

PARENT AND GUARDIAN CRIMINAL LIABILITY FOR  
COMPULSORY SCHOOL ATTENDANCE

by

MELISSA SHIELDS

DAVID DAGLEY, COMMITTEE CHAIR  
ROXANNE MITCHELL  
JOYCE STALLWORTH  
STEPHEN TOMLINSON  
ALAN WEBB

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## ABSTRACT

Schools across the country are experiencing growing concerns about student attendance, particularly as state and national policies are holding schools more accountable for the attendance of their students. The challenges to compulsory school attendance, as well as the issues that present themselves as a result of student absences, may never be completely recognized or resolved. However, it is important to be aware of the laws and subsequent legal rulings that affect students and their families, particularly as they relate to litigation implications for parents and guardians of school-age children.

Compulsory attendance laws require that parents or legal guardians ensure their children's school attendance. While compulsory statutes may vary state to state, the parents and legal guardians are granted a certain degree of rights in directing the educational decisions for their children. It is imperative that both educators and parents understand how those rights may be balanced with those given to the local school systems and the State to mitigate further challenges to compulsory attendance laws.

The purpose of this research was to study issues, outcomes, and trends in cases involving liability of parents and guardians in relation to the truancy of their children. The researcher endeavored to reveal information that would prove helpful to educational leaders at all administrative levels of education in terms of general compulsory school attendance knowledge, as well as mitigate future litigation related to compulsory school attendance and parent liability. Furthermore, findings from this study could help inform future compulsory school attendance legal and policy actions.

The West Law Digest System was used to obtain data and information on the topic of parent and guardian liability for compulsory school attendance. The study encompassed 101 cases involving parent and guardian liability for compulsory school attendance between the years of 1918-2014. Each case was analyzed using the framework of Statsky and Wernet (1995). The analysis of the cases in this study included a review of the instructional settings, school levels, states, case issues, prosecuting claims, cases citing Yoder, Pierce, and Meyer, and defensive claims.

## DEDICATION

I dedicate this paper to the friends, family, and colleagues who have supported me throughout my educational and academic careers. There are so many to thank, but first, I must acknowledge my husband for his unwavering encouragement and support through the many years of various graduate degrees, this one being the one that required the most time and dedication. I truly married my best friend, and I thank God every day for him. He believes in me more than I believe in myself, and his faith propelled me to keep going. He was also a great tutor for statistics and, for that, this mathematically challenged English teacher is eternally grateful.

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## CHAPTER I

### INTRODUCTION

#### **Introduction**

Children in every state are required by law “to attend school or to receive some minimum level of instruction in the home” (Yudof, Kirp, Levin, & Moran, 2002, p. 1). Since the inception of the first compulsory attendance statute in Massachusetts in 1852, compulsory attendance laws have traditionally been justified as the State’s interest in ensuring that minimum education standards were upheld for the greater good of its citizenry. However, as compulsory attendance laws emerged in the late 1800s to early 1900s, so did the growing concern about their constitutionality.

The United States Constitution does not include an explicit parental right to direct the education of one’s child. State courts have been given the discretion to decide the extent in which the state can regulate education. How far states may go in controlling and regulating education has been and continues to be a critical issue in the last century’s challenges to compelled student attendance. Katz (1976) posed the question that most clearly articulates the conflict: Who should exercise the most control over content and manner of a child’s education – the parent or the state? This point of contention can readily be evidenced in numerous legal cases over the years in United States courts related to compulsory school attendance challenges.

For the most part, these challenges have been alleged infringements of the First, Fourth, Ninth, and Fourteenth Amendments, particularly constitutionally-promised rights to freedom of religion, personal liberty, due process, and equal protection. In many cases, parents have claimed

a “natural” right to direct the education of their children, a right they firmly asserted should be free from state or federal interference. Conversely, the states have argued that they have the right to direct children’s education under “parens patriae,” a legal doctrine permitting states to protect a child’s best interest, even if doing so diminishes parental control (Katz, 1976).

It goes without saying that students must be present in school to reap the full benefit of its academic program and offerings. Research has shown a direct correlation between good attendance and student achievement, while poor attendance has been linked to poor academic achievement, criminal activity, and adult poverty (Balfanz & Byrnes, 2012). That said, student absenteeism is a problem that extends far beyond the walls of the school. The repercussions of truancy and chronic absenteeism can ultimately affect the respective students for years to come, their families, and the communities at large. In response, school and law enforcement officials are increasingly getting more serious about enforcing compulsory attendance statutes, as well as holding parents accountable for their children’s absences or non-attendance. Accordingly, educational mandates and initiatives at the local, state, and national levels have been implemented to better identify and serve students who miss school. Moreover, schools and states are increasingly held more accountable for the attendance, or non-attendance, of their students by way of federal and state-level accountability models.

