

2016 TRUANCY PROTOCOL – 12th Judicial District

The primary goal of this truancy protocol is to provide to the School Districts and respondent parents and students an opportunity to resolve the issues regarding a student's attendance in an effective and prompt manner so that each student is receiving an education as required by statute. To further this goal, the protocol establishes procedures for the parties when judicial proceedings are necessary. Judicial proceedings are, themselves, designed to address problems affecting the student's school attendance and to ensure the student has an opportunity to obtain a quality education. Thus, the judicial proceedings culminate in the entry and enforcement of orders intended to further these goals.

The protocol begins with an introduction and overview of the law governing truancy. The protocol then describes the preliminary requirements a School District must meet before it initiates judicial proceedings. Judicial proceedings are broken into two stages. In the first stage, the district seeks a court order compelling the student to attend school. Most cases end with the Court entering an order compelling attendance. But, if the student or parents do not comply with this order, the proceedings may enter a second stage. The second stage is a contempt proceeding designed to secure compliance with the order (Remedial Contempt) or to punish a violation of the order (Punitive Contempt).

INTRODUCTION

Colorado's School Attendance Law of 1963, found at C.R.S. § 22-33-101 *et. seq.* outlines the procedures to be followed in truancy matters. The School Attendance Law requires that each child between the ages of 6 and 17 attend public school unless otherwise excused. It is the obligation of every parent to ensure that every child under the parent's care and supervision between the ages of 6 and 17 be in compliance with this statute. *See* C.R.S. § 22-33-104.

Colorado law requires each board of education to adopt a written attendance policy setting forth the district's attendance requirements, and this attendance policy must explain what the School District classifies as an excused absence. C.R.S. § 22-33-104(4). Each board's attendance policy must determine the maximum number of unexcused absences a student may incur before the attorney for the School District, the attendance officer, or the local board of education may initiate judicial proceedings under C.R.S. § 22-33-108. Further, the law requires each district to work with individual students who are "habitually truant" by developing a plan, with the assistance of appropriate school personnel, the parent or guardian of the student and the student, to assist the student to remain in school. C.R.S. § 22-33-107(3)(b). (A student is habitually truant if the student between the ages of 6 and 17 years incurs an unexcused absence for more than 4 days in a single month or 10 days in any school year. C.R.S. § 22-33-107).

A. PRELIMINARY REQUIREMENTS BEFORE INITIATING JUDICIAL PROCEEDINGS

Once a School District determines that a student is having unexcused absences from school, but before the School District starts judicial proceedings, the School District must first comply with these preliminary requirements:

1. The School District must develop a plan with interventions and strategies to assist the student to remain in school. To the extent possible, the School District should develop this plan with the participation of the student's parent, guardian, or legal custodian. In seeking their participation, the School District shall make reasonable efforts to meet with the parent, guardian, or legal custodian of the student to review and evaluate the reasons for the student's truancy.
2. The School District must determine that the student has continued to be habitually truant after the district created and implemented the plan, described above, and after the district has exhausted all other reasonable alternatives in assisting the student to remain in school.
3. The School District must provide written notice to the student's parent, legal guardian, or legal custodian that the School District will initiate judicial proceedings if the student does not comply with the attendance requirements of state law. (See Attachment 1 - Sample Letter.)
 - a) The notice must state the provision(s) of the statute with which compliance is required and must state that the School District will not file a truancy case if the student complies with the provision(s) before the filing of the petition. The notice should include a deadline for the student to comply.
 - b) The notice must state that if the student does not start attending school by the School District's deadline, then the School District may initiate judicial proceedings.
 - c) The notice may be mailed or hand-delivered. The School District must file a copy of the notice with the court, and in addition to being mailed or hand-delivered, must be served on the student and parents along with the Petition to Compel Attendance and the Summons To Appear and Notice of Petition To Compel Attendance.

B. INITIAL JUDICIAL PROCEEDINGS PETITION TO COMPEL ATTENDANCE

To initiate judicial proceedings, the School District must file a Petition to Compel Attendance and must have the petition, the summons, and the notice letter served on the student and the parents.

