

TWELFTH JUDICIAL DISTRICT TRUANCY PROTOCOL

The primary goal of this truancy protocol is to provide the school districts, 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 intervention by the court may be necessary. Judicial proceedings are 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 that is intended to provide an overview of the law governing truancy. The protocol then describes the four phases of a truancy case, beginning with the preliminary requirements a school district must meet before it initiates judicial proceedings. The second phase is when the school district prepares the necessary documents that will be filed with the court and ensures that proper service of process on the student and the student's parent(s), guardian(s), or legal custodian(s) take place.¹ The third phase consists of the school district's efforts at a truancy hearing to obtain a court order compelling the student to attend school. Most cases end with the entry of this order. But, if the respondents do not comply with this order, the proceedings may enter the fourth phase. The fourth phase is a contempt proceeding designed to secure compliance with the order (*i.e.*, remedial contempt) or to punish a violation of the order (*i.e.*, punitive contempt).

For more information on the four phases discussed in this protocol, please refer to the PowerPoint that is posted on the 12th Judicial District Court Business Resources webpage. The PowerPoint and the forms can be accessed via the following url:

<https://www.coloradojudicial.gov/courts/trial-courts/alamosa-county/court-business-resources?topic=10&wrapped=true>

INTRODUCTION

Colorado's School Attendance Law of 1963, found at C.R.S. § 22-33-101 *et. seq.* ("School Attendance Law"), outlines the procedures to be followed in truancy matters. The School Attendance Law requires each child between the ages of 6 and 17 attend public school as follows unless otherwise excused.

- One thousand fifty-six (1,056) hours if a secondary school pupil;

¹Throughout the remainder of the protocol, use of the term "parent" or "parent(s)" is intended to encompass a student's guardian(s) or legal custodian(s) as may be applicable. Additionally, the student and the student's parent(s) will be referred to collectively as "respondents."

- Nine hundred sixty-eight (968) hours if an elementary school pupil in a grade other than kindergarten;
- Nine hundred (900) hours if a full-day kindergarten pupil; or
- Four hundred fifty (450) hours if a half-day kindergarten pupil.

C.R.S. § 22-33-104(1)(a). 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 complies with this statute. *Id.* at (5)(a). A student is habitually truant if the student has 4 or more unexcused absences in a single month or 10 or more in any school year. C.R.S. § 22-33-102(3.5).

I. PHASE ONE: PRELIMINARY REQUIREMENTS BEFORE INITIATING JUDICIAL PROCEEDINGS

Each board of education is required to adopt a written attendance policy setting forth the school 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. The board of education of each school district is required to designate one or more of the employees of the school district to act as attendance officer(s) for the school district. C.R.S. § 22-33-107(1). Further, the law requires each school district to work with individual students who are “habitually truant” by developing a plan, with the assistance of appropriate school personnel and the student’s parent(s) to assist the student to remain in school. C.R.S. § 22-33-107(3)(b).

Once a school district determines that a student is having trouble with unexcused absences, 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 attend school. To the extent possible, the school district should develop this plan with the participation of the student and the student’s parent(s). In seeking their participation, the school district shall make reasonable efforts to meet with the parent(s) of the student to review and evaluate the reasons for the student’s truancy.
 - a) “The appropriate school personnel are encouraged to work with the local community services group to develop the plan.” C.R.S. § 22-33-107(3)(b). A “local community services group” that can assist with the development of the plan is the Center for Restorative Programs, whose phone number is 719-589-5255 and whose website can be accessed via the following url: <https://restorativeprograms.org>

2. The school district must determine that the student has continued to be habitually truant after the school district implemented the plan described above and also that the school district exhausted all other reasonable alternatives in assisting the student to attend school.
3. The school district must provide written notice to the student's parent(s) that the school district will initiate judicial proceedings if the student does not comply with the State's attendance requirements. (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 deadline, the school district may initiate judicial proceedings. The notice may be mailed or hand-delivered to the student's parent(s), but simply sending the notice home with the student is not acceptable.

II. PHASE TWO: INITIAL JUDICIAL PROCEEDINGS -- PETITION TO COMPEL ATTENDANCE

A. File a Petition to Compel Attendance

To initiate judicial proceedings, the school district must file a "Petition to Compel Attendance" and then follow the instructions below.

