



## School Attendance Matters

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## Why This Topic?



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## "Data Rigging Scandal"

- ▶ **The "Scandal":** Staff withdrew from school students they knew to be still enrolled, deleted their absences, and then re-enrolled them in order to effect test scoring reporting.
- ▶ **The Reason:** Only the test scores of students who are continuously enrolled from October through the time they take state tests in the spring are counted in a school's overall test-passing rate.

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## "Data Rigging Scandal"

- ▶ Auditor Yost began investigating student-data manipulation in one district in Summer 2012 after data was submitted for the 2011-12 school year.
- ▶ One district regularly withdrew students who had been absent 10 straight days without an excuse; another after 5 consecutive days.



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## Objectives



- ▶ Impact of nonattendance
- ▶ Ohio attendance statutes and regulations
- ▶ Compulsory schooling
- ▶ Reasons students do not attend school
- ▶ Legitimate and other reasons
- ▶ Truancy
- ▶ Nonattendance and special education law
- ▶ What schools do to improve attendance

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## Impact of Nonattendance



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If children aren't in school, they don't learn.  
Improving school attendance improves  
success in school.



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## Why Attendance Matters

- ▶ Every day a student is absent is a lost opportunity to learn.
- ▶ Negative effects of nonattendance are cumulative.
  - High correlation between high school absenteeism and failure to graduate.
  - Negative correlation between grade point average (GPA) and number of days absent from school. (<http://nces.ed.gov/pubst2009/attendancedata/chapter4b.asp>)



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## Why Attendance Matters

- ▶ Chronic absenteeism is missing 10% of a school year for any reason and is linked to:
  - ▶ Crime,
  - ▶ Unemployment,
  - ▶ Underemployment,
  - ▶ Drug abuse,
  - ▶ Alcohol abuse, and
  - ▶ Risky sexual activity.



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## Attendance Matters

- ▶ One variable in the Ohio school funding formula is "Average Daily Attendance" (ADM):
  - *Number of students enrolled in a school district who are in attendance or have an excused absence as counted in the first full week of October and the first full week of February.*

$$\frac{1}{2} \text{ of the verified October count } + \frac{1}{2} \text{ of the average of the verified October and February counts} = \text{The final ADM}$$
- ▶ *A school can have an ADM of 90% and still have 40% of its students chronically absent, because on different days, different students make up that 90%.*

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## Compulsory Education



- ▶ All children actually resident in the state shall be amenable to the laws relating to compulsory education and shall not be excused from the law on the ground that:
  - the child's residence is seasonal,
  - the child's parent lives in another state, or
  - the child has attended school for the legal period in another state. (ORC 3321.02)

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## Compulsory Education

- ▶ All children between the ages of 6 and 18 are of compulsory school age. (ORC 3321.01(A))
- ▶ A child who is under age 6 but is enrolled in kindergarten is also of compulsory school age.



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## Compulsory Education

- ▶ Every parent must send their child of compulsory school age to a school or **special education program** that conforms to the minimum standards prescribed by the state board of education, unless the child earns a diploma/completes IEP program, receives a work permit, or is excused. (ORC 3321.03)
- ▶ Attendance must begin within the first week or within one week of the date on which the child begins to reside in the district or within one week after the child's withdrawal from employment. (ORC 3321.04)

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## Attendance Assumptions

Barring illness or an extraordinary event, students are in class every school day.

Attendance in the earlier grades is less important than in later grades.

It's OK for students to skip a few days here or there if parents know.



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## Why Don't Students Come To School?



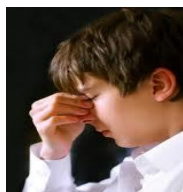
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## 3 Broad Categories for Why Students Do Not Attend School

1) They *cannot attend* school due to:

- Illness,
- Family responsibilities,
- Emergency,
- Housing instability,
- The need to work.



