

THE CHILDREN'S CORNER

Chronically Absent Students or Chronically Absentminded Policies? How Vermont Can Change its Truancy System to Keep Kids in School and Stop the School-to-Prison-Pipeline



It was a sun-drenched summer afternoon that I arrived at the courthouse to meet my clients, Jenny and Ben.¹ Jenny is the single mother of Ben, a stout ten year-old boy. Ben was diagnosed with Pervasive Developmental Disorder, a mild form of autism, at an early age and has been on an Individualized Education Plan (IEP) at school since he was six. Although a loving boy, he has presented many challenging behaviors throughout his life. His needs and behaviors, in addition to Jenny's own disabilities, have forced Jenny to drop out of a master's program and she is unable to maintain regular employment. It has never been easy.

On this particular day, the pair was in family court because Ben misses a lot of school. He regularly refuses to leave home when it is time to go to school and he is also sick more frequently than other students. He refuses to leave for a number of reasons: he's afraid to leave his mom alone, he is afraid of storms, and he fears being stung by bees. When he is not physically ill, it will typically take his mom three to four hours to get him to dress, eat, take care of basic hygiene needs, and leave for school. Throughout the mornings he will cry, become upset, throw things, undress, and simply refuse to leave.

Because of Ben's absences and late arrivals, his school sent a request to the local state's attorney's office asking that a "Child in Need of Care or Supervision" truancy (CHINS(D)) petition be filed in the family court. Under Title 33 of Vermont law, upon request of a school district's superintendent, the local state's attorney "shall" petition the court alleging a child is in need of care or supervision for being "truant."² Although "truant" is not specifically defined in Title 33, a child that is "habitually and without justification truant from compulsory school attendance" is a "child in need of care or supervision (CHINS)."³ Although some information usually accompanies the request, Vermont law does not require any specific information be provided or documented. Thus, a CHINS(D) petition can be filed based solely on a school superintendent's request.

In Ben's case, the one-page request for a truancy petition from Ben's guidance coun-

selor stated the number of Ben's absences and a list of the alleged actions taken by the school to reduce his absenteeism. The requesting affidavit did not mention whether his absences were excused or unexcused, what the causes of the absences were, or whether the absences were without justification, and did not provide documentation to show that the school's alleged actions had occurred.

Over the last three years, I have represented families in special education disputes where truancy petitions have been filed. Frequently, superintendents or other school officials make similarly short requests as that in Ben's case. And, upon very little information about the particular student's or family's needs, the state's attorney can and according to statute, "shall," file a petition with the court.⁴

Receiving a summons for truancy is a bewildering experience for my clients. Most are caught off guard by the referral to court. Many of them were working proactively and diligently with their school team to address the chronic absenteeism. They have participated in many meetings to discuss the issue and have offered possible solutions to reduce the absenteeism. Most have never been summoned to court before, let alone for a child protection or criminal matter. The parents are unsure of what to bring to court, what they should say, whether employers will find out, whether they will have a lawyer, and what it will cost. In addition, the families I have represented have all felt that the referral to court was either a punishment from their child's school or a way to pass the buck.

In Ben's case, the school team was well aware of his longstanding struggles with absenteeism. The team was also aware of his complex developmental disabilities, that his disability was a direct cause of his excessive absences, and that he was in a loving single-parent low-income household. Instead of providing and implementing detailed services to help, the school ignored Jenny's requests for meetings, refused to offer a transportation plan, did not follow up on promises made during meetings, and failed to provide adequate accommodations and services that would

help Ben get to school. Furthermore, the school failed to provide thorough psychological and behavioral evaluations to determine how Ben's disability was related to his absences and what could be done to reduce his absenteeism.

Under the Individuals with Disabilities Education Act (IDEA), schools are required to provide a Free Appropriate Public Education (FAPE) to all students with disabilities.⁵ Schools can meet this obligation by providing adequate evaluations, accommodations, services, and supports to students with disabilities in the Least Restrictive Environment (LRE).⁶ A common evaluation for special education students whose behavior is preventing them from accessing academics is known as a Functional Behavioral Assessment (FBA). The FBA examines the underlying issues causing the problematic behavior. That information allows an expert to advise school staff and parents on how they can overcome or prevent these behaviors. Unfortunately, Ben was not offered or provided an FBA, even when it was specifically requested.

