



The Children's Law Center serves as a statewide resource center for attorneys and other professionals involved in juvenile justice and child protection court proceedings. The Children's Law Center is a program of the University of South Carolina School of Law.

Resource attorneys at the Children's Law Center are available to provide general technical assistance regarding family court procedure and discuss legal issues with attorneys who represent children in family court cases. Numerous publications addressing juvenile justice and child protection issues are also available on the Center's website.

For more information or to schedule a training session, contact the Children's Law Center at (803) 777-1646 or visit the Children's Law Center website at <http://childlaw.sc.edu>.

Truancy and Educational Neglect

This informational packet provides an overview of the handling of school absenteeism related to truancy and educational neglect. It is designed for professionals, including child protection staff, guardians ad litem, foster parents, and mental health providers, who may participate in an intervention plan developed by the school or support school and agency efforts to improve a child's attendance in other ways.

A more detailed overview of state laws and regulations regarding truancy, along with intervention strategies, can be found in the Children's Law Center publication titled *Truancy Guide - A Training and Resource Manual for Truancy Intervention*. This guide is available on the Children's Law Center's website.

PART ONE: 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.

In South Carolina, attendance and truancy issues are governed by S.C. Code Ann. §§ 59-65-10 through -280 and 24 S.C. Code Ann. Regs. 43-274 (hereinafter Reg. 43-274). 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.

PART TWO: 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.

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

"Child abuse or neglect"...occurs when the parent, guardian, or other person responsible for the child's welfare...fails to supply the child with...education as required under Article 1 of Chapter 65 of Title 59...However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate.¹

For purposes of child abuse and neglect laws, a child is defined as a person under the age of 18.² 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.³

Parents' Responsibility

- 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. § 59-65-30.⁴
- 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.⁵
- 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.⁶ 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 parents' 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:

- The child is too young to be held responsible for his or her own regular school attendance.
- The parents do not respond to requests by school officials to meet regarding the child's attendance problems.
- The parents appear apathetic about school attendance and make no effort to work with the school to encourage the child's future attendance.
- The parents refuse to cooperate with an intervention plan instituted by the school to address the child's continued absence from school.
- 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:

- 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; or
- Parent appears to be indifferent to child's needs.

School's Responsibility in Educational Neglect Cases

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; and
- 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.

Reports to DSS

If efforts to work with the parents have failed to correct the attendance problem due to the parent's refusal to cooperate, school personnel, as mandated reporters must make a report to the Department of Social Services (DSS) in the county of the child's legal residence.⁷

The school district is not authorized to petition the court directly under the child abuse and neglect statute. DSS 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 by law 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 to make such reports.⁸ Additional information regarding responsibilities of mandated reporters can be found in *Information for Mandated Reporters* available on the Children's Law Center's website.

It is helpful to DSS if the following information is included with the report: child's name, age, date of birth, address, and present location if known; names and ages of siblings; and parents' or guardians' names and addresses. The report should also include information about the child's attendance; any other reasons that cause you to be concerned about the child; and a detailed account of the school's efforts to obtain cooperation from the parents, including dates and times of meetings, phone calls, and letters.

DSS's Responsibility

Upon receipt of a report, DSS will assess whether it meets the statutory definition of child abuse or neglect. A report of educational neglect should include information regarding:

- Child's excessive absences from school;
- Efforts by the school to bring about satisfactory attendance; and
- Parents' failure to cooperate with the school.

DSS must begin an investigation within 24 hours of receiving a report to determine if the allegations have merit.⁹ DSS has the authority to interview the child and other children in the household outside the presence of the parents. DSS is also specifically authorized to interview children at school.¹⁰

DSS is required to notify the parents that a report has been received. Parents have a right to information contained in the report, except for the identity of the reporter.¹¹

The investigation must be completed within 45 days from receipt of the report. A single extension of up to 15 days may be granted by the DSS director for good cause shown. DSS will determine whether the report is "indicated" (i.e., supported by facts that warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred) or "unfounded" (i.e., there is not a preponderance of evidence to believe the child is abused or neglected).¹²

If the case is indicated, DSS will work with the parents to prepare a treatment plan, 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 while 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.¹³

DSS can also petition the court for removal of the child at any time during the investigation if the child is at risk of substantial harm. 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.¹⁴

PART THREE: Truancy

Truancy Defined

Reg. 43-274 outlines the state requirements for school attendance and 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 or 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 on 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 truant 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, and substance abuse and prevention, as well as other persons deemed appropriate.¹⁵

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 and other intervention team members; actions to be taken should unlawful absences continue; and guidelines for making revisions to the plan.¹⁶

Underlying Causes and Solutions

In order to effectively address truancy, the underlying problems and causes of the truant 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. Community factors, such as economic conditions and differing culturally-based attitudes toward education, are included in the four identified areas.¹⁷

