

The Family Court of the State of Delaware

For ☐ New Castle ☒ Kent ☐ Sussex County

JUDICIAL DISPOSITION/SENTENCE

☒ Juvenile Delinquency ☐ Adult Criminal

STATE OF

DELAWARE

in the interest of:

| | | | | |
|---|-------------------|--|-------------------------------|-------------------------------|
| Defendant T----- P----- | DOB --/--/2007 | Charges TRUANCY | | SBI No. ----- |
| ----- | | COMMITMENT REVIEW HRG | | Case No(s). 2205015730 |
| -----, -- ----- | | Org. Charge: No Valid License (Probation before Adjudication) | | |
| Attorney PD/Deborah Carey, Esquire | | | | |
| Prosecuting Attorney DAG/Susan Schmidhauser, Esquire | | Date of Decision 01/09/2023 | Date of Hearing 01/09/2023 | |

BEFORE THE **HONORABLE LOUANN VARI, JUDGE** of the Family Court of the State of Delaware:

SUPPLEMENTAL DISPOSITION

Respondent T----- P----- (“Respondent”) is 15 years old. It is undisputed she has not attended school in any setting or manner for about one year despite numerous orders by the Justice of the Peace Court and by this Court.

In September 2022, the Court placed Respondent on probation before adjudication of delinquency¹ after she admitted she committed a traffic offense (“the PBAD Order”). The Department of Justice declined to prosecute many other charges then pending against Respondent (including truancy and criminal contempt regarding her school attendance).

The Department of Justice has consistently and reasonably maintained that the State’s primary interest is having Respondent attend school. Mother also agrees that it is important that Respondent attend school and maintains she is simply not able to have her do so. The Court notes that Respondent is a student with a disability and is eligible for special education and related services; her last educational placement was in an intensive learning center (“ILC”). This Court has previously entered orders addressing Mother’s right to request a meeting of Respondent’s individualized education program (“IEP”) team and the school’s responsibility for providing Respondent a free and appropriate education with no improvement in her school attendance.

Additional background

The Court’s PBAD Order placed Respondent under the community supervision of the Division of Youth Rehabilitative Services (“YRS”) and imposed one significant condition: it required Respondent to “attend school each day it is in session unless she is excused by her doctor. There is zero tolerance for

¹ 10 Del.C. § 1009A (2013).

school attendance.” Respondent and her parent, M----- P---- (“Mother”), agreed this condition would be recommended to the Court as part of Respondent’s delinquency plea.

The PBAD Order was entered on September 26, 2022. YRS first met with Respondent and Mother on November 10, 2022.² In the meantime, Respondent did not attend school. YRS concluded that Respondent was at moderate risk of future delinquency; recommended that she receive cognitive behavioral self-counseling through Vision Quest (“CBT-S”); and referred the family to Vision Quest on November 21, 2022.

The Court then reviewed Respondent’s compliance with the terms of the PBAD Order on December 19, 2022. It learned that Respondent had not attended school since the PBAD Order was entered three months earlier. The Department of Justice and Mother requested that the Court place Respondent in a setting outside Mother’s home to ensure her school attendance. YRS recommended continuing supervision in the community and Vision Quest services.

Noting the long history ineffective interventions around school attendance issues, the Court entered an order adjudicating Respondent delinquent and committed her to the care of YRS for an indefinite period at a Level 4 facility (specifically, the Division’s Cottages). It also deferred the commitment to January 9, 2023 to permit Respondent, Mother and YRS to ensure that Respondent attended “school each day [it] is in session unless excused by medical note” (“the Commitment Order”).³ The Court urged YRS to consider more intensive interventions for Respondent, noting her mental health diagnosis, special education needs and the services previously provided the family.

Compliance with the Commitment Order

The Court held a second review hearing on January 9, 2023. The State appeared through Deputy Attorney General Susan Schmidhauser. Respondent appeared with her attorney, Deborah Carey, Esquire, and with Mother. YRS attended through employees Julia Sammons and Sarah Toto.

Mother and Respondent acknowledge Respondent has not attended school since the December 19, 2022 hearing. The evidence shows that Respondent has had some four (according to Mother) or five (according to YRS) CBT-S counseling appointments with Vision Quest, sometimes remotely (according to Mother) and all in person (according to YRS). YRS also referred Mother and Respondent for multisystemic therapy shortly after the December 2022 hearing; the family is awaiting an intake session. Mother has also contacted Delaware Guidance Services to have Respondent resume counseling and other mental health treatment; they are on a waiting list. Finally, Respondent and Mother remain compliant with all services and expectations in the Commitment Order except one: school attendance.

Decision to Home School

Respondent has told Mother and her YRS probation officer that she does not want to return to school *in person*: Respondent has told Mother she is embarrassed (and afraid and anxious, probably) to go back

² See DYRS Community Services/Probation/Aftercare Recommendation for Disposition, signed December 15, 2021.