1. The petition must state that the student is subject to the School Attendance Law; has failed to attend school as required by law; that notice to the respondents has been given; and that the respondents have failed to ensure that the student is in attendance. (See Attachment 2 - Petition to Compel Attendance).
2. The school district must include the following with the petition:
 - a) The student's attendance record prior to and after the point at which the student was identified as habitually truant;
 - b) Whether the student was identified as habitually truant or chronically absent and the strategies the school district used to improve the student's attendance;
 - c) The interventions and strategies used to improve the student's attendance before school or school district personnel created the student's plan described in C.R.S. § 22-33-107; and

- d) The student’s plan and the efforts of the student, the student’s parent(s), 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 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 must inform the court clerk if the primary language of any of the respondents is something other than English so a court interpreter can be scheduled for the first court date. Additionally, the school district must inform the court clerk if any of the respondents need an accommodation pursuant to the Americans with Disabilities Act.
5. The school district must have the Petition to Compel Attendance, the Summons to Appear and Notice of Petition to Compel Attendance, and (if applicable) the notice letter described above served on the parents of the truant student at least 5 days before the court date. Before any orders will be issued, the school district must submit proof of this service to the court. (See Attachment 4 - Return of Service). Instead of proof of service, the school district can submit a waiver of service signed by the parent(s). (See Attachment 5 – Waiver and Acceptance of Service).
 - a) The court cannot take any action on the case until the school 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. The student and parent(s) automatically waive service by appearing in court voluntarily. If this happens, the school district will not be required to file a return or waiver of service.

B. Appearing in Court for the First Time

6. At every hearing, the court will require the school district to prepare and present a report concerning the student’s attendance and attempts to obtain the student’s compliance with the School Attendance Law. This report is called a “Valid Court

Order Written Report.” (See Attachment 6 – Valid Court Order Written Report).

7. At the first court hearing, the court will advise the respondents of their rights. It is helpful to the court if the school district can provide the advisement form to the respondents prior to the court hearing so they can read and sign it. (See Attachment 7 – Advisement of Rights). The advisement form must advise the respondents 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 in the event the respondents are found to be in violation of the order compelling attendance.
8. If the respondents agree to admit the allegations set forth in the petition and if they agree to have an order enter compelling the student to attend school, the school district can prepare a Stipulation and proposed Valid Court Order to that effect and provide it to the court on the day of the hearing. If the respondents 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 set forth all the terms and conditions. (See Attachment 8 – Stipulation and Attachment 9 - Valid Court Order Compelling Attendance).

III. PHASE THREE: HEARING ON PETITION TO COMPEL ATTENDANCE

A. Hearing on the Petition

If the respondents 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 and is habitually truant.

B. The Court’s Order to Attend School

1. 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 the School Attendance Law or compelling the parent(s) 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 treatment plan to achieve the goals of the School Attendance Law. If the school

district wants the court to order the student and/or parent(s) to comply with a treatment plan, the school district should discuss the plan with the parties before the hearing. Even if the parent(s) 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. If the school district wants to make this request, it should attach a copy of the treatment plan to its proposed Valid Court Order.

2. The school district is required to provide the court with a proposed order compelling attendance before or at the time of hearing. (See Attachment 9 – Valid Court Order Compelling Attendance). This way, the court can immediately issue the order to the parents(s) and student.
3. 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 initiates contempt proceedings to enforce the order compelling attendance.

IV. PHASE FOUR: ENFORCEMENT PROCEEDINGS (CONTEMPT CITATIONS)

Contempt proceedings are the appropriate way to enforce an order compelling attendance in the 12th Judicial District. Most respondents only need one opportunity to comply with the School Attendance Law. For the others, if the respondents have failed and/or refused to comply with the order of the court compelling attendance, the school district can seek a contempt citation to enforce the court order. A school district may appear in a contempt proceeding without an attorney, but the school district must designate only one person to speak in court for the contempt citation.