So, Jenny and Ben sat in the courthouse waiting for the hearing to begin. Just before we entered the courtroom, Ben turned to his mother and said, "No one's going to take me away from you today, right?" Jenny explained that no one would be taking him away, at least she didn't think so. After everyone was seated in the courtroom, Ben looked around sheepishly, sometimes making animal noises. His mother, a bit shaken, collected herself to make her case if called upon. After a quick review of the underlying facts and scheduling of a follow-up status conference, the preliminary hearing was over. Frustrated, but relieved that it was over for the moment, Jenny and Ben left the courthouse to get ice cream.

Vermont Legal Aid has informally intervened as education counsel in several truancy cases across a few counties. What we have seen in these cases has been troubling. The families involved, most of whom are low-income or parenting children with disabilities (or both), suffer a great deal of stress, fear, and hopelessness. The children typically have emotional, learning, or developmental disabilities, and have included

parenting students and homeless students.

Commonly, the families feel they are being punished for the atypical needs of their children or criminalized for being poor and unable to send their children to a private school with adequate resources. Jenny felt this way. And, when Ben's case was dismissed without any additional connections to services or a concrete plan for improvement, she was left wondering why she had to go through a court process at all. Other families probably feel the same because the majority of truancy cases end with a withdrawal or dismissal.⁷

Across the country, tens of thousands of children are sent to court for truancy every year. The staggering number of children ending up in court for truancy, a non-criminal "status offense,"⁸ is problematic because there are well-understood psychological and social reasons to prevent vulnerable children from being stigmatized as "delinquents" or "truants."⁹ In addition, research shows that court appearances for youth misbehavior are correlated with a greater likelihood of school dropout, juvenile delinquency, and adult incarceration.¹⁰ In response, prominent institutions and figures have started questioning the necessity and appropriateness of court action in truancy cases. The U.S. Department of Justice,¹¹ Vera Institute of Justice,¹² and the American Bar Association,¹³ as well as juvenile justice advocates, judges, state's attorneys, state legislatures,¹⁴ and law schools¹⁵ have all recognized that court should not be the first response to chronic absenteeism.

To replace court-first approaches, these institutions have recommended pre-court school- and community-based diversion services. Although research on pre-court truancy diversion programs is only just starting to be produced,¹⁶ there are myriad robust studies regarding rapid diversion programs for delinquency. As compared with court-first models, both sets of studies show that diversion programs are cheaper, developmentally appropriate, more effective in preventing future court involvement, and ethical.¹⁷ Overall, diversion programs work because they have the flexibility and speedy services that struggling children and families need, but courts are not designed to provide.

Nationally, there are hundreds of local truancy diversion programs providing pre-court intervention services to students and families. New York, Maine, Minnesota, and other states have created statewide systems to ensure pre-court truancy diversion is attempted before children end up in court. The available programs provide a range of services, but usually include some combination of community and parent support, case management, training for all involved parties, progress monitoring, and options to mediate—all before an initial court appearance. The overarching goal of every approach is to find out what will get the child to access academics and to implement that approach immediately. By effectively preempting court involvement, these models also show families that the system is trying to work with them as equal partners, and only seeks justice system involve-

ment as a last resort.

In Vermont, we already have a county-based system of delinquency diversion programs because they provide accountability, meet the needs of young people quickly and effectively, reduce the use of overburdened courts, prevent future court involvement, and save money. In fact, from 2009 to 2013 Vermont saw a 17% reduction in delinquency cases, from 980 to 820.¹⁸ Alternatively, over that same period, the number of children brought to court for truancy has nearly doubled, from 73 to 134.¹⁹

The disconnect between the declining rates of delinquency and the doubling of truancy exists because Vermont has neglected to apply the approaches that we know work for delinquency in the truancy context. Although chronic absenteeism has been recognized as a problem by Vermont policymakers, no cohesive system or comprehensive policy exists. Additionally, despite the political urgency to address truancy statewide, there are very few viable truancy diversion programs due to a lack of resources. This vacuum has been filled in many counties by a consequence-based court-first approach.