³ Through clerical error, the Court did not distribute the Commitment Order to YRS. However, YRS staff were present when the Court announced the deferred commitment and its expectations during the December 19, 2022 review hearing.

to school. In the meantime, YRS convened an internal committee to review Respondent's placement at the Cottages; the committee concluded that Respondent does not need the level of service provided by the Cottages. This would be more persuasive had the other interventions YRS provided been successful in having Respondent attend school.

Mother credibly explained that she has contacted Respondent's school since the December 2022 hearing and learned that Respondent is *not* eligible for remote instruction or for homebound instruction from the school district.⁴ On the other hand, she also learned that she may *homeschool* Respondent.⁵ YRS soon referred Mother to Respondent's school to obtain information about how to arrange this. Mother did so, and recently completed and filed paperwork with Respondent's school district informing it she plans to homeschool her daughter. She expects that paperwork to be processed and to begin home schooling her daughter in the next several days. Mother no longer believes Respondent should be placed at the Cottages.

Discussion

The Department of Justice asks the Court to impose the deferred Level 4 commitment as contemplated in December 2022. It also alerted the Court that Respondent's school district has filed a new truancy charge against Respondent *and* asserts the district will not approve Mother's request to homeschool Respondent while those matters are pending. The Court agrees this would be a sensible result, but concludes it is not the correct legal one.

A homeschool is "considered a nonpublic school" for purposes of the State's school attendance requirements. There are three classes of homeschools, including "single-family homeschools" (the type Mother apparently contemplates). People conducting homeschools are required to annually report enrollment and attendance.⁶ Otherwise, the Court is aware of no restriction on a parent's ability to homeschool their child at any time and for any reason. It is also not aware of any standards about the content of homeschool instruction or the qualifications of the people providing it.⁷ Most pertinent, children who attend a homeschool are *expressly* exempted from the State's compulsory school attendance requirements.⁸

⁴ The Department of Education's regulations refer to homebound as "supportive instruction," defined as "an alternative educational program provided at home, in a hospital or at a related site for a student *temporarily* at home or hospitalized for a *sudden* physical or mental illness, injury, *episodic* flare up of a chronic physical or mental health condition, accident, or pregnancy, childbirth, or related medical condition to pregnancy or childbirth...." 14 DE Admin. Code 930.1.0 (emphases added).

⁵ 14 *Del.C.* §2703A (2015). See also 14 DE Admin. Code 255.2.0, "Definitions of Types of Schools."

⁶ 14 *Del.C.* §2704 (2015).

⁷ In contrast, children attending *private* schools (another type of non-public school) are also exempt from compulsory attendance requirements, *but* only if they are receiving "regular and thorough instruction in the subjects prescribed for the public schools of the State in a manner suitable to children of the same age and stage of advancement." 14 *Del.C.* § 2703. See also 14 DE Admin. Code 278, which creates a *voluntary* licensure and certification system for nonpublic teachers and specialists.

⁸ 14 *Del.C.* §2703 (2015).

The Court concludes that Respondent is likely to be withdrawn from her school district and begin home-schooling in the next several days: she has taken steps to do so and the Department of Justice's pragmatic argument to the contrary, there is nothing preventing her from doing so.

Given this, committing Respondent to the Cottages is unlikely to address what Mother, YRS, and the Department of Justice have identified as her most significant need (and what her district is required to provide while she is its student): a regular and thorough education. The Court does not doubt YRS would ensure Respondent attend school while she is at the Cottages. However, Mother's decision to homeschool her daughter makes it unlikely Respondent will attend public school once she is released from the Cottages. The Court declines to commit her to Level 4 under these circumstances.

Conclusion

The Court finds Mother probably would *not* have decided to homeschool her daughter had more effective interventions and services been available to address Respondent's truancy from her public school. It urges the agencies involved in these (and similar) proceedings to consider system improvements, including better service coordination between the Department of Services for Children, Youth and Their Families, the Department of Education, and the local education agencies and advocacy for legislative or regulatory changes.

As things currently stand, however, the Court's ability to effectively intervene, including its ultimate authority to detain a child, are not likely to cause a child to attend school when a parent (whether from frustration or for their own interests) can effectively exempt their child from the compulsory attendance law---often with the tacit approval of some of the agencies involved.

For these reasons and the others explained on the record during the January 9, 2023 hearing, the Court *declines* to commit Respondent to a Level 4 placement. It orders her release from that commitment and her return to community supervision as detailed in the separate order it has entered in this matter. No further review hearings are scheduled.

IT IS SO ORDERED this 9th day of **January, A.D. 2023**.

**/ Louann Vari /
LOUANN VARI, JUDGE**

LAV/gap
Copy to: Parent of T----- P-----
PD/Deborah Carey, Esquire
DAG/Susan Schmidhauser, Esquire
Court Liaison/YRS
Date Mailed: 01/11/2023