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## 3 Broad Categories for Why Students Miss School

2) They *will not attend* school due to:

- Bullying,
- Harassment,
- Lack of safety.



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### 3 Broad Categories for Why Students Miss School

3) They *choose* not to attend school because they, or their parents:

- Do not see the value in being there.
- They have something else they would rather do, or
- Nothing stops them from skipping school.



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### Legitimate Reasons for Not Attending School

Approved Absence  
Legitimate Excuse

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### Approved Absence

- An "approving authority" reviews student absenteeism on a day-to-day basis and either approves or denies a student's reason for being absent from school.
- The parent/guardian must provide an explanation for the absence, which shall be recorded by the approving authority and shall include the date and time of the absence.



(OAC 3301-69-02(B))

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### "Real" Absence Excuses

- Dear School: Please excuse John being absent on Jan. 28, 29, 30, 31, 32, and also 33.
- Please excuse Jennifer for missing school yesterday. We forgot to get the Sunday paper off the porch, and when we found it Monday, we thought it was Sunday.

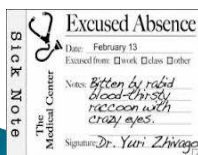


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### "Real" Absence Excuses

- Please excuse Pedro from being absent yesterday. He had diarrhea and the runs.
- Please excuse Burma, she has been sick and under the doctor.



Jerry was at his grandmother's yesterday, and she did not bring him to school because Jerry couldn't remember where the school was.

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### Approved Absence From School

- Personal illness\*
- Family illness necessitating student presence\*
- Quarantine of home
- Death of a relative
- Medical or dental appointment\*
- Observance of religious holidays
- College visitation
- Emergency constituting good and just cause (OAC 3301-69-02(B))

\*May require health care provider's note

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## Legitimate Excuse from School Attendance

- ▶ ORC 3321.04 (eff. 9/29/13) provides that:

The Superintendent of the district of residence in which the student resides *may grant an excused absence* from future attendance at, or past absence from, school or a special education program.

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## Excusal from Past/Future School Attendance (ORC 3321.04)

- ▶ The child's bodily or mental condition does not permit attendance at school or a special education program. Facts must be:
  - Certified in writing by a licensed physician or, in the case of a mental condition, by a licensed physician, a licensed psychologist, licensed school psychologist or a certificated school psychologist; and
  - Provision is made for appropriate instruction under ORC 3323 (special education).

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## Truancy



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## Truants: Absent without Excuse

- ▶ **Habitual**
  - Unruly
  - Delinquent
- ▶ **Chronic**
  - Delinquent



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## Truancy Risk Factors

- ▶ **Family factors:**
  - Lack of guidance & parental supervision.
  - Violence, poverty, & substance abuse.
  - Negative attitudes toward education.
- ▶ **Student variables:**
  - Poor mental/physical health.
  - Lack of social competence.
  - Substance abuse.
- ▶ **Economic Influences:**
  - Unemployment.
  - Single-parent homes.
  - High mobility.
- ▶ **School factors:**
  - Climate and culture of school.
  - Inflexibility in meeting diverse needs.
  - Inconsistent policies.

Source: National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent, or At Risk.

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## Mandatory Action Against Truant

- ▶ File a complaint in juvenile court against the student and parent
- ▶ Implement intervention strategies
  - ▶ Alternative school
  - ▶ Counseling
  - ▶ Parent involvement program
  - ▶ Mediation program
  - ▶ Notice to registrar of motor vehicles
- ▶ Fine up to \$500 or not more than 70 hours community service for parent



Bob Andres, bandres@ajc.com  
Cheryl McCoy is escorted by DeKalb County Sheriff's Deputy Nick Mendez after her arrest during a roundup of parents of truant children.