1. The Petition must state that the student is subject to the school attendance laws; has failed to attend school as required by the statute; that the notice to the parents and student has been given; and that the student and/or parents have failed to insure that the student is in attendance. (See Attachment 2 - Petition to Compel Attendance.)
2. The School District must include evidence of the following with the Petition:

- a) “The child’s attendance record prior to and after the point at which the child was identified as habitually truant”;
 - b) “Whether the child was identified as chronically absent and, if so, the strategies the School District used to improve the child’s attendance”;
 - c) “The interventions and strategies used to improve the child’s attendance before school or School District personnel created the child’s plan described in section 22-33-107”; and
 - d) “The child’s plan and the efforts of the child, the child’s parent, and school or School District personnel to implement the plan.” C.R.S. 22-33-108(5)(d).
3. The School District must file the Petition with the Court Clerk’s Office of the county in which the School District is located. At the time the Petition is filed, the Court Clerk will assign a case number to the case and will give the School District the date and time for the first court date. In addition, if the School District does not have a lawyer representing it, the Court Clerk will issue the Summons to Appear on the form the School District will have completed and provided to the Court Clerk. (See Attachment 3 – Summons to Appear and Notice of Petition).
 4. The School District should inform the Court Clerk if the primary language of either parent or the student is something other than English so an appropriate court interpreter can be scheduled for the first court date.
 5. The School District must have the Petition to Compel Attendance, the Summons to Appear and Notice of Petition to Compel Attendance, and the notice of intent to start judicial proceedings served on the parents of the truant student **at least 5 days before the court date**. The School District must submit proof of service of the Petition to Compel Attendance and the Summons to the Court before any orders will enter. (See Attachment 16 - Return of Service.) Instead of proof of service, the School District can submit a waiver of service signed by the parents. (See Attachment 17 – Waiver and Acceptance of Service.) The Court cannot take any action on the case until the district provides proof of service or a waiver of service to the court. It is the School District’s responsibility to complete the service of the paperwork and provide the return of service. The School District may bring proof of service to court at the time of the hearing.
 6. The Court requires that **at every hearing** the School District will prepare and present a report concerning the juvenile’s attendance and attempts to obtain the juvenile’s compliance with the School Attendance Law. (This report is called a “Valid Court Order Written Report.” For the appropriate JDF 562 form, see Attachment 4.)
 7. At the first court hearing, the Court will advise the parents and juvenile of their rights. It is helpful to the Court if the School District can provide the advisement form to the parents prior to the court hearing so they can read and sign it. (See Attachment 5 –

Advisement of Rights.) The advisement form must advise the parties of their right to have counsel, their right to have a hearing on the petition, and any possible penalties the court may impose including jail and/or detention.

8. If the parent(s) and student agree to admit the Petition and if they agree to have an Order enter compelling the student to attend school, the School District can prepare a Stipulation to that effect and provide it to the Court on the day of the hearing. (See Attachment 6 - Stipulation and Attachment 7 - Valid Court Order Compelling Attendance) If the parent(s) and the student are going to agree to such an order, the Court prefers that the agreement be in writing, that the agreement be signed by all parties before the hearing begins, and that the agreement include all the conditions.
9. If the parent(s) and/or student object to the Court ordering the student to attend school, the Court will set a hearing on the Petition for a later date. At that hearing, the School District will have the burden to prove beyond a reasonable doubt that the child has failed to attend school as required by law and is habitually truant.
10. After a hearing on the Petition or an admission, the Court, in its discretion, may enter an order, such as the following:
 - a) The Court may enter an order against the student or the student's parent(s) or both, compelling the student to attend school as provided by statute or compelling the parent to take reasonable steps to assure the student's attendance. Such orders do not enter for students under 10 years of age because they lack culpability; in that case, the order would be directed to the parent(s) only.
 - b) The Court may order the student or parent(s) or both to follow an appropriate plan to achieve the goals of the statute. If the School District wants the Court to order the child or parent(s) to comply with a plan, the School District should make this request in conjunction with the request that an order enter compelling attendance.
 - c) If the School District wants the Court to order the student and/or parent(s) to comply with a treatment plan, which is a plan designed to help the student and parents comply with the School Attendance Law, the School District should discuss the plan with the parties before the hearing. Even if the parents and/or student do not agree to a treatment plan, the School District may ask the Court to order compliance with such a plan if it will assist the family with the issues that are creating barriers to the student attending school.
11. The Court requires the School District to provide the Court with a proposed order compelling attendance before or **at the time of hearing**. (See Attachment 7 – Valid Court Order Compelling Attendance.) This way the Court can immediately issue the order to the parents(s) and student.
12. After the Court enters an order compelling attendance, the Court will close the case. The Court will only re-open the case if the School District files a contempt citation.

