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Suit challenges Truancy Court

By Jack Dew
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The complaints started flowing into the local and national offices of the American Civil Liberties Union at the same time, with parents angered at their treatment by the truancy courts that operate in Rhode Island's public schools.

The parents complained that their children were sometimes threatened with incarceration, that their rights were not clearly explained, and that the courts seemed to operate with a baffling set of arbitrary rules.

The Truancy Court was created as a branch of the Family Court in an effort to provide at-risk students with quick and efficient access to services they needed to stay in school. By holding hearings in the schools with specially appointed magistrates, the courts seemed designed to help students find the right path and stay on it without disrupting their education.

But in a Superior Court lawsuit filed on March 29, the ACLU alleges that the courts have strayed from that mission. The suit claims that six school districts now use the courts as a "disciplinary device ... for children who may have difficulty attending school or are unable to do their schoolwork because of special education or medical needs or caretaking obligations at home."

The suit claims that the truancy courts have deprived students of a host of rights, including the right to consult an attorney and to have one appointed for them. [The full text of the complaint can be found by clicking here.](#)

The suit is seeking class certification and is asking the court to grant declaratory and injunctive relief.

Thomas W. Lyons of Strauss, Factor, Laing & Lyons in Providence is one of the attorneys representing the plaintiffs. He spoke with Lawyers Weekly's Jack Dew about the case last week.

Q. When the parents approached the ACLU, what were their complaints?

A. A variety of things. They were being threatened with having their children taken away from them, not being able to get their children out of Truancy Court even though they had been attending school on a regular basis. There was no understanding of how to get out of the program or what was going on.

Q. Why was it so confusing?

A. As we understand it, what happens is the schools make decisions as to who is going to be referred to Truancy Court and then arrange to have whatever paperwork is served on them to be served by a school truancy officer. Part of our complaint is that, in some cases, the correct paperwork hasn't even been served.

Q. What would happen at the hearing?

A. What often happens is that, prior to the hearing, there was ex parte communication between school officials and the magistrate as to what the allegations are with respect to the children.

So the parents don't know beforehand what they are up against and sometimes don't find out what is going on until they are in the midst of the hearing. Oftentimes, the allegations have nothing to do with truancy. Oftentimes, it either begins with or evolves into an issue of whether or not a student is going to his or her homeroom or whether or not he or she is behaving in class.

Q. What power does the court have?



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A. Our understanding is that one or more of the magistrates have in fact ordered children taken out and put in the juvenile detention center. So they have on occasion exercised a great deal of power.

Q. Were the kids represented by an attorney?

A. In theory, they are supposed to be. If this were a hearing in Family Court on a waywardness petition, they would be entitled to counsel, and that is one of the claims being set forth here — that they are entitled to counsel, and either they have not been apprised of their rights or have not knowingly waived them.

Q. Is there some form of the Truancy Court that you and the plaintiffs think is viable?

A. That is presently going to be the subject of some discussion with the defendants who have expressed an interest into whether this can be resolved. How can it function? At this point, I would say that we are probably not in a position to set forth a proposal for resolving the case, other than to say that [the court] comply with the constitutional requirements of due process.

Q. Are you at all concerned that the suit will deprive the system of a tool that can help educators reach troubled students?

A. I'll speak personally. My impression is that much of what is referred to Truancy Court are things that should be handled by either guidance counselors or vice principals at these schools. In my personal view ... it appears that, to some extent, the Truancy Court has become kind of a dumping ground for students or parents that the schools don't want to deal with in the usual way.

The schools are the ones who define what constitutes truancy, and they determine what constitutes an inexcusable absence. They are also the ones who decide which student will be referred to the truancy courts. The parents we have spoken to have told us that it appears to be a highly subjective process. You have some kids whose absences aren't referred, and we have one parent whose child missed two days of school and was referred [to the court].

Q. Shortly after this suit was filed, Judge Jeremiah S. Jeremiah announced that he was retiring. Since he was the founder of the Truancy Court program, do you think there is a connection?

A. I have no idea. I understand that he has said there is not, and I would, at least for now, take that at face value because I have no other information.

Q. What has the reaction to the lawsuit been?

A. There have been two reactions: One, the publicity has prompted a number of additional phone calls from parents whose children are involved in the Truancy Court and who are interested in getting involved in the case. We are looking at whether or not to add additional plaintiffs and whether or not it would involve suing additional school districts. And some defendants' counsel have expressed an interest in sitting down and talking about whether or not this case can be resolved without significantly more litigation.



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