

MDJ TRUANCY COMPLIANCE CHECKLIST

August 2023

The purpose of [Act 138 of 2016](#) is to improve attendance and deter truancy by consistently identifying and addressing attendance issues as early as possible with credible intervention techniques in order to preserve the unity of the family, avoid the loss of housing or entry of a child into foster care, or disruption of an intact family unit.¹ The law also seeks to ensure that the person in parental relation to a child who is considered to be habitually truant will only be subject to imprisonment as a last resort and only for the minimum amount of time.²

The Education Law Center has created a [Judge’s Guide to Attendance Barriers \(Truancy\) and Act 138](#) and a [screening tool for use by MDJs](#) to address truancy referrals. This checklist identifies common issues that arise for MDJs who adjudicated truancy matters. As a reminder, Act 138 provides as follows:

- Schools must provide the court with **written verification that they held a school attendance improvement conference**. The conference must result in a written attendance improvement plan that identifies and addresses the cause of attendance issues.³
- Schools **may cite either the child (15 or older) or the parent; not both**. This was clarified under Act 138 and MDJs should reject any duplicative citations.⁴
- A student or parent may **only be fined for *each citation*** filed by a school (defined as each “offense”) and cannot be fined for each day of unexcused absence.⁵
- **Schools may not file citations** in a magisterial district court against a child or person in parental relation if (1) a prior citation is pending before a magisterial court, (2) the school referred the child to CYS and the CYS case is still open, (3) CYS filed a petition for dependency.⁶
- Before entering a decision, a judge should allow the person in parental relation or the child to present information to assist the judge in making an informed decision.⁷
- **MDJs should consider a child’s disability or suspected disability and its relation to attendance** when considering justification of an absence. If a child’s absences are caused by or related to a child’s disability or unidentified need for special education services or accommodations, the child’s absences should be excused.⁸

- **Parents and students cannot be jailed for inability to pay fines.** MDJs should undertake an inability to pay determination before imposing fines.⁹
- The imposition of fines, jail time, or other allowable **penalties under the law is discretionary, not mandatory.**¹⁰ Such sanctions should only be imposed as a last resort and only after an inability to pay determination has been conducted.
- **Schools must prove “beyond a reasonable doubt”** that the student was habitually truant while subject to compulsory school attendance laws and that the absences were without justification. It is an affirmative defense to a citation if the person in parental relation took every reasonable step to ensure attendance of the child at school.¹¹
- MDJs can order or direct that a child’s **improper unexcused absences be expunged** from their education records.¹²

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 or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ See 24 P.S. § 13-1325.

² *Id.*

³ 24 P.S. § 13-1333(b)(3); PA Dept. of Education, [Basic Education Circular on school attendance](#).

⁴ 24 P.S. § 13-1333.1(b)(2).

⁵ 24 P.S. § 13-1326.

⁶ 24 P.S. § 13-1333.3(d).

⁷ 24 P.S. § 13-1333.2(c)-(h).

⁸ See *In re C.M.T.*, 861 A.2d 348, 355 (Pa. Super. Ct. 2004) (hearing court erred by failing to consider evidence that child’s disabilities may have been responsible for poor school attendance or that school failed to meet her special education needs).

⁹ See PA. R. CRIM. P. 456; 42 PA. CONS. STAT. § 9730(b).

¹⁰ 24 P.S. § 13-1333.3(a).

¹¹ 24 P.S. § 13-1333.2(c).

¹² 20 U.S.C. § 1232g; 34 CFR § 99.20.