S.C. Code Ann. §59-65-30. Parents are primarily responsible for ensuring that their child attends school regularly, and they face statutory penalties if they neglect that responsibility.

II. Educational Neglect

In approaching a case as educational neglect, the focus is on the parents' failure to meet their responsibility to provide for the child's education.

Definition: Educational Neglect is included in the state's definition of child abuse and neglect.

*Child abuse or neglect, or harm, occurs when a parent, guardian, or other person responsible for the child's welfare ... fails to supply the child with adequate food, clothing, shelter, **education** (as required by Article 1 of Chapter 65 of Title 59), supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused physical or mental injury or presents a substantial risk of causing such injury.*

A child's absences from school may not be considered abuse or neglect unless the school has first made efforts to bring about the child's attendance, and the efforts were unsuccessful because the parents refused to cooperate. S.C. Code Ann. §20-7-490(c) (Supp. 2004).

For purposes of child abuse and neglect laws, a child is defined as a person under the age of 18. A person responsible for the child's welfare includes the child's parent, guardian, foster parent, or caregiver of a public or private residential home or institution. It can also include an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child. A person whose contact with the child is incidental, such as an occasional babysitter, is not included in this definition.

Parents Responsibility

1. Parents are required by law to make sure their children regularly attend school (unless the child meets one of the limited exceptions listed in S.C. Code Ann. §59-65-30).
2. A parent whose child is not six years of age on or before the first day of September of a particular school year may elect for their child not to attend kindergarten. The parent must sign a written document making the election with the school district in which the parent resides.
3. Parents who neglect to enroll their child or refuse to make their child attend school, upon conviction, may be fined up to fifty dollars or imprisoned for up to thirty days for each absence. It may be considered educational neglect if a child is accumulating unlawful absences and the school's efforts to help the child attend regularly fail because of the parent's refusal to cooperate.

Indicators of Educational Neglect

Specific signs that indicate educational neglect are not included in state law, regulations, or agency policy. Rather, professional judgment is required on a case-by-case basis. Educational neglect may be indicated if:

1. The child is too young to be held responsible for his or her own regular school attendance.
2. The parents do not respond to requests by school officials to meet regarding the child's attendance problems.
3. The parents appear apathetic about school attendance and make no effort to work with the school to encourage the child's future attendance.
4. The parents refuse to cooperate with an intervention plan instituted by the school to address the child's continued absence from school.
5. Other indicators of neglect are present. Child neglect is often chronic and can occur across dimensions. Neglect may be indicated when frequent absences from school are coupled with other signs of neglect, such as the following:
 - Inappropriate clothing for the weather
 - Poor hygiene, body odor
 - Failure to receive routine or urgent medical care
 - Excessive sleepiness during the day
 - Coming to school hungry, stealing or asking for food
 - Child (frequently oldest sibling) acting as caretaker
 - Child reports being left alone at home
 - Child is overly compliant, passive, or withdrawn
 - Parent appears to be indifferent to child's needs

School's Responsibility in Educational Neglect Cases

A. Efforts to Work with Parents

When a child has excessive absences, the school's first step is to work with the child and family to bring about satisfactory attendance. The response to these efforts will help determine whether the issue is one of neglect by the parents or willful absence by the child.

The law does not provide specific efforts that are required by the school. Steps generally recommended include:

- Letters or phone calls to the parents
- Meetings with the family
- Referrals to school social worker or attendance officer

It is important that the school document these efforts, as the information will be helpful if a report to DSS becomes necessary.

B. Reports to DSS

If efforts to work with the parents have failed to correct the attendance problem, school personnel may make a report to the Department of Social Services in the county of the child's legal residence.

The school district is not authorized to petition the court directly under the child abuse and neglect statute. The Department of Social Services is the designated agency responsible for investigating reports of child abuse and neglect, and may invoke the authority of the court.

School teachers, counselors, principals, and assistant principals are specifically required to report to DSS when they have reason to believe that a child has been abused or neglected. Nurses, mental health professionals, social workers, and law enforcement officers are also mandated reporters (For more information about the responsibilities of mandated reporters, request *Information for Mandated Reporters* from the Children's Law Office, or go to <http://childlaw.sc.edu> and click on publications).

In making the report, the following information is helpful to DSS: child's name, age, date of birth, address, and present location if known; names and ages of siblings; parents' or guardians' names and addresses. Additionally, provide information about the child's attendance, and any other reasons that cause you to be concerned about the child. Detail the school's efforts to obtain cooperation from the parents, including dates and times of meetings, phone calls, and letters.

DSS Responsibility

Upon receipt of a report, DSS will assess whether it meets the statutory definitions of child abuse or neglect. When the report is of educational neglect, this criteria includes: (1) excessive absences from school; (2) efforts by the school to bring about satisfactory attendance; and (3) parents' failure to cooperate with the school.

