

THE
PUBLIC
DEFENDER
SERVICE

for the District of Columbia



CHAMPIONS OF LIBERTY

COMMENTS OF THE PUBLIC DEFENDER SERVICE
FOR THE DISTRICT OF COLUMBIA

concerning

Chronic Absenteeism and Truancy

Presented by

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before

COMMITTEE OF THE WHOLE
CHAIRMAN PHIL MENDELSON

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Thank you for the opportunity to testify today. My name is Nakisha Winston. I am a special education attorney in the Civil Legal Services Division at the Public Defender Service for the District of Columbia (PDS). I am a Ward 6 resident as well as a parent of children with disabilities attending both a DC Public School and a DC Public Charter School during the 2022-2023 school year.

PDS special education attorneys advocate for special education services and appropriate school placements for justice-involved youth who are detained and in the community. On a policy level, we are particularly interested in ways to improve the educational outcomes for those students with disabilities who are involved in the juvenile and criminal legal systems—with the ultimate goal of allowing these at-risk youth to benefit from their education and become successful members of our community.

It should not go unstated that the students most affected by chronic absenteeism are students of color from economically disadvantaged homes. The demographic data in OSSE’s attendance report shows that African American students were 9.3 times as likely to be truant as white students and students who were highly economically disadvantaged were 3.6 times more likely to be chronically absent as students without economic disadvantage.¹ Youth moving through the juvenile justice system are almost exclusively indigent children of color. PDS believes that school absenteeism must be considered and responded to, not only as a matter of educational and public health policy, but also as an urgent matter of racial justice. It is for this reason that attendance policies must not be punitive and exclusionary, but instead should be designed to keep students in school.

In representing parents of students with disabilities in the District’s justice systems over the past 18 years, I have acquired first-hand knowledge of the barriers to school attendance these students face. For the vast majority of youth who are chronically absent, the issue is far more complex than a child refusing to attend school. My testimony today will highlight some of those issues and possible solutions.

The District has to do a better job of understanding, assessing, and intervening with school attendance problems

There is a wealth of research addressing the association between mental health and school absenteeism. Different types of school attendance problems require different interventions. For example, “school refusal” – that is absences that are related to emotional distress such as debilitating anxiety or depression – is a school attendance problem that requires specific mental health care.² A letter, phone call, or home visit

¹ District of Columbia Office of the State Superintendent of Education, District of Columbia Attendance Report, 2022-2023 School Year (November 30, 2023), available at: <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2022-23%20OSSE%20Attendance%20Report.pdf>

² Researchers differentiate between distinct categories of school attendance problems. School refusal is how they categorize absences that are related to emotional distress such

from school staff is not going to fix absences related to emotional distress. A list of community resources is not helpful to the parent of a child who refuses to leave the house for doctor's visits. To effectively treat these students, schools have to understand when school attendance problems are actually a symptom of a mental health issue.

Researchers have developed instruments to identify school attendance problems.³ In order to better understand the drivers of school attendance problems, OSSE should provide professional development to all clinicians, focusing on school-based clinicians as well as clinicians through the School Behavioral Health Program,⁴ on how to properly assess students with school attendance problems with these instruments.

Our youth need more behavioral health support. If families believe their child's absences are related to emotional distress, there are long waitlists to have their children evaluated. Currently, the DBH Assessment Center only conducts court-ordered assessments. The Assessment Center should be expanded to allow families to request assessments of their children if they suspect their absences are related to emotional distress.

The lack of community-based support leaves many of our youth overwhelmed and unable to come to school. During the 2019-2023 school years, the Show Up, Stand Up Program grantees were able to assign staff to multiple school locations. However, due to a reduction in funding, during school year 2024, grantees will assign one staff member to a priority school and will assign one staff member to split between two schools.⁵ For interventions to have a real impact, there has to be funding to increase staffing dedicated to reducing absenteeism.

Students with Disabilities face barriers that exacerbates Chronic Absenteeism

OSSE reported that there were 15,646 students with disabilities enrolled in D.C. schools during the 2022-2023 school year. According to their Attendance Report, 52 % of students with disabilities were chronically absent compared to 41% of students without

as debilitating anxiety or depression. *See* Heyne D, Gren-Landell M, Melvin G, Gentle-Genitty C. Differentiation Between School Attendance Problems: Why and How? *Cogn Behav Pract* 2019; 26:8–34, available at: <https://doi.org/10.1016/j.cbpra.2018.03.006>.

