



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT

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ALAN G. DAVIS
CHIEF MAGISTRATE

LEGAL MEMORANDUM 00-251 (REVISION)

TO: ALL JUSTICES OF THE PEACE

FROM: ALAN G. DAVIS *AGD*
CHIEF MAGISTRATE

RE: CHARGING OF STUDENTS UNDER TRUANCY STATUTE

DATE: 11/30/2022

ISSUE

Does the truancy statute permit a student to be charged with violating the truancy statute when the parent has not first been charged?

SHORT ANSWER

Yes. Although the parent must also be charged, in 2002, legislative changes permitted civil charges to be brought against a student at the same time that criminal charges are brought against the parent if the student is age 12 or over. Prior to such legislative changes, a student could only be charged with violating the truancy statute after the parent was charged, the parent established a statutory affirmative defense, and/or the case against the parent was dismissed.

DISCUSSION

14 *Del. C.* § 2702 establishes school attendance requirements. Violations of the requirements of § 2702 by parents for failure to send their child to school are addressed in 14 *Del. C.* § 2729 which is titled "Failure to send; affirmative defense; penalties." (Emphasis added.) This section provides for charging parents for failure to send their child to school. This section also establishes affirmative defenses for parents. The affirmative defenses are contained in subsection (b) which states:

In the prosecution of a parent for violation of § 2702 of this title, it shall be an affirmative defense that the parent has made substantial and reasonable efforts to comply with the

compulsory attendance requirements of § 2702 but is unable to cause the student to attend school. It shall also be an affirmative defense that the parent does not have legal custody of the student. Other affirmative defenses may be permitted as required in the interests of justice. If the court determines the affirmative defense is valid it shall dismiss the complaint against the parent and the school may file a complaint against the student pursuant to § 2730 of this title.

Thus, § 2729 indicates that a charge against a student may be filed after a parent has successfully asserted the affirmative defense. This section does not indicate that this is the sole method by which a charge against a student may be initiated. Section 2729(b) provides that the complaint against the student be brought pursuant to § 2730.

Section 2730 is titled "Failure to attend; penalties.", and is the parallel section to § 2729. While § 2729 provides for charging parents for failure to send, § 2730 provides for charging students for failure to attend. Section 2730 provides the procedure for charging students under the truancy statute. It states in subsection (a) that the school may file a civil charge of truancy against the student if:

(1) The student is age 12 or older; and/or

(2) The Court determines that a parent who is charged with violating § 2702 of this title has a valid affirmative defense under § 2729(b) of this title.

Section 2730 is the sole statute¹ establishing the procedure for bringing truancy charges against a student, and, therefore, provides the sole method of charging students with truancy violations. In accordance with legislative intent as set forth in the 141st General Assembly's HB 308², truancy charges against a student under 12 may only be filed after the parent has been charged, the parent has established an affirmative defense pursuant to 14 *Del. C.* § 2729(b)³, or the Court has dismissed the case against the parent. However, truancy charges against a student aged 12 or older may be filed at the same time criminal charges are filed against the parent.

Cc: Hon. Collins J. Seitz, Jr.
Hon. Kathaleen S. McCormick
Hon. Jan R. Jurden
Hon. Carl Danberg
Hon. Michael K. Newell
Gale Lafferty, Court Administrator

¹ While 14 *Del. C.* § 2729(b) states that a school may file a complaint against a student (after a charge against a parent is dismissed upon proof of the affirmative defense), it provides that the complaint shall be filed pursuant to § 2730.

² See HB 308, Synopsis, "This Act amends the Truancy statute to permit civil charges to be brought against a student at the same time that criminal charges are brought against the parent, if the student is age 12 or over. Currently, the statute requires that charges be brought, in all cases, first against a parent. However, experience has shown that, in many cases, when the student is age 12 or over, the student is solely or partially culpable for failing to attend school and should be charged. Thus, the existing statutory provision both unnecessarily extends the truancy process by requiring the parent to establish an affirmative defense before the student can be charged and by requiring a frequently unrealistic determination that either the parent or student is solely culpable."

³ If a charge has been filed against a parent under the old legislation and dismissed because the Court found the equivalent of the statutory affirmative defense (if the Court essentially found that the parent had made substantial and reasonable efforts to comply), the parent need not be re-charged under the new statute prior to charging the student.

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