DSS must see the child and begin an investigation within 24 hours of receiving a report. DSS can interview the child and other children in the household outside the presence of the parents. The agency is specifically authorized to interview children at school.

DSS is also required to notify parents that a report has been received. Parents have a right to information contained in the report, except for the identify of the reporter.

The investigation must be completed within 45 days, or, with good cause, a single 15-day extension can be granted by the county director. DSS determines whether the case is indicated, i.e. a preponderance of the evidence supports a finding that the abuse or neglect is more likely than not to have occurred. A case is unfounded if the preponderance of the evidence does not support such a finding.

If the case is indicated, DSS prepares a treatment plan in conjunction with the parents which specifies the goals the parents must reach and the services to be provided to them. If the parents voluntarily cooperate, DSS may work with them without court intervention. This is generally referred to as a treatment case.

If the parents do not willingly cooperate, DSS may petition the family court to invoke its authority. An intervention case is one in which DSS works with the family under the authority of the court, but the child remains in the home. An intervention hearing is held within 35 days of the filing of a complaint. The court's jurisdiction will end in 18 months unless an interested party requests an extension.

When the child is at risk of substantial harm, DSS can also petition the court for removal of the child at any time during the investigation. If the child is in imminent and substantial danger and there is not time to petition the court, a law enforcement officer may place the child in emergency protective custody.

III. Truancy

South Carolina Code of Regulations No. 43-274 outlines the state requirements for school attendance. In November of 2003, the State Board of Education revised this regulation in response to the federal "No Child Left Behind" Act mandate to gather and report on truancy rates. As amended, Reg. 43-274 provides a clear and concise definition of truancy. The regulation uses a three tiered approach for defining the varying levels of truant behavior. A child is deemed to be a truant, a habitual truant, or a chronic truant depending on the surrounding circumstances, as described below:

Truant: A child, at least 6 but not yet 17 years old, who has accumulated three consecutive unlawful absences of a total of five unlawful absences.

Habitual Truant: A child, at least 12 but not yet 17 years old, who (1) fails to comply with the intervention plan developed by the school, the child, and the parents or guardians, and (2) accumulates two or more additional unlawful absences.

Chronic Truant: A child, at least 12 but not yet 17 years old, who (1) has been through the school intervention process; (2) has reached the level of a habitual truant and has been referred

to family court and placed under an order to attend school; and (3) continues to accumulate unlawful absences.

The varying levels of truancy are important because there are requirements and limitations at each level for what should and can be done to address the child's truancy behavior.

Reg. 43-274 requires school districts to adopt policies to define and list lawful and unlawful absences.

School's Responsibility in Truancy Cases

As soon as a child is determined to be "truant", school officials are required to immediately intervene to encourage the child's future attendance. After determining the reasons for the child's continued absence, school officials are required to work with the child and the parents to develop a written intervention plan to address the child's continued absence. When developing the intervention plan, school officials may determine that the child and the family are in need of additional services that the school is not equipped to provide. If this is the case, a team intervention approach may be used to formulate the intervention plan. At this point community professionals may become involved. Team members may include representatives from social services, community mental health, substance abuse and prevention, and other persons deemed appropriate.

The intervention plan must include reasons for the unlawful absences; actions to be taken by the parent or guardian and student to resolve the causes of the unlawful absences; documentation of referrals by the school to any community based service providers; actions to be taken by the school; actions to be taken should unlawful absences continue; and guidelines for making revisions to the plan.

In order to effectively address truancy, the underlying problems and causes of the truancy behavior must first be identified and resolved. According to a study by the Office of Juvenile Justice and Delinquency Prevention, the causes of truancy can be divided into four broad categories: family factors, school factors, economic influences, and student variables. Although not specifically mentioned, the community significantly contributes to truancy behavior as well. Community factors, such as economic conditions and differing culturally based attitudes toward education, are included in the four identified areas. (Baker, Sigmon and Nugent 2001).

The following is an overview of each of the four categories, along with suggested interventions.

A. Family factors

1. Family factors include:
 - Lack of guidance and/or parental supervision
 - Domestic violence
 - Drug or alcohol abuse in the home
 - Lack of awareness of school's policies and attendance laws
 - Ambivalent attitudes about the importance of education
2. Suggested interventions:
 - Inform parents of available counseling services and parent education classes offered in the community that will assist them in working with their

child to alleviate factors contributing to truancy. Consider whether they may need individual or family counseling, drug or alcohol counseling, or parenting skills classes.

- Encourage parents to assume greater responsibility for ensuring regular attendance by their child.
- Conduct workshops to educate parents about the compulsory attendance and educational neglect laws. Make sure that parents have a clear understanding of their legal obligations and what can happen if they do not make their child attend school.
 - If convicted for violating South Carolina's compulsory school attendance laws, parents can be fined up to \$50 for each day their child is absent or put in jail for up to 30 days for each unexcused absence. S.C. Code Ann. §59-65-20.
 - Parents can be charged with educational neglect if the school has made efforts to ensure the child's regular attendance and those efforts fail because of the parents' refusal to cooperate. S.C. Code Ann. §20-7-490(2).