³ Instruments used to assess attendance include the School Refusal Assessment – Revised (SRAR), the Pediatric School Refusal Assessment (PSRA) and the School Non-Attendance Checklist (SNACK).

⁴ DBH and Community Based Organizations

⁵ Every Day Counts! Taskforce. (September 19, 2023), available at:

https://attendance.dc.gov/sites/default/files/dc/sites/attendance/page_content/attachments/September2023%20EDCTaskforceMtgDeck.pdf

disabilities.⁶ Students with disabilities are also over-represented in the juvenile and criminal legal systems. Studies have shown that nationwide up to 70% of incarcerated young people have some form of disability. Attendance policies and interventions should address factors that contribute to a higher rate of absences for students with disabilities. Better practices to prevent absenteeism could in turn help prevent youth with disabilities from entering the adult and juvenile criminal legal systems.

The Individuals with Disabilities Education Act (IDEA) requires that each local education agency have a system to find and identify children who may have a disability. This requirement, referred to as “Child Find,” places an affirmative duty on schools to locate, identify, and provide services to children who may have a disability and may need special education and related services. Child Find obligations should be triggered when a child has significant absences and there is a reason to believe the absences are linked to a disability and a need for services. OSSE should develop attendance policies to flag students with excessive absences for Child Find consideration.

In our experience, absences are used as the basis for denying eligibility for special education services. Such denials will often misjudge the situation entirely. Rather than using absences as the basis to deny eligibility, absences should be the glaring clue that services might be needed and that the school’s affirmative Child Find duty might be activated. There should be an automatic referral for attendance interventions if that is the reason for denying special education eligibility. The current approach - absences as a basis for eligibility denial – is extremely harmful because students with disabilities will not receive educational benefit unless their academic, emotional, or behavioral deficits are addressed.

The District must make efforts to address the absenteeism of students with disabilities. IEP teams can amend the IEP to provide extra services to these students, including reduced school hours, homebound services, and parent training. Another solution is to have specific attendance procedures to address students with disabilities, including training on best practices for functional behavioral assessments and behavior intervention plans to specifically address attendance.

Students with chronic health conditions frequently lack access to Home and Hospital Instruction

Students with disabilities often miss school for a number of medically related reasons, ranging from asthma to anxiety. The Home and Hospital Instruction Program (HHIP) is an under-utilized program that can help combat and remediate the systemic problem of school absences for students with disabilities who are absent from class because of

⁶ District of Columbia Office of the State Superintendent of Education, District of Columbia Attendance Report, 2022-2023 School Year (November 30, 2023), available at: <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2022-23%20OSSE%20Attendance%20Report.pdf>

unaddressed health conditions.⁷ HHIP is a program that provides instruction and support to students who have been, or are anticipated to be, absent due to a health condition. Too often, students with disabilities who have these health conditions are being marked as absent rather than provided HHIP support. The attendance of a student receiving home or hospital instruction would be designated as “medically excused” instead of absent.

Too few parents know of their right to HHIP services and too few schools affirmatively connect parents to this service when they are made aware of health-related absences. Parents must apply for HHIP and schools do not have to provide the service unless a parent provides a physician verification form. A solution to this problem is revising attendance policies to include a requirement that attendance counselors inform parents of this right when an absence is due to a health condition. There should also be more outreach to the medical community to make them aware that chronically absent patients can receive instruction through HHIP.

Students Lack access to meaningful student support interventions

Once a student reaches five cumulative full-day unexcused absences, the attendance counselor is supposed to hold a Student Attendance Conference (SAC) with the parent and the student. The purpose of the conference is to discuss barriers to attendance and develop an Attendance Action Plan with interventions. In our experience, the strategies and interventions at the SAC are not meaningful.

