

Lawful and Unlawful Absences

WHEN IS AN ABSENCE LAWFUL?

- When a student is ill and attending school would be harmful to the student's health, or could harm others.
- When the absence is due to a death or illness in the student's immediate family.
- When the student is observing a recognized religious holiday of his or her faith.
- When the student is attending an activity approved in advance by the principal.

WHEN IS AN ABSENCE UNLAWFUL?

- When the student is absent without the knowledge of his or her parent/guardian.
- When the student is absent with the knowledge of his or her parent/guardian but without an acceptable cause.
- While a suspension is generally not an unlawful absence for truancy purposes, the suspension may be an unlawful absence if a student has previously been placed under a court order for truancy.

ARE THERE ANY OTHER "UNLAWFUL" ABSENCES?

- School districts may define additional lawful and unlawful absences. Contact your school for specific policies.
- School district policy may require a doctor's excuse for an absence due to illness to be counted as lawful, particularly when such absences are frequent or lengthy.
- It is up to the school district whether a student who has more than 10 total absences (lawful or unlawful) will receive credit for the school year.

Truancy

WHO IS A TRUANT?

- A truant is a child at least 6 but not yet 17 who has three unlawful absences in a row or a total of five unlawful absences during the school year.

WHAT IS AN ATTENDANCE INTERVENTION PLAN?

- The school is required to create a written plan to address the student's unlawful absences without court involvement. The student and his

or her parent/guardian must assist with developing the plan. This plan will identify ways that the student, family, and school will work together to increase the student's school attendance.

- If a parent/guardian refuses to cooperate, the student and parent/guardian may be sent to court for truancy, and a report will be filed against the parent/guardian with DSS for educational neglect.
- If the attendance intervention plan is not successful and the student accumulates two or more additional unlawful absences, the school may send the student and parent/guardian to family court for truancy.

Court Order for Mandatory School Attendance

HOW MAY I BE PLACED UNDER A COURT ORDER FOR TRUANCY?

- The school will file a truancy petition with the court and attach a copy of the student's attendance intervention plan.
- The student and parent/guardian are scheduled to go to court so that a judge may address the student's school attendance. The student must continue to attend school prior to the court date.
- The student and parent/guardian may hire an attorney or request to be appointed an attorney for this hearing if they cannot afford one. They may also choose to go to court without an attorney.
- In court, a school attendance staff member will testify about the unexcused absences and the attendance intervention plan. The student, his or her parent/guardian, or lawyer may respond in accordance with court rules.
- There is no jury in family court and the case is heard by a judge. The judge must determine whether the student failed to comply with the attendance intervention plan, has accumulated two or more additional absences, and is a truant.
- If so, the judge will order that the student must not have any more unlawful absences, and may make additional orders, such as that the student must not have any discipline referrals, tardies, or class cuts.



DOES THE COURT ORDER APPLY TO ME? HOW LONG DOES IT LAST?

- The court order applies to both the student and the student's parent/guardian. How long the court order lasts is up to the judge and may last until the child's 18th birthday. A student who has been court-ordered to attend school until his or her 18th birthday may not drop out of school at age 17.
- When a younger child is truant, the judge is typically focused on the compliance of the parent/guardian. When an older child is truant, the judge is typically focused on the compliance of the student. However, cases may be different depending on the circumstances.

How to Comply with the Court Order

HOW DO I COMPLY WITH AN ATTENDANCE ORDER BY THE COURT?

- A copy of the court order should be given to the student and parent/guardian after court.
- The student and parent/guardian should both read the order and speak with the student's lawyer after court about what it means.
- Once placed under an attendance order, the student is not allowed to have any more unexcused absences.
- Parents/guardians and students should speak with their school attendance officer about what will be considered an excused absence now that the student is under a court order.
- If a student does make an error and violate the court order, he or she should not become reckless and start skipping even more school. A judge will generally show more mercy to a student with one violation than with many.

This is not all the information you need to know about school attendance laws. You may need to speak to a lawyer about your individual situation. You may also want to contact your school administration or attendance office for district-specific policies or unusual situations.

WHAT SHOULD I DO IF I'VE BEEN PLACED UNDER AN ATTENDANCE ORDER?

- A student should go to school if suffering from a minor discomfort like a headache or cramps. School attendance laws only allow an absence for illness when attendance would endanger the student's health or harm others. A student may ask to see the school nurse or administrator if needed.
- Many schools require a student who is under a court order to attend school to provide a doctor's excuse for any absence due to illness, and will no longer accept a parent note. This means that the school must receive a written letter from a medical professional stating that the child was seen in their office for an illness, and that the child was unable to attend school on the date that the child missed due to the serious nature of the illness.
- Many schools require that they receive the doctor's note within a certain time period, so the parent/guardian and student should present the note to the school attendance office on the date that the student returns to school.
- A student whose illness typically does not require a doctor's appointment, such as a virus, should call the school attendance officer and ask what to do. It may be necessary for the student to appear at the school and request to be excused by the school nurse or an administrator.
- A student whose family is financially unable to afford a doctor's visit should contact the school district social worker or attendance officer for assistance.

Failure to Comply with the Court Order

WHAT HAPPENS IF I DON'T COMPLY WITH THE COURT ORDER?

- If a judge finds that a parent/guardian has violated the order, he or she may be held in contempt of court and ordered to pay a \$50 fine or serve thirty days in jail for each unlawful absence the child had.
- If a judge finds the student has violated the school attendance order, the student may be held in contempt of court and placed on probation or sentenced to the Department of Juvenile Justice for up to 90 days. The student may be sentenced to reside at a group home or other alternative placement, or may be ordered to have a psychological evaluation.
- A student who still has unlawful absences after being sentenced by the court and completing his or her sentence may be charged with truancy again and punished again until the student stops having unexcused absences, the court order expires, or the student turns 18.
- A parent/guardian who continues to be responsible for a student's unlawful absences may also be charged and sentenced for contempt of court repeatedly, and may lose custody of their child.
- A student who continues to have unlawful absences after being sentenced to probation may also be charged with and sentenced for violating probation.

This project was supported by Federal Grant # 2011-JB-FX-0045 & 2012-JB-FX-0031 awarded by the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice through the South Carolina Department of Public Safety. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions contained within this document are those of the author and do not represent the official position or policies of the U. S. Department of Justice.

Truancy and the Family Court Process in South Carolina



What Students and Their Parents or Guardians Need to Know About School Attendance Laws

CHILDREN'S LAW CENTER
University of South Carolina
School of Law
Columbia, SC
(803) 777-1646
<http://childlaw.sc.edu>
2015