B. Economic influences

1. Economic influences include:

- Poverty
- Working students
- Single-parent homes
- High rate of mobility or relocation
- Parents who work multiple jobs
- Lack of adequate transportation
- Lack of affordable childcare

2. Suggested interventions:

- Adopt alternative schedules for high school students who are working to encourage and accommodate regular school attendance.
- Connect homeless families with service providers who can help them obtain financial, social, and medical assistance.
- Assign a case manager to work with the family to obtain services and counseling needed to address the truancy.
- Work with community-based organizations and agencies that could offer a continuum of services for truant children and their families.
- Encourage student participation in organized educational, recreational, and social activities conducted in the community.

C. School factors

1. School factors include:

- School climate issues
 - school size and overcrowded classrooms
 - attitudes of teachers, other students, and administrators
 - no flexibility in meeting the diverse cultural and learning styles of the students
- Inconsistent procedures for dealing with truancy
- Lack of meaningful consequences for truant youth

2. Suggested interventions:
 - Establish and encourage in-school and out-of-school tutoring and mentoring programs.
 - Make use of in-school instead of out-of-school suspension.
 - Reward student participation with community organizations.

D. Student variables

1. Student variables include:
 - Academic problems and learning difficulties
 - Drug and alcohol abuse
 - Lack of understanding of attendance laws
 - Poor social skills
 - Mental health issues
2. Suggested interventions:
 - Develop attendance workshops for truant students.
 - Make sure that the student has a clear understanding of the school's attendance policies, the compulsory attendance laws, and the implications of violating those laws.
 - Assign a case manager to work with the student and the student's family to obtain services and counseling needed to address the truancy.
 - Provide students with support such as tutoring and mentoring services.
 - Refer the student to the appropriate agencies or organizations in the community for testing, counseling, or social services.

Once a child is deemed to be a **“habitual truant”** (has failed to comply with the intervention plan and has accumulated two or more additional unlawful absences) pursuant to R. 43-274: School officials **may** file an initial truancy petition as long as they have completed the written intervention planning with the parent(s) / guardian(s). If the parent(s) / guardian(s) do not cooperate with the intervention planning, the school district may refer the student to Family Court. The school district also shall file a report for educational neglect against the parent(s) / guardian(s) with DSS. The written intervention plan and documentation of non-compliance must be attached to the truancy petition and served on the student and the parent(s) or guardians (s). Informing parents and the child of the child's right to have legal representation is important at this point of the referral process. The referral must also specify any corrective action regarding the student and/or the parent(s) or guardian(s) that the district recommends that court adopt as well as any other available programs or alternatives identified by the school district.

Once a child is deemed to be a **chronic truant** (has been through the school intervention process, has reached the level of a “habitual” truant, has been referred to Family Court and placed on an order to attend school, and continues to accumulate unlawful absences) pursuant to R. 43-274: School officials may refer the student to Family Court for violation of previous court order. The school and district must exhaust all reasonable alternatives prior to petitioning the Family Court to hold the student and/or the parent(s) or guardian(s) in contempt of court. Any petition for contempt of court must include a written report from the school district indicating: the corrective actions / intervention plans that were attempted by the school district; What graduated sanctions or alternatives to incarceration are available to the court in the community; and its recommendation to the court should the student and/or parent(s) or guardian(s) be found in contempt of court.

Family Court Role

Family court should be used as a last resort for a child that is truant. State School Board Regulation R 43-274 stipulates that no child be referred to the Family Court to be placed under an order to attend school unless the intervention planning process has been completed with the parent or guardian and child. A family court judge will review information from school officials regarding the child's absences and remedies that were sought. A referral to family court may occur if the student and/or parent or guardian fail to comply with the intervention plan and the student accumulates two or more additional unlawful absences. The student now becomes a "habitual" truant. Each court referral must include a copy of the intervention plan and specify corrective action requested by the court. A judge may then place a student on an order to attend school. As a student may continue to be unlawfully absent after coming before the court, that student will be a "chronic" truant and may be held in contempt of court for not obeying a previous order of the court.

DJJ Responsibility

The Department of Juvenile Justice completes an intake assessment of most children that have been served a petition to come to family court. In most counties, children petitioned for first time truancy do not go through an intake with DJJ. The most common practice is that school officials bring in first time truant cases to court without the involvement of DJJ. If a child reaches the level of being held in contempt of court for not obeying a school attendance order, then most school districts refer the case to DJJ for an intake assessment to take place. If a child is placed on probation by a family court judge for being truant or if that child is committed to a DJJ institution by a family court judge, then the county DJJ probation officer will monitor that child's probation or commitment order.