**TWELFTH JUDICIAL DISTRICT**

**TRUANCY CHECKLIST FOR SCHOOL DISTRICTS**

1. Adopt a written attendance policy setting forth the school district’s attendance requirements and explaining what the school district classifies as an “excused absence.” The attendance policy must determine the maximum number of unexcused absences a student may incur before the school district may initiate judicial proceedings.

2. Designate one or more employees of the school district to act as attendance officer.

3. Work with students who are classified as “habitually truant”[[1]](#footnote-1) by developing a plan with the assistance of school personnel and the student’s parent(s) to assist the student to remain in school.

1. The appropriate school personnel are encouraged to work with the Center for Restorative Programs to develop the plan. The Center for Restorative Programs’ phone number is 719-589-5255 and its website can be accessed via the following url: https://restorativeprograms.org

**PHASE ONE: PRELIMINARY REQUIREMENTS BEFORE INITIATING JUDICIAL PROCEEDINGS:**

4. Before initiating judicial proceedings, the school district must comply with these preliminary requirements:

a. Develop a plan with interventions and strategies to assist the student to remain in school. The Center for Restorative Programs can assist with this.

b. There must be a determination that the student has continued to be habitually truant after the creation and implementation of the plan and that all other reasonable alternatives to assist the student to attend school have been exhausted.

c. Must provide written notice to the student’s parent(s) indicating the school district will initiate judicial proceedings if the student does not comply with the attendance requirements. The notice cannot simply be sent home with the student; rather, it must be mailed or hand-delivered and it must:

i. State the provision(s) of the statute with which compliance is required and indicate judicial proceedings will not be initiated if the student complies before the filing of the petition with the court.

ii. Include a deadline for compliance.

iii. State that if the student does not start attending school by the deadline, the school district may initiate judicial proceedings.

**PHASE TWO: INITIAL JUDICIAL PROCEEDINGS – PETITION TO COMPEL ATTENDANCE:**

5. File a Petition to Compel Attendance with the Court. The Petition must state:

* 1. The student is subject to Colorado’s School Attendance Law;
  2. The student failed to attend school as required by the Law;
  3. Notice to the respondents has been given; and
  4. The respondents have failed to ensure that the student attends school as required.

6. The following evidence must be included with the petition:

1. The student’s attendance record both prior to and after the point at which the student was deemed to be habitually truant;
2. Whether the student was identified as habitually truant or chronically absent and, if so, the strategies used to improve the student’s attendance;
3. The interventions and strategies used to improve the student’s attendance before the creation of the plan described above; and
4. The student’s plan and the efforts of the student, the student’s parent(s), and school personnel to implement the plan.

7. The petition must be filed with the court clerk’s office of the county in which the school district is located. If the school district does not have an attorney, the court clerk will issue the summons provided by the school district. The school district should inform the court clerk if the primary language of any of the respondents is something other than English.

8. Serve the petition, summons, and notice letter on the respondents.

a. The petition, summons, and notice letter must be served on the student’s parent(s) at least 5 days before the court date.

b. Proof of service of these documents must be filed with the court before any orders are issued.

c. Instead of proof of service, the school district can file a waiver of service signed by the student’s parent(s) with the court.

9. At every hearing, the school district must present a “Valid Court Order Written Report” detailing the student’s attendance and the school district’s efforts to obtain the student’s compliance with the School Attendance Law.

10. Prior to the first hearing, the school district should provide an advisement form to the respondents that is intended to explain the respondents’ rights. The court prefers that the respondents be provided with the advisement form prior to the first hearing so they can read and sign it. The advisement form must advise the respondents of:

a. Their right to counsel;

b. Their right to have a hearing on the petition; and

c. any possible penalties the court may impose including jail and/or detention.

11. If all parties have come to an agreement before court, the school district should prepare a stipulation and a proposed “Valid Court Order Compelling Attendance.” If an agreement is reached, the agreement should be in writing, be signed by all parties and include all the conditions.

12. Even if the parties have not come to an agreement before court, the school district must still provide the court with a proposed Valid Court Order Compelling Attendance before or at the time of the hearing. It is recommended that the proposed order be filed with the court in advance of the hearing on the petition.

**PHASE THREE: HEARING ON PETITION TO COMPEL ATTENDANCE:**

13. If the respondents object to the court ordering the student to attend school at the initial hearing, the court will set a hearing on the petition for a later date and it is the school district’s responsibility to prove beyond a reasonable doubt that the student has failed to attend school as required and is habitually truant.

14. Even if the respondents request a hearing, the school district must still provide the court with a proposed Valid Court Order Compelling Attendance before or at the time of the hearing. It is recommended that the proposed order be filed with the court in advance of the hearing on the petition. If the court sustains the school district’s petition, it will issue the order after the hearing.

**PHASE FOUR: ENFORCEMENT PROCEEDINGS – CONTEMPT CITATIONS:**

15. If the respondents have failed and/or refused to comply with the order compelling attendance, the school district can initiate contempt proceedings. The school district is permitted to appear in a contempt proceeding without an attorney, but the school district must designate only one person to attend court.

16. The school district can ask the court to issue a “Contempt Citation” against any party who was subject to the order compelling attendance. To do so, the school district must:

a. File a “Verified Motion for Contempt Citation.” In the motion, the school district should identify the order the court issued and detail the specific facts showing why the school district believes one or more of the respondents have violated the court order; and

b. Include a “Proposed Order to Issue Contempt Citation” and a proposed order for the desired outcome (either no detention or for a secured placement).

17. If, after reviewing the Verified Motion for Contempt Citation as well as other supporting documentation, the court orders a citation to issue, the court clerk will provide the school district with the signed citation (“Order to Show Cause”) with a hearing date.

18. It is the school district’s responsibility to serve the Verified Motion for Contempt Citation, the Order to Issue Contempt Citation, and the Order to Show Cause on the respondents:

a. Service must take place at least 20 days before the respondents are expected to appear in court.

b. The person who serves the respondents must sign a return of service indicating the respondents were served.

c. Instead of a proof of service, the school district is permitted to file a waiver of service signed by the parent(s).

19. If the school district does not wish to continue with the contempt proceedings, it must file a written request asking for dismissal of the contempt citation along with a proposed order. The school district cannot excuse the respondents’ appearance without the permission of the court.

20. At the first court appearance on the contempt citation, the court will advise the respondents of their rights and will expect them to enter a plea; however, if the respondents ask the court to appoint a lawyer to represent them, the court will continue the matter for entry of a plea.

21. If the respondents’ plea is not guilty and the matter is set for a hearing at a later date, the school district will need to present evidence that the student and/or the student’s parent(s) violated the school attendance order previously issued by the court. If the school district is asking that the student go to detention or the parent(s) go to jail, the school district must prove the facts asserted in the verified motion for contempt by proof beyond a reasonable doubt.

22. The court may impose either punitive or remedial sanctions. The school district must be prepared to make recommendations to the court concerning the appropriate sentence.

a. Punitive sanctions are punishments for disobeying a court order (*e.g.*, detention for the student or jail for the parent(s)).

b. Remedial sanctions are intended to obtain compliance or obedience to the court’s order.

1. A student is habitually truant if he or she is between the ages of 6 and 17 and has unexcused absences for more than 4 days in a single month or 10 days in any school year. [↑](#footnote-ref-1)