C. ENFORCEMENT PROCEEDINGS CONTEMPT CITATIONS

Contempt proceedings are the appropriate way to enforce an order compelling attendance in the 12th Judicial District. The Court understands that the statute provides for a review process, but it is not the best use of the resources available to the Court to review the matters. Most students and parents only need one opportunity to comply with the statute. For the others, if the Respondents have failed and/or refused to comply with the order of the Court compelling attendance, the School District should seek a contempt citation to enforce the court order. A School District may appear in a contempt proceeding without an attorney, but the district must designate **one person** to attend for the contempt citation.

1. If the Court has entered an order compelling attendance and the student is not in attendance as required, the School District may file a motion seeking a contempt citation.
2. The School District may file a motion seeking a contempt citation against any party who was subject to the order compelling attendance. The Court, however, will not issue a contempt citation against someone who was not a party to the case at the time the Court issued the order compelling attendance. For example, if the student was in the custody of the parents at the time of the initial order but is in the custody of the grandparents when the School District is seeking a contempt citation, the Court will not issue a contempt citation against the grandparents because the original court order was not issued to them and they may not have been aware of that order.
3. Colorado law requires the Court to strictly comply with due process and with the rules governing contempt proceedings. Rule 107 of the Colorado Rules of Civil Procedure governs the procedure the Court must follow in issuing and hearing a contempt citation. Under Rule 107, the Court may impose either punitive or remedial sanctions. These sanctions may include detention for the student or jail for the parent or other alternative appropriate sanctions for the purpose of either punishment or to obtain compliance or obedience to a lawful order of the court. Because the result of a contempt citation can be an order for jail or juvenile detention, the proceedings must comply with the same type of due process requirements required for criminal proceedings.
4. To initiate a contempt proceeding, the School District should prepare and file a motion and affidavit as well as a proposed contempt citation. The pleadings must conform to the law with regard to notice and advisement of rights. (See Attachment 9 - Verified Motion for Contempt Citation, and Attachment 10 - Order to Issue Contempt Citation.) The School District should also prepare a proposed order for the desired disposition. (See Attachment 11 – Order on

Contempt Citation (No Detention), and Attachment 12 – Order for Secure Placement as a Disposition.)

5. The Court will review the motion and affidavit and determine whether a contempt citation should be issued. Before the court can issue a contempt citation, the Court must be satisfied that the Court issued an order to the alleged contemnor(s) and that the alleged contemnor(s) have failed to comply with the order. The School District should identify the order that the Court issued and then detail the specific facts showing how the School District believes the student and/or parent(s) have violated that court order.
6. If the Court orders a citation to issue, the Court Clerk will send a copy of the signed citation, which will include the hearing date, to the School District.
7. It is the School District's responsibility to have the verified motion for contempt citation and the Order to Issue Contempt Citation and Order to Show Cause properly served on the parent(s) and the student. The School District must serve each party (although students should be served by serving their parent(s)) and such service must take place at least 20 days before the party is expected to appear in court.
8. The person who serves the citation on the student and parents (someone over the age of 18 years and not a party to the case—typically law enforcement or a private process server), must sign a return of service indicating the parent(s) and student were served. The School District should file the return of service with the court no later than the date set for the contempt hearing. Proof of service may be provided with Attachment 17- Return of Service. (Please note that Attachment 16 – Return of Service is to be used when initiating judicial proceedings and not as proof of service for serving the motion for citation and order to show cause.) Instead of proof of service, the School District can submit a waiver of service signed by the parents. (See Attachment 17 – Waiver and Acceptance of Service.)
9. If the School District wants to cancel the citation, it must file a written request with the Court. (See Attachment 13 – Motion to Dismiss, and Attachment 14 – Order Granting Motion to Dismiss). If the court does not vacate the hearing, then the parties must appear for the hearing. The School District cannot excuse the parent(s) or student's appearance without the permission of the Court.
10. At the initial appearance on the contempt citation, the Court will advise the parent(s) and student of their rights. The Court will expect that the parent(s) and student will enter a plea at the initial advisement although the Court will continue the matter for entry of a plea if the parent(s)/student ask the Court to appoint a lawyer to represent the student. The School District may provide the parent(s) and student with the advisement and use it in discussing a resolution of the issue.