### **Statement of the Problem**

While compulsory attendance laws were initiated in the mid-1800s, they continue to influence current legislative and judicial opinions. The challenges to compulsory school attendance, as well as the issues that present themselves as a result of student absences, may never be completely recognized or resolved. However, it is important to be aware of the laws and

subsequent legal rulings that affect students and their families, particularly as they relate to litigation implications for parents of school-age children.

Compulsory attendance laws require that parents or legal guardians ensure their children's school attendance. While compulsory statutes may vary state to state, the parents and legal guardians are granted a certain degree of rights in directing the educational decisions for their children. It is imperative that both educators and parents understand how those rights may be balanced with those given to the local school systems and the State to mitigate further challenges to compulsory attendance laws.

### **Significance of the Problem**

School administrators need to examine and understand case law standards related to compulsory school attendance laws. The research in this study is both relevant and timely, as schools across the country are experiencing growing concerns in the issue of compulsory attendance, particularly as state and national policies are holding schools more accountable for the attendance of their students.

In order to better understand the impact and importance of these laws, particularly as they relate to criminal liability of parents, it is necessary that educators, legal professionals, students, and parents/guardians understand the history of compulsory attendance legislation in America, significant events related to compulsory attendance, and the importance of school attendance for student academic and social success.

### **Statement of Purpose**

The purpose of this research is to study issues, outcomes, and trends in cases involving liability of parents and guardians in relation to the truancy of their children. The researcher endeavored to reveal information that would prove helpful to educational leaders at all

administrative levels of education in terms of general compulsory school attendance knowledge, as well as mitigate future litigation related to compulsory school attendance and parent liability. Furthermore, findings from this study could help inform future compulsory school attendance legal and policy actions.

### **Research Questions**

1. What are the issues in court cases involving criminal liability of parents/guardians in relation to compulsory attendance?
2. What are the outcomes in court cases involving criminal liability of parents/guardians in relation to compulsory attendance?
3. What are the trends in court cases involving criminal liability of parents/guardians in relation to compulsory attendance?
4. What legal principles can be derived from court cases involving criminal liability of parents/guardians in relation to compulsory attendance?

### **Limitations**

The following limitations are relevant to this study:

1. The cases in this study were limited to those between the timeframe of 1918-2014.
2. The cases in this study were limited to those listed in the West's Key Numbering System under the key number 141E (Education) under the subheading 688 (Criminal Liability of Parent or Guardian).
3. The selection of cases was limited to only those involving liability of parents for compulsory school attendance violations.
4. The research and analysis of the documents are left to the interpretation of the researcher, who is an educator, not a legal expert.

5. Complete and/or partial access to case documents may be difficult or impossible to obtain. Consequently, case documents are limited to those reported in West's National Reporter System.

### **Assumptions**

The study was based on the following assumptions:

1. It was assumed that the court cases included in the study had been adjudicated in accordance with local, state, and federal laws.
2. The relevant cases were reported in West's National Reporter System.
3. The court cases represented litigation pertaining compulsory school attendance laws for parents or guardians from 1915-2014.
4. The cases would provide sufficient information to address the stated research questions.
5. The rulings of the courts were binding for parents and guardians of school-age children in the United States. Rulings by local and state courts were binding within the court's jurisdiction.
6. The case brief method of analysis used in this study provides a methodology that reduces court documents to data for analysis.

### **Definition of Terms**

The following legal and educational definitions are provided to clarify important terms that were used in this study:

*Appeal.* To seek review from a lower court's decision by a higher court (Black, 2009).

*Adjudication.* The formal giving or pronouncing a judgment or decree in a cause; also the judgment given (Black, 2009).

*Appellant.* The party who takes an appeal from one court or jurisdiction to another (Black, 2009).

*Appellee.* The party against whom an appeal is brought (Black, 2009).

*Attendance policy.* Rules and regulations that have been adopted by a local school district in an effort to reduce absenteeism (ALSDE, *School Attendance Manual*, 2015).

*Average daily attendance.* The attendance rate schools use for state report cards of federal accountability (Balfanz & Byrnes, 2012).

*Case.* A civil or criminal proceeding, action, suit, or controversy of law or in equity; a question contested before a court (Black, 2009).