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

Family Factors

- Family factors include:
 - Lack of guidance or parental supervision
 - Domestic violence
 - Drug or alcohol abuse in the home
 - Lack of awareness of school policies and attendance laws

- Ambivalent attitudes about the importance of education
- 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 school attendance and educational neglect laws. Make sure parents have a clear understanding of their legal obligations and what can happen if they do not make their child attend school.
 - Parents are required by law to ensure their children regularly attend school.¹⁸
 - If convicted of violating South Carolina's compulsory school attendance laws, parents can be fined up to \$50 or put in jail for up to 30 days for each absence.¹⁹
 - 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.²⁰

Economic Influences

- 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
- Suggested interventions:
 - Adopt alternative schedules for high school students who are employed 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.

School Factors

- School factors include:
 - School size and overcrowded classrooms
 - Attitudes of teachers, other students, and administrators
 - Limited 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

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

Student Variables

- Student variables include:
 - Academic problems and learning difficulties
 - Drug and alcohol abuse
 - Lack of understanding of attendance laws
 - Poor social skills
 - Mental health issues
- Suggested interventions:
 - Develop attendance workshops for truant students.
 - Make sure 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), school officials **may** file an initial truancy petition as long as they have completed the written intervention planning with the parent(s) or guardian(s). If the parent(s) or guardian(s) refuse to cooperate with the intervention planning, the school district may refer the student to family court and a report for educational neglect must be filed against the parent(s) or 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 guardian(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 or the parent(s) or guardian(s) the district recommends that the court adopt, as well as any other available programs or alternatives identified by the school district.²¹

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), school officials may refer the student back to the family court for violation of a 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 attempted by the school district; the graduated sanctions or alternatives to incarceration available to the court in the community; and the school district's recommendation to the court should the student and/or parent(s) or guardian(s) be found in contempt of court.²²

Family Court Role

Family court should be used as a last resort for a child who is truant. Reg. 43-274(D) stipulates that no child be referred to the family court to be placed under an order to attend school unless the school has completed the written intervention planning with the parent or guardian and child.

If a child is referred to family court for violating the compulsory school attendance law, the child and the parents will be required to appear before the family court judge on a specified date for the initial truancy hearing. At this hearing, the judge will usually place the child and parents under a school attendance order. If the child and parents comply with the court order, there will be no further intervention by the court. However, if the child or parents violate the court order, they may be charged with contempt of court and required to return to the family court.

DJJ's Responsibility

The Department of Juvenile Justice completes an intake assessment of most children who have been served a petition to come to family court. In most counties, children referred to family court for first time truancy violations do not go through intake with DJJ. The most common practice involves school officials bringing first time truant cases to court without the involvement of DJJ. If a child is charged with contempt of court for not obeying a school attendance order, the case will likely be referred to DJJ for an intake assessment. If a child is placed on probation by a family court judge for being truant, the county DJJ probation officer will monitor that child's probation.

Endnotes

- ¹ S.C. Code Ann. § 63-7-20(4)(c).
- ² S.C. Code Ann. § 63-7-20(3).
- ³ S.C. Code Ann. § 63-7-20(16).
- ⁴ S.C. Code Ann. § 59-65-10(A).
- ⁵ *Id.*
- ⁶ S.C. Code Ann. § 59-65-20.
- ⁷ S.C. Code Ann. § 63-7-310(B), 24 S.C. Code Ann. Regs. 43-274(D).
- ⁸ S.C. Code Ann. § 63-7-310(A).
- ⁹ S.C. Code Ann. § 63-7-920(A)(1).
- ¹⁰ S.C. Code Ann. § 63-7-920(C).
- ¹¹ S.C. Code Ann. §§ 63-7-920(D), -330(A).
- ¹² S.C. Code Ann. §§ 63-7-920(A)(1), -20(11),(24).
- ¹³ S.C. Code Ann. §§ 63-7-1650, -1670.
- ¹⁴ S.C. Code Ann. § 63-7-620(A)(1).
- ¹⁵ 24 S.C. Code Ann. Regs. 43-274(C).
- ¹⁶ *Id.*
- ¹⁷ Baker, Myriam L., Sigmon, Jane Nady, and Nugent, M. Elaine, 2001. *Truancy Reduction: Keeping Students in School. OJJDP Juvenile Justice Bulletin, September 2001.*
- ¹⁸ S.C. Code Ann. § 59-65-10(A).
- ¹⁹ S.C. Code Ann. § 59-65-20.
- ²⁰ S.C. Code Ann. § 63-7-20(4)(c).
- ²¹ 24 S.C. Code Ann. Regs. 43-274(D)(1).
- ²² 24 S.C. Code Ann. Regs. 43-274(D)(2).