11. If the plea is not guilty, the Court will set the matter for a hearing at a later date. At the later hearing, the School District will need to present evidence to prove that the student has violated the court's school attendance order as set forth in the motion for the contempt citation. The School District must prove these facts by proof beyond a reasonable doubt.
12. If the student and/or parent(s) plead not guilty and the Court appoints a lawyer to represent the student, the School District may want to consider hiring a lawyer to represent the School District.
13. If the parent(s) and/or student admit they violated the court's order compelling attendance, then the Court will accept the admission and find the parent(s) and/or student in contempt of court.
14. If the Court finds the parent(s) and/or student guilty of contempt of court either at the hearing or by plea(admission) prior to the hearing, the Court will proceed immediately to sentencing. The Court will expect the School District and the parent(s) and student to make recommendations to the Court concerning an appropriate sentence.
15. As set forth in 12th Judicial District Chief Judge Administrative Order 16-04, it is the policy of the 12th Judicial District that alternatives to detention will be used as sanctions in truancy cases whenever appropriate. Non-detention sanctions may include but are not limited to: verbal admonishment, letters of apology, imposition of curfew, community service hours, requiring a parent to accompany the child to school, increased substance abuse testing, increased therapeutic and/or supportive services, and/or loss of privileges.
16. The School District must prepare and present a Valid Written Report (Attachment 4) to the Court for every hearing where the School District will be asking the Court to enforce the Court's order (See Attachment 8 – Colorado Rules of Juvenile Procedure Rule 3.8.)
17. The School District should prepare a sentencing order for the Court's use at sentencing. There are very strict requirements for the contents of such an order The prepared Valid Court Order (VCO) and a written report will be required at every hearing regarding the student and parent. (See Attachment 4 - Valid Court Order Written Report.)
18. Once the Court sentences a student, the Court will set the case for periodic review hearings to determine whether the student is complying with the Court's order. It is customary for the court to stay a jail or detention sentence to determine if the parties will comply with the Court orders, including the plan to secure the student's attendance. If, at a later review hearing, the student is in compliance, then the Court will vacate the stayed sentence. If not, the court will impose

sentence as it deems necessary. If the student is in compliance, the court may deem the contempt purged and will then dismiss the citation.

19. If the Court sentences the juvenile to secure detention, the court must issue a specific order complying with federal law and the Colorado Rules of Juvenile Procedure. The School District should prepare the Secure Placement as Disposition Order (SPDO) and provide it to the court within 5 business days from the date of the hearing. (Attachment 12 – Order for Secure Placement as a Disposition.)
20. As set forth in 12th Judicial District Chief Judge Administrative Order 16-04, if the presiding judicial officer determines that a juvenile has committed contempt of court, the juvenile may be placed in detention, at the discretion of the presiding judicial officer, only if one or more of the following criteria exist:
 - a) The juvenile is sentenced for direct punitive contempt based on their conduct in the courtroom in accordance with Rule 107(b) of the Colorado Rule of Civil Procedure;
 - b) The juvenile is detained on a warrant issued in conformity with Rule 107(c) based on the juvenile's failure to appear at any stage of a contempt proceeding of which they have notice;
 - i. The presiding judicial officer may stay a warrant, in his or her discretion, based on a juvenile's prior history with the court and cooperation with the proceedings overall;
 - ii. It is the policy of the 12th Judicial District that any warrant issued for a failure to appear at a contempt proceeding shall mandate a release be made to a parent, guardian, or legal custodian. Terms of release shall ensure that a non-sentenced youth is not held in detention longer than 24 hours;
 - c) The juvenile is sentenced for a finding of indirect punitive contempt based on knowing and willful violation of the orders of the court and one or more of the following are present:
 - i. The juvenile is being sentenced on a second or successive contempt citation in a two year calendar period that is accompanied by a demonstrated refusal to engage in remedial services;
 - ii. The juvenile is being sentenced and demonstrates additional behaviors above and beyond non-attendance that are dangerous to the juvenile or the community.

D. TERMINATION OF PROCEEDINGS

A successful truancy proceeding will result in the student attending school as required by Colorado law. Most cases end when the Court enters an order compelling attendance and closes the case. Even when the School District must ask the court to impose a sanction for the student's contempt of court, the court's goal is to have the student comply with the order to attend school.

Pattie P. Swift

Chief Judge
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