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## Truancy and Grade Promotion and Retention Policy (ORC 3313.609)

### Policy shall prohibit grade promotion if a student:

- was truant >10% of the required attendance days of the current school year, and
- failed 2 or more of the required curriculum subject areas in the current grade –

*unless the student's principal and the teachers of any failed subject areas agree that the student is academically prepared to be promoted to the next grade level.*

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## Nonattendance and Special Education



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## Disability, Absenteeism, and Truancy

- ▶ Excessive absenteeism may impact legal obligations under the IDEA or §504:
- ▶ Child Find
- ▶ Initial Evaluation
- ▶ Eligibility Determinations
- ▶ Placement Decisions
- ▶ IEP Goals and Objectives
- ▶ Least Restrictive Environment (LRE)



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## Disability and Truancy: Child Find

- ▶ Districts should investigate the reason for student absences when they absences exceed school averages.
- ▶ Failure to follow up with excessive student absence runs the risk of an IDEA violation for failing to identify students with disabilities.



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## Disability and Truancy: Child Find

- ▶ **IDEA** – Districts identify, locate, and evaluate all students with disabilities residing within the district that have, or are suspected of having, disabilities and may be in need of special education as a result of those disabilities. (34 C.F.R. 300.111)
- ▶ **§504** – Districts must evaluate students “who, because of handicap, need or are believed to need special education and related services.” (34 C.F.R. 104.35)

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## Disability and Truancy: Child Find

- ▶ The Child Find duty may be triggered where there are significant absences AND if there is reason to suspect that the absences are linked to a disability and a need for special education.



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## Disability and Truancy: Child Find

- ▶ Example: *Department of Educ., State of Hawaii v. Cari Rae S.*, 35 IDELR 90 (D. Haw. 2001) (holding IDEA violated for failure to refer for evaluation student who had 159 absences, numerous behavioral referrals, and failing grades).
- ▶ Example: *Hilliard City Sch. Dist.*, 112 LRP 53622 (state complaint 10/02/12) (finding IDEA child find violation for failure to evaluate a student with anxiety issues who was frequently absent from school).

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## Disability and Truancy: Child Find

- ▶ Excessive absenteeism by itself is not a per se basis for suspecting the child has a disability.  
(*Board of Educ. of Syracuse City Sch. Dist.*, 37 IDELR 232 (SEA NY 2002).)
- ▶ Example: If the truancy is the result of social maladjustment, or family or social circumstances.
  - *W.G. v. New York City Dep't of Educ.*, 56 IDELR 260 (S.D.N.Y. 2011).
  - *Southwest Indep. Sch. Dist.*, 39 IDELR 203 (SEA TX 2003).

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## School Refusal

- ▶ School refusal is the third most common cause of children missing school.
  - School refusal is more common in girls than in boys.
- ▶ 50% of students with school refusal have other behavioral problems.
- ▶ 20% of parents who have a child with school refusal have a psychiatric problem.
  - Often a strong bond between the parent and child.
  - Children may have depression, anxiety, oppositional defiance disorder, etc.

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## Special Rule for Eligibility

- ▶ A child must not be determined to be a child with a disability if the determinant factor for that determination is:
  - ▶ A lack of appropriate instruction in reading or math. (OAC 3301-51-06(G)(2))



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## Disability and Truancy: Eligibility

“Emotional disturbance” is the IDEA category typically at issue.

ED is a condition exhibiting one or more of the following **“over a long period of time and to a marked degree that adversely affects a child's educational performance.”**

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## Disability and Truancy: Eligibility

- ▶ An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- ▶ An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- ▶ Inappropriate types of behavior or feelings under normal circumstances.
- ▶ A general pervasive mood of unhappiness or depression.
- ▶ A tendency to develop physical symptoms or fears associated with personal or school problems. (34 C.F.R. 300.8(c)(4)(i))

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## Disability and Truancy: Eligibility

- Emotional disturbance does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under the definition. (34 C.F.R. 300.8(c)(4)(i))
- The fact that a student is socially maladjusted does not eliminate the possibility that s/he is eligible.
- Consider if an emotional disturbance is an underlying cause or substantially contributes to the truancy.