Similarly, there is a lack of cohesive and comprehensive policies among local schools, resulting in broadly disparate treatment. For instance, prior to referring students to the state's attorney, some schools will proactively meet with families, provide home visits,²⁰ seek outside assistance, conduct evaluations, or determine whether the child's disability is causing the chronic ab-

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senteeism. Other schools offer little or no direct support. Some schools do not distinguish between excused and unexcused absences, despite Agency of Education guidance requiring them to do so,²¹ while other schools have very clear distinctions. Schools also have different consequences for truancy, such as being dropped off the school roster,²² detention and suspension, losing credits required for graduation,²³ being dropped from classes, and referral to DCF.²⁴ Schools even have widely differing policies on the exact number of missed days required to be deemed "truant."

Starting in 2014, at the direction of Vermont Legal Aid, a team of Northeastern Law School students began investigating Vermont's truancy system to determine how and why Vermont should address chronic absenteeism without a court-first approach. In a 130-page report, the team details the statutory scheme, state and local policies, service gaps, needs of young people, and impact of truancy policies on vulnerable populations. Based upon legal, policy, and social research, as well as interviews with Vermont stakeholders, the report concludes with specific recommendations for the Vermont legislature, Agency of Education, Vermont judiciary, and schools.

Most important among these recommendations, is that Vermont create a statewide system to address truancy that is oriented towards the best interests of the child. To do this, the Northeastern team suggests that Vermont establish standard definitions for excused and unexcused absences, create comprehensive model policies that include pre-court school- or community-based interventions, implement consistent useful data collection around absenteeism, and fund truancy diversion programs in every county. In addition, Vermont Legal Aid recommends requiring schools to provide documentation of attempted intervention services, reasons why the absenteeism is not justified, and confirmation that a disability is not a substantial cause of the child's absenteeism before a truancy petition can be filed.

In addition to a variety of projects, policies, and statutes across the country, there are several homegrown models of truancy diversion that Vermont can replicate. For example, Lamoille County has had great success with the Lamoille Valley Truancy Project, which provides case management and direct assistance to students and families through the Lamoille Restorative Center. In 2010, the Truancy Project served 313 students and families, with only four cases requiring court intervention.²⁵ Bennington County's Center for Restorative Justice also has a pre-court truancy program that provides case management, identifies barriers, and integrates community services.²⁶

It is in everyone's short- and long-term

interest to keep kids out of court and encourage greater school attendance. To accomplish this goal, Vermont must update its laws and support communities in the creation of pre-court truancy diversion services. These programs will enable us to maximize the attendance of our most vulnerable children while lessening the burden on struggling families and our courts.

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¹ The clients' names have been changed to protect their identity.

² 33 V.S.A. § 5309(a).

³ 33 V.S.A. § 5102(3)(D).

⁴ 33 V.S.A. § 5309(a).

⁵ See 34 C.F.R. § 300.101(a).

⁶ See 34 C.F.R. § 300.114(a).

⁷ See 2013 Family Division Statistics, available at <https://www.vermontjudiciary.org/JC/Shared%20Documents/2013-Family.pdf>.

⁸ "Status offense" refers to an offense that is non-criminal and is only punishable based upon the individual being below a certain age. Truancy is one of several status offenses such as running away, alcohol consumption, and curfew violations.

⁹ Nathaniel Ascani, *Labeling Theory and the Effects of Sanctioning on Delinquent Peer Association: A New Approach to Sentencing Juveniles*, available at http://cola.unh.edu/sites/cola.unh.edu/files/student-journals/P12_Ascani.pdf; Jessica Kendall, *Juvenile Status Offenses: Treatment and Early Intervention*, Technical Assistance Bulletin No. 29, American Bar Association Division for Public Education, available at <http://www.americanbar.org/content/dam/aba/migrated/publiced/tab29.authcheckdam.pdf>.