*Church School.* A school which provides a general education for its students while being supported by a particular faith or church (Alexander & Alexander, 2012).

*Common Schools.* Tax-supported schools which coincided with Horace Mann's campaign for the establishment of free public schooling for America's children (Katz, 1976).

*Chronic absenteeism.* Occurs when students have missed 10% of a school year (approximately 18 days a year) for any reason, excused or unexcused (Balfanz & Byrnes, 2012).

*Compulsory education age.* The age range in which a student is required to attend school or another equivalent education program, as allowed by law (Aragon, 2015).

*Declaratory judgment.* A judgment which states the rights of the parties in a given legal matter, without providing for enforcement or further action (Black, 2009).

*Defendant.* A person sued in a civil proceeding or accused in a criminal proceeding (Black, 2009).

*Defense.* The response of a party to a claim of another party, setting forth the reason(s) the claim should be denied (Black, 2009).

*Demurrer.* A pleading to dispute the sufficiency in law of the other side's pleading; although the facts alleged in a complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer (Black, 2009).

*Dissent.* Refusal to agree with something already stated or decided (Black, 2009).

*District court.* A type of trial court that has general jurisdiction within the boundaries of the district in which it is located (Black, 2009).

*Free education age.* The age range in which a student must be admitted to a public school without a fee (Aragon, 2015).

*Home school.* A state-regulated system for parents educating their children at home as an alternative to sending the children to a public, private, or parochial school; children may be taught by one or both parents, by tutors who come to the home, or through virtual online school programs (U.S. Department of Education, 2009).

*Litigation.* A contest in a court of justice, for the purpose of enforcing a right (Black, 2009).

*Parens patriae.* The power of the state to act as guardian for individuals who are unable to care for themselves, such as children or disabled individuals (Black, 2009).

*Plaintiff.* The party who brings a civil suit in a court of law (Black, 2009).

*Prima facie.* "On first appearance" or "at first sight"; a fact that is presumed to be true unless disproved by evidence (Black, 2009).

*Private school.* An educational institution established to provide a general education for the enrolled students and supported primarily by non-governmental agencies; most are religious (U.S. Department of Education, 2009).

*Private tutor.* One who privately instructs a child and holds a certificate issued by the State Superintendent of Education and who offers instruction in the several branches of study required to be taught in the public schools (ALSDE, *School Attendance Manual*, 2015).

*Public school.* Any educational institution that is a tax-supported school and is controlled by a local government authority (Alexander & Alexander, 2012).

*Remand.* The act or an instance of sending something back for further action, such as a case or claim (Black, 2009).

*Statute.* A law passed by a legislative body (Black, 2009).

*Superior court.* A trial court that can be found in some states and has general jurisdiction within that state; less authority than an appeals court (Black, 2009).

*Supreme Court.* A type of appellate court found in most states and considered a court of last resort (Black, 2009).

*Trial de novo.* A new trial on the entire case conducted as if there had been no first trial (Black, 2009).

*Truancy.* A student's willful and unjustified failure to attend school (Black, 2009).

*Unexcused absence.* Any absence not meeting the scope or requirements of an excused absence (ALSDE, *School Attendance Manual*, 2015).

### **Organization of the Study**

This study was organized into five chapters.

Chapter I is an introduction to the study; it includes the statement of the problem, significance of the problem, statement of purpose, research questions, limitations, assumptions, and legal and educational definitions of terms mentioned in the study.

Chapter II contains a review of the literature, related to compulsory school attendance. The review includes a history of compulsory school attendance in America and an overview of compulsory attendance statutes. In addition, the review of the literature discusses the significance of school attendance, as well as local, state, and national initiatives which address student attendance in schools.

Chapter III contains a description of the research design, materials, and methodology used in the study. The research questions, as well as the data collection and analysis procedures, are included as well.

Chapter IV consists of 101 case briefs spanning 96 years, which are focused on litigation related to compulsory school attendance laws. The briefs were reviewed by employing the legal review template designed by Statsky and Wernet (1995). Following the briefs is an analysis of the cases.

Chapter V will conclude the study by providing the findings, conclusions, and recommendations for further study.

## CHAPTER II

### LITERATURE REVIEW

#### **Introduction**

A John Hopkins University report in 2012 estimated that between 5 million and 7.5 million American students miss nearly a month of school each year. That said, America's public education system has been based on the assumption that students regularly attend school, and compulsory attendance laws have laid the groundwork to reinforce this assumption (Balfanz & Byrnes, 2012). Also referred to as compulsory education laws and compulsory school laws, they vary from state to state and have continued to evolve since the passing of the first compulsory attendance law in Massachusetts in 1852 (Katz, 1976).