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## Social Maladjustment

- "Socially maladjusted" has many different definitions, e.g., *a child who has a persistent pattern of violating societal norms with truancy*, substance abuse, a perpetual struggle with authority, is easily frustrated, impulsive, and manipulative. (*Doe v. Board of Educ. of the State of CT*, (D. Conn. Oct. 24, 1990)).

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## Social Maladjustment

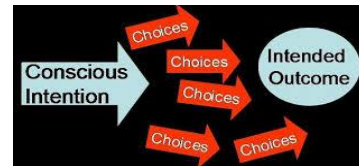
- Example:* A child with an emotional disturbance is *unable* to comply with teacher requests while a child who is socially maladjusted is *unwilling* to comply with teacher requests.
- Example:* A child with emotional disturbance misses school due to emotional or psychosomatic issues while a child who is socially maladjusted misses school due to choice.

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## Social Maladjustment

- Thus, *intentionality* is the distinguishing feature between social maladjustment and emotional disturbance.



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## Social Maladjustment

- Example: Springer v. Fairfax Cty. Sch. Bd.*, 27 IDELR 367 (4th Cir. 1998) (holding that a student's truancy, drug use and theft, were inconsistent with ED but related to his diagnosed social maladjustment).



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## Disability and Truancy: Eligibility

- Nonetheless, nonattendance may be a behavioral symptom of an emotional disturbance.*
- Example: Eschenasy v. New York City Dep't of Educ.*, 52 IDELR 66 (S.D.N.Y. 2009) (finding that cutting classes, abusing drugs, and stealing others' property did not render student IDEA-ineligible, given that she also had an emotional disturbance).

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## Disability and Truancy: Eligibility

- ▶ For eligibility under the IDEA, determine whether:
  - the truancy is caused by a disability,
  - the disability adversely affects student educational performance, and
  - the student needs special education as a result of the disability.

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## IEPs and Truancy

- ▶ Truancy can be a behavior adversely impacting the student's own learning. (34 C.F.R. 300.324(a)(2)(i))
- ▶ If so, the District should consider:
  - Use of positive behavioral interventions and supports or other strategies,
  - Reevaluation.
- ▶ Will a hearing officer/judge regard truancy as an educational need that must be addressed in the IEP?
  - Consequences: denial of FAPE, compensatory education, tuition reimbursement

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## IEPs and Truancy

- ▶ Will a hearing officer/judge regard truancy as an educational need that must be addressed in the IEP?
- ▶ In order to properly address absenteeism in the IEP, districts may need to reevaluate the student.
- ▶ Consequences: denial of FAPE, compensatory education, tuition reimbursement

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## Compensatory Education

- ▶ *Corpus Christi Independent School District*, 57 IDELR 240 (SEA TX 2011) (ordering 1 year of compensatory education for failure to evaluate the student for an emotional disturbance which led to an IEP that did not properly address the student's behavior and denied him even a basic floor of opportunity).

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## Tuition Reimbursement

- ▶ + Example: *Dale M. v. Board of Educ. of Bradley-Bourbonnais High Sch. Dist. No. 307*, 33 IDELR 266 (7th Cir. 2001) (denying reimbursement for residential placement where its purpose was to keep student out of jail).
- ▶ – Example: *Board of Educ. of Oak Park and River Forest Dist. No. 200 v. Illinois State Bd. of Educ.*, 29 IDELR 52 (N.D. Ill. 1998) (holding student was denied FAPE where District failed to address truancy, but ordering reimbursement only for tuition because placement was primarily for drug abuse).

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## IEPs and Truancy

- ▶ + Example: *Tamalpais Union High Sch. Dist.*, 59 IDELR 236 (SEA CA 2012) (finding that placement in a residential facility stemmed the drug use and absenteeism of a student with emotional disturbance and OHI but denying tuition reimbursement because the placement was not educationally necessary).
- ▶ – Example: *Urban Pathways Charter Sch.*, 112 LRP 27526 (SEA 05/01/12) (finding denial of FAPE where charter school's response to student's 47 absences insufficient).