¹⁰ Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23(4) *Justice Quarterly* 462, 477-478 (Dec. 2006), available at http://www.masslegalservices.org/system/files/library/H.S.ed_and_arrest_-_ct_involvement_study_by_Sweeten.pdf; Texas Appleseed, *Class, Not Court: Reconsidering Texas' Criminalization of Truancy*, available at http://www.njpn.org/uploads/digital-library/TX_TexasAppleseed_TruancyReport_April-2015.pdf; Anna Aizer, *Juvenile Incarceration & Adult Outcomes: Evidence from Randomly-Assigned Judges*, available at http://www.law.yale.edu/documents/pdf/LEO/J.Doyle.swingjudges_03032011.pdf.

¹¹ *Justice News*, Office of Public Affairs, Department of Justice, March 31, 2015, available at <http://www.justice.gov/opa/pr/department-justice-announces-investigation-dallas-county-truancy-court-and-juvenile-district>.

¹² www.statusoffensereform.org/.

¹³ *Report on Truancy and Dropout Prevention*, Vol. 2, No. 9, ABA Commission on Youth at Risk, available at http://www.americanbar.org/publications/gpsolo_ereport/2013/april_2013/executive_summary_report_truancy_dropout_prevention.html.

¹⁴ "West Virginia Loosens Anti-Truancy Laws," *The Marshall Project*, March 27, 2015, available at <https://www.themarshallproject.org/2015/03/27/west-virginia-loosens-anti-truancy-laws>.

¹⁵ "Why Truancy Cases Shouldn't Be Handled in Court," *Status Offense Reform Center*, available

at <http://www.statusoffensereform.org/blog/truancy-cases-shouldnt-handled-court>.

¹⁶ *Trevis Killen, Project Reconnect Program: Engaging Truancy Adolescents through Pre-Court Diversion*, Spring 2014, available at <http://digitalcommons.georgiasouthern.edu/cgi/viewcontent.cgi?article=1968&context=etd>; Bret Blackmon, *Reducing Juvenile Justice Involvement Through a Childhood Truancy Intervention*, May 2014, available at http://etd.lsu.edu/docs/available/etd-03312014-143918/unrestricted/diss_Blackmon.pdf.

¹⁷ Annie Salsich, *From Courts to Communities: The Right Response to Truancy, Running Away, and Other Status Offenses*, Dec. 2013, available at <http://www.statusoffensereform.org/wp-content/uploads/2013/12/from-courts-to-communities-response-to-status-offenses.pdf>.

¹⁸ See 2009 Family Division Statistics, available at <https://www.vermontjudiciary.org/JC/Shared%20Documents/2009-Family.pdf> compared to 2013 Family Division Statistics, available at <https://www.vermontjudiciary.org/JC/Shared%20Documents/2013-Family.pdf>.

¹⁹ See *id.*

²⁰ See Elm Hill Primary School Parent/Student Handbook 18-19, 2015, available at <http://www.ssdvt.org/main/wp-content/uploads/2014/07/2014-15-Elm-Parent-Student-Handbook.pdf>.

²¹ See Elementary/Secondary School Register 2014/2015, Vermont Agency of Education, available at http://education.vermont.gov/documents/EDU-Data_Collection_Elementary_Secondary_School_Register.pdf.

²² See Franklin Northwest Supervisory Union Focused Monitoring Report, 23-24, March, 2013, available at http://education.vermont.gov/documents/EDU-Focused_Monitoring_2013_Franklin_Northwest.pdf.

²³ See Rutland High School Student Handbook, available at http://rhs.rutlandcitypublicschools.org/files/2008/12/stu_handbook_1112.pdf.

²⁴ See Montpelier High School Student Handbook, 3-4, available at http://www.mpsvt.org/images/stories/MPSDocuments/MHS_Handbook14-15.pdf.

²⁵ Lamoille Valley Truancy Project, Lamoille Restorative Center website, available at http://www.lrcvt.org/index.php?option=com_content&view=article&id=13&Itemid=25.

²⁶ Bennington Center for Restorative Justice, available at <http://www.bcrj.org/programs/>.



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