On a weekly basis, the attendance counselor is supposed to provide the Multi-tiered System of Supports (MTSS) Leadership Team with a list of all students who have reached the 5-day and 10-day unexcused absence threshold, along with a report that summarizes the barriers identified during SAC meetings. The MTSS Leadership Team is supposed to review lists of all students to consider whether more targeted support is needed. Too often students at schools with a high number of chronically truant students are not referred for Tier II or III interventions. Due to capacity, schools prioritize the referrals of students who are physically in the building. That leaves the most disengaged students without support.

During the 2022-2023 school year, there were 2,572 DCPS students eligible for referrals to the court system for truancy.⁸ However, an entire school year has often passed before a student appears in front of a judge. Even if it were more timely, the court system is not in the best position to get to the root of the causes of absenteeism. It is more efficient to expand the capacity of programs providing effective preventative

⁷ § 38–251.02 of the Code of the District of Columbia, requires every Local Education Agency to adopt and implement a home and hospital instruction program beginning in school year 2022-2023.

⁸ SY 2022-23 Annual Attendance Report. DC Public Schools. (August 2023). <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS%20Annual%20Attendance%20Report%20SY%202022-2023.pdf>

services. For example, the Department of Human Services' Parent and Adolescent Support Services Intensive Case Management program is inaccessible to families until they have been referred to the court. Schools should have the ability to directly refer families to these types of programs prior to involving the court system.

Students require Mental Health Breaks

Many students are having to process traumatic incidents that take place near their schools and their homes. It is very difficult for students exposed to this trauma to have the emotional and mental acuity necessary to benefit from instruction. The mental health of students who are far too frequently exposed to trauma should be addressed; as trauma is a barrier to achieving regular school attendance.

PDS supports family and students advocating for student mental health. Parents should be able to use their judgment to determine when their child's mental health will prevent them from functioning effectively in the classroom. Twelve states allow mental health days.⁹ Illinois enacted legislation allowing students to take up to five excused absences for mental or behavioral health yearly. Schools refer students to support personnel, like a school psychologist or counselor, after two such absences.¹⁰

Schools should also have a designated safe space within the school if a student needs to take a mental health break during the school day. When a student feels overwhelmed, they will often leave school early. This will give them a safe space to collect themselves and learn to safely manage their emotions so they can return to class.

School push-out negatively impacts absenteeism

In June 2023, OSSE issued their State of Discipline 2021-22 School Year report. Students with disabilities received about 30 percent of all suspensions, despite being only 18 percent of the District's school population.¹¹ The District has to acknowledge that these school-based actions can create attendance problems. The American Institutes for Research released a study that showed in-school and out-of-school suspensions had a consistent negative effect on middle and high school students' attendance 1, 2, and 3 years after students were involved in a behavioral incident.¹²

⁹ <https://www.cnbc.com/2022/08/23/12-states-that-allow-mental-health-days-for-kids-in-schools.html>

¹⁰ <https://www.edweek.org/leadership/illinois-students-can-now-take-mental-health-days-why-arent-more-doing-it/2022/03>

¹¹ District of Columbia Office of the State Superintendent of Education, State of Discipline Report, 2021-2022 school year (June 2023).

https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/2021-22%20Discipline%20Report_2.pdf

¹² LiCalsi, C., Osher, D., & Bailey, P. (2021). An empirical examination of the effects of suspension and suspension severity on behavioral and academic outcomes. American

Our clients also face the troubling use of the involuntary transfer process, which allows an LEA to remove students to another school placement without any clear standards for what a school has to prove to disenroll students.¹³ OSSE's attendance report noted that students who attended multiple schools were 2.6 times more likely to be chronically truant than students who attended one school. The use of this involuntary transfer process is counterproductive to efforts to decrease absenteeism.

PDS has seen the involuntary transfer process used to get around the protections offered by the Student Fair Access to Schools Act.¹⁴ Under the involuntary transfer regulations,¹⁵ a school must only provide notice of the reasons for the transfer and an opportunity for a hearing prior to the proposed transfer. It does not include any of the extensive procedures a school must follow to expel a student under Chapter 25.¹⁶ A solution to this issue is to require a revision of the involuntary transfer regulations to exclude as the basis of an involuntary transfer any behavior infractions contained in Chapter 25, and to include specific procedures in the governing regulations to ensure there is a uniform and enforceable standard for when a student can be involuntarily transferred to another school.