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## IEPs and Truancy

- ▶ – Example: *Lexington County Sch. Dist. One v. Frazier ex rel. D.T.*, 57 IDELR 190 (D.S.C. 2011) (affirming tuition reimbursement for student with autism whose anxiety prevented teachers from teaching him and eventually caused him to stop attending school).
- ▶ – Example: *Springfield School Committee v. Doe*, 53 IDELR 158 (D. Mass. 2009) (finding that a district's failure to promptly address the 32 days in two months truancy of a 16-year-old with cognitive, attention, and behavioral difficulties denied the student FAPE).

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## 504 Plans and Truancy

- ▶ – Example: *Ms. H. v. Montgomery Cty. Bd. of Educ.*, 56 IDELR 268 (M.D. Ala. 2011) (denying district's motion for summary judgment on the parent's §504 claim where student's current level of accommodations was unchanged despite her frequent absences, tardies, failures to complete work, and refusals to participate in class).
- ▶ + Example: *Freedom Area (PA) Sch. Dist.*, 111 LRP 64831 (OCR 06/07/11) (finding no evidence that the district's enforcement of its attendance policy to student with ADHD and anxiety was a pretext for disability discrimination).

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## Does Excessive Absence Trigger the Need for an IEP Team Meeting?

- ▶ NO. The IDEA does not specifically require a district to hold an IEP team meeting or reevaluate a student with a disability who is truant or excessively absent.
- ▶ NOR does Section 504 require a team meeting for the chronically absent student . . . **BUT** . . .

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## Recommendations

- ▶ **Review records to determine if there is a pattern of truancy**
  - Evaluation Team Report
  - IEP
  - Disciplinary records

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## Recommendations

- ▶ **Consult with the parents**
  - Ask if something has happened that could explain the truancies
  - Approach the conversation from a mental/physical health perspective (not disciplinary)
  - Ask permission to communicate with any private providers that may provide insight into the student's psychiatric or medical needs.

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## Recommendations

- ▶ **Hold an IEP meeting:**
  - Don't delay in holding an IEP meeting to discuss the information gathered
  - Determine if an addendum to the IEP is needed
  - Determine if a reevaluation is needed
  - Conduct a functional behavior assessment and/or behavior intervention plan
  - Offer related services, if needed, e.g., parent and/or student counseling

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## What if Attendance Doesn't Improve?

- ▶ Don't just stop working on the problem!
- ▶ Bring in outside consultant
- ▶ Document all efforts and offers, e.g., evaluation
- ▶ Ensure the IEP Team fully addresses all options
- ▶ File charges in juvenile court ???

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## Beware! Retaliation Claims

- ▶ The Office for Civil Rights enforces §504 which prohibits discrimination on the basis of disability in public elementary and secondary education systems.



- ▶ [A cause of action exists under §504 for retaliation.](#)

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## Beware! Retaliation Claims

- ▶ Example: *Roane Cty. (NT) Sch. Dist.*, 34 IDELR 94 (OCR 2000) (finding that truancy charges were not filed in retaliation for parents' advocacy but because the student missed 80 school days).
- ▶ Be sure reasons for truancy filing are legitimate and nondiscriminatory.

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## Disability and Truancy: LRE

- ▶ Homebound instruction may be used to provide FAPE when the student cannot be educated with other students even with the use of appropriate related services and supplemental aids and services.
- ▶ *Create plans to transition the student back to school as soon as possible.*

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## Attendance and Special Education

- ▶ For the purposes of determining formula ADM under ORC 3317.03, 5 hours of home instruction shall be equivalent to attendance for 5 school days. (ORC 3323.12)



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## How to Improve Attendance? Assess the Function of Nonattendance

- ▶ All behavior serves a function including school attendance or lack of school attendance.
- ▶ Reason 1: Attention
- ▶ Reason 2: Escape and Avoidance
- ▶ Determine the function of the student's truancy and then plan accordingly.