A. Filing a Verified Motion for 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 Verified Motion for Contempt Citation. (See Attachment 10 – Verified Motion for Contempt Citation).
2. The school district may file a Verified Motion for 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 parent(s) 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. Punitive sanctions are punishments for disobeying a court order. These sanctions may include detention for the student or jail for the parent. In lieu of jail, the court may impose a fine of up to \$25 per day until the respondents comply with the order. Remedial sanctions are intended 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 10 – Verified Motion for Contempt Citation and Attachment 11 – Order to Issue Contempt Citation). The school district should also prepare a proposed order for the desired disposition. (See Attachment 12 – Order on Contempt Citation (No Detention) and Attachment 13 – 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 parties and that they have failed to comply with the order. The school district should identify the order that the court issued and detail the specific facts showing how the school district believes one or more of the respondents 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 (“Order to Show Cause”), 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, Order to Issue Contempt Citation, and Order to Show Cause properly served on the respondents. 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 21 days before the contempt hearing.
8. The person who serves the citation on the respondents (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 respondents were served. The school district must 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 14 – Return of Service. (Please note that Attachment 4 – Return of Service is to be used only when initiating judicial proceedings and not as proof of service for serving the Verified Motion to Issue Contempt Citation and Order to Show Cause.) Instead of proof of service, the school district can submit a waiver of service signed by the parent(s). (See Attachment 5 – Waiver and Acceptance of Service).

9. If the school district wants to cancel the citation, it must file a written request and a corresponding proposed order with the court. (See Attachment 15 – Motion to Dismiss and Attachment 16 – Order Granting Motion to Dismiss). If the court does not vacate the hearing, the parties must appear for the hearing. The school district cannot excuse the student’s or parent(s)’ appearance without the permission of the court.
10. At the initial appearance on the contempt citation, the court will advise the respondents of their rights. The court will expect that the respondents will enter a plea at the initial advisement although the court will continue the matter for entry of a plea if the respondents ask the court to appoint a lawyer to represent them. The school district may provide the respondents with the advisement and use it in discussing a resolution of the issue.

B. Contempt Hearing

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 and may call witnesses to prove that the student has violated the court’s school attendance order as set forth in the Verified Motion to Issue Contempt Citation. If the school district is asking that the student go to detention or the parent(s) go to jail, the school district must prove these facts beyond a reasonable doubt.
12. If the respondents admit they violated the court’s order compelling attendance, the court will accept the admission and find them in contempt of court.

C. Sentencing for Contempt

13. If the court finds the respondents guilty of contempt of court either at the hearing or by plea (*i.e.*, admission) prior to the hearing, the court will proceed immediately to sentencing. The court will expect the school district and the respondents to make recommendations to the court concerning an appropriate sentence. In other words, the parties will be permitted to recommend an appropriate sentence.
14. 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 student to school, increased substance abuse testing, increased therapeutic and/or supportive services, and/or loss of privileges.

15. The school district should prepare a proposed sentencing order for the court's use at sentencing. (See Attachment 12 – Order with Respect to Contempt Citation (No Detention) and Attachment 13 – Order for a Secured Placement as a Disposition). There are very strict requirements for the contents of the order. The prepared Valid Court Order Written Report will be required at every hearing regarding the respondents. (See Attachment 6 - Valid Court Order Written Report).
16. If the court sentences the student to detention in a facility, the court must issue a specific order complying with federal law and the Colorado Rules of Juvenile Procedure. (See Attachment 17 – Colorado Rule of Juvenile Procedure 3.8). The school district should prepare the Secure Placement as Disposition Order and provide it to the court within 5 business days from the date of the hearing. (Attachment 13 – Order for Secure Placement as a Disposition).
17. As set forth in 12th Judicial District Chief Judge Administrative Order 16-04, if the court determines that a student has committed contempt of court, the student may be placed in detention, at the discretion of the court, only if one or more of the following criteria exist:
 - a) The student is sentenced for direct punitive contempt based on their conduct in the courtroom in accordance with Rule 107(b) of the Colorado Rules of Civil Procedure;
 - b) The student is detained on a warrant issued in conformity with Rule 107(c) based on the student's failure to appear at any stage of a contempt proceeding of which they have notice;
 - i. The court may stay a warrant, in his or her discretion, based on a student'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. Terms of release shall ensure that a non-sentenced youth is not held in detention longer than 24 hours;
 - c) The student 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 student 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 student is being sentenced and demonstrates additional behaviors above and beyond non-attendance that are dangerous to the student or the community.

D. Review

18. Once the court sentences the respondents, 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 delay imposing (or "stay") a jail or detention sentence to determine if the parties will comply with the court order, including the plan to secure the student's attendance. If, at a later review hearing, the student is in compliance, the court will vacate (cancel) 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 (completed) and will then dismiss the citation.

V. TERMINATION OF PROCEEDINGS

A successful truancy proceeding will result in the student attending school as required by the School Attendance 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 ultimate goal is to have the student comply with the order to attend school.

Michael A. Gonzales
Chief Judge
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