Another form of institutional “push-out” is found in the regulations requiring a failing grade for any secondary student who accumulates more than thirty unexcused absences in a course.¹⁷ This type of punitive response is counter-productive: it discourages school attendance. The remedy for chronic absences should not be institutionally enforced failure. It is a systemic failure of our educational system's imagination if the principal institutional response to a student's chronic absence is imposed failure. PDS supports a repeal of the regulations that mandate failure due to absence.

Legal system-involved youth experience challenges attempting to enroll in school

When a student becomes involved in the delinquency system, they will often experience multiple school placements during the same school year. Our clients are often held at the Youth Services Center (YSC) while pending trial or waiting for shelter house placement. After the fifth school day at YSC, the student will be enrolled at DYRS's school (Maya Angelou) and formally withdrawn from the school in which they were enrolled in the community. Trials for detained youth must be held within 30- or 45-days which means any detained child invoking their right to a trial will be withdrawn from their school. If the detained student had been enrolled in an out-of-boundary school,

Institutes for Research. <https://www.air.org/sites/default/files/2021-08/NYC-Suspension-Effects-Behavioral-Academic-Outcomes-August2021.pdf> .

¹³ 5-E DCMR 2107.

¹⁴ Student Fair Access to School Amendment Act of 2018, D.C. Official Code § 38-236.01 et seq

¹⁵ DCMR Title 5, Chapter E-21 § 2107

¹⁶ 5-B DCMR § 2500 et seq. – Student Discipline (Chapter 25)

¹⁷ 5-B DCMR § 2103.6.

when the student is released back into the community, they can only enroll in that out-of-boundary-school if there is space available, which means they often have to enroll in their neighborhood school.

This child, who is now system-involved and has to deal with a whole new set of challenges, should not have to forcibly change schools. This is setting system-involved students up for failure, especially since they have already missed school as a result of pretrial detention and court hearings. This is particularly harmful to families who went through the lottery system to avoid their neighborhood school, a decision often motivated by families trying to avoid violence associated with their neighborhoods and find the best educational environment for their student

Detained students should be allowed to remain in their enrolled school as non-attending while they are detained. This is the same way that students who have excused absences are treated, even for prolonged excused absences, for instance as a result of hospitalization. School choice should not be forfeited because a child is now system-involved. The seat should be available to the student once they are released. It is also a perverse byproduct of asserting one's constitutional right to a trial: that pretrial detention, even if you are found "not involved", the juvenile system's equivalent of a not guilty verdict, causes the student to lose a hard-fought school placement.

Once children are unenrolled, every school, including a right to attend placement, requires the student's family to go back through the enrollment process including providing documentation to verify residency. It is troubling that system-involved youth often miss multiple days from school waiting on documentation that has previously been submitted to OSSE. Students should not be kept out of school for purely administrative reasons. Students should be immediately readmitted to their prior school, again just as any other youth who missed school because of hospitalization.

Legal system-involved youth face barriers to credit attainment

There is a lack of coordination to ensure system-involved students can earn credits. This causes many students to become disengaged with school and eventually leads to chronic absences. System-involved students often experience school transfers during the middle of terms which may require the student to repeat classes. It is also not uncommon for court involved youth to attend multiple schools in multiple jurisdictions during the same school year when they are placed in out-of-District placements such as therapeutic foster homes or residential facilities. The Council should pass legislation to address the barriers to credit accumulation faced by court involved youth and by all youth who move between jurisdictions or between charter and DCPS schools.

Governmental agency failures

On July 18, 2018, the Students in the Care of the District of Columbia Working Group made recommendations for a Coordinating Committee, which included PDS as a voting member. The Students in the Care of DC (SCDC) was supposed to provide

coordination for students involved in the neglect and the juvenile justice system. Five years later, the Coordinating Committee has not held a single meeting. This committee is vital to address systemic interagency issues such as shelter houses not transporting students if they are enrolled in schools in Maryland. The Deputy Mayor for Education should convene SCDC to ensure these vulnerable populations are getting their needs met.

Thank you again for convening this hearing. PDS is available to work with the Committee to continue identifying and to finding solutions that will benefit these students.