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## What Are Districts Doing?

- » RTI
- Ad Campaigns
- RFID Chips

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## Three Tier Intervention Plan

- » Tier 1: Implement schoolwide practices for preventing and addressing unexcused absences, e.g., PBIS, anti-bullying programs.
- » Tier 2 and Tier 3 interventions for truancy are more individualized, requiring in-depth investigation, while still affording students access to the general education curriculum.
- » Use a team approach, e.g., have a separate attendance team, RTI or problem-solving team.

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## Tier 2

- » **Conduct home visits**
  - Transportation issues?
  - Lack of parental supervision, or
  - Caring for younger siblings
- » **Address emotional needs**
  - Counseling
  - Functional behavior assessment
- » **Institute a mentoring system**
  - Monitor grades, attendance, suspension, and credit
  - Connect students to resources and services.

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## Tier 3

- » **Implement targeted intervention**
  - Plan gradual transition back to school.
  - Teach coping strategies, goal-setting tips, relaxation training, breathing exercises, and increasing rewards for working their way back to school.
  - Offer parent training.
- » **Consider alternative schooling**
  - Evening classes, online courses, virtual schools.

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## Bad ad campaign



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## RFID Attendance Tracking System

### Northside Indep. Sch. Dist., San Antonio, TX

- ▶ "Smart ID" tracking badges were for a "legitimate need to easily identify students for purposes of safety, security, attendance and funding."



Caused a national outcry about "big brother."

Project scrapped after attendance increased by only 0.5% at the high school; and .07% at the middle school.

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## ADM Count Week

Robocalls      Phone calls      Emails      Bus

Special parties/activities: LAUSD prize – 2 cars.



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## Data "Scrubbing" Outcome

- ▶ "You've got a huge incentive one week of the year to make sure the kids are in school," Yost said.

"The state's going to dole out your tax dollars based on how many kids are in the seats of what school this week. What happened last week doesn't matter at all. What happens next week doesn't matter. What happens next spring doesn't matter."

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## Data "Scrubbing" Outcome

- ▶ Auditor Yost determined that 1 week to count heads in classrooms is not sufficient.
- ▶ In 2015, enrollment will be counted 3 weeks of the year instead of one.

*"But there really isn't any reason in this day and age that we couldn't have a web based application where all of the schools just upload the data that they are collecting right now."*

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## Data "Scrubbing" Outcome

- ▶ Yost proposed that ODE track student attendance all year long.
- ▶ May mean:
  - More reporting errors and correction
  - More staff.
- ▶ Yost argues that improved attendance may result in improved achievement.

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## Conclusion

- ▶ Students need to attend school daily to succeed.
- ▶ The good news is that being in school leads to succeeding in school.
- ▶ Achievement, especially in math, is very sensitive to attendance, and absence of even two weeks during one school year matters.
- ▶ Attendance also strongly affects standardized test scores and graduation and dropout rates.

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## Conclusion

- ▶ Student achievement gaps or efforts to close them without considering chronic absenteeism.



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## Thank You!

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## References

- ▶ Alternatives that empower teachers to figure out why a child misbehaves and equip him or her to do better in the future include: [Positive Behavior Interventions and Supports](#), [The Good Behavior Game](#), and [Promoting Alternative Thinking Strategies](#) (PATHS), to name a few.

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## References

- ▶ [Bringing Attendance Home: Engaging Parents in Preventing Chronic Absence](#), Attendance Works.

A new toolkit from [Attendance Works](#) provides research about the positive connection between parent involvement and attendance, shares key principles for involving parents in efforts to improve attendance, offers links and examples of materials to share with parents, and includes interactive exercises for parent groups.

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