When these laws first emerged, they were not highly adhered to, largely due to the absence of child labor laws (Button & Provenzo, 1983). Once child labor laws were in place, the impetus seemed to be more about preventing others from keeping children out of school than actually requiring children to attend school (Pulliam & Van Patten, 2007). In response, the laws continued to shape around the needs of students and address barriers, ultimately refining the landscape of compulsory school attendance across the country (Katz, 1976).

In order to better understand the impact and importance of these laws, particularly as they relate to criminal liability of parents, it is necessary that educators, legal professionals, students, and parents/guardians understand the history of compulsory attendance legislation in America, significant events related to compulsory attendance, and the importance of school attendance for student academic and social success.

## **History of Compulsory Attendance**

### **The Colonial Period**

The original settlers came to America with diverse and preconceived ideas about what education should look like, at least for those who had experienced an education themselves. These distinctive notions of education came together in forming America's founding educational philosophies.

To many who were trying to establish themselves and their families in the New World, education was more a luxury than a necessity. Children were often needed to work alongside their parents for the financial and provisional stability of the family. As a result, many children received very little education, if any at all. Instead, they often focused on trades and apprenticeship opportunities to prepare them for adult vocations (Alexander & Alexander, 1998). For more fortunate families with steady incomes, private tutors were employed or parents paid a fee for a school-type setting for their children. Some even sent their children back to England to receive an education.

The Puritans who came to America were quick to promote their educational ideologies. It was important for citizens to have reading and writing skills so that they could more effectively follow both God's laws and man's laws (Spring, 1994). Failure to do so was viewed as a "serious threat to the moral and economic well-being of the commonwealth" (Katz, 1976, p. 11). As the Puritans continued to settle in the New English colonies, they touted education as a religious endeavor that closely aligned with their belief that all things in life should be directly related to worship (Tehie, 2007). The Puritan evangelicals were obsessed by human sinfulness and sought complete authority over their children, using every means to "break the will" of children. They sought "pure" churches, institutions which could give them a sense of unity and fellowship. They

often attempted to use the state to enforce the same purity and orthodoxy they desired in religious life (Greven, 1977). Consequently, their children were only allowed to read religious materials (Tehie, 2007).

The Puritans' conviction about religion driving education led to what is considered America's first law establishing education as a community responsibility, *The Old Deluder Satan Act* in 1647. It was created to prevent the "chief project of that old deluder, Satan" from interfering with men reading scripture and exposing men to deceivers (Tehie, 2007). It was considered an improvement on the Massachusetts Act of 1642, which required that parents and the schoolmaster ensure all children knew religious principles and commonwealth laws. The Act of 1647 required communities of 50 households or more to provide a teacher who should teach reading and writing. If a town was made up of 100 households or more, the law mandated a grammar school (Katz, 1976). If the town did not comply, they were fined five pounds per year. Before this legislation, education of children was considered a moral obligation, not a legal agreement between the parents and the state. However, this law birthed a paradigm shift in the way education would forever be viewed, particularly in terms of accountabilities and duties of both parents and educators. It required a select group of individuals whose sole function was to identify neglectful parents who did not comply and report them to the nearest court (Katz, 1976).

There was little continuity of educational practices and curricula among colonies during this era, likely due to the diverse pockets of cultures populating these early settlements. For example, the Southern Colonies focused more on apprenticeships and less on school attendance or religious doctrines. The Middle Colonies concentrated on preparing students to become religious or political leaders. The New England Colonies placed an emphasis on compulsory

education for all students so that they may grow to become productive citizens as adults (Katz, 1976).

The distrust between colonies that emerged during the late Colonial Period and Revolutionary War created many rifts, including attitudes toward education. The government neither encouraged nor discouraged education, as evidenced by the omission of the word “education” in the United States Constitution (Fowler, 2013). States were given sole authority to implement and monitor the education of their youth. As such, educational offerings were diverse within and across the states which included, but was not limited to, quasi-public schools, home schools, and private-venture schools. There were pockets of higher learning opportunities, beyond the basic levels, made available through private or public funding. These early Americans began to voice a desire for increased literacy for their children, as well as themselves. Furthermore, parents wanted the control of their children’s education, with several options made available to them (Fowler, 2013).

### **The Common School**

For much of America’s early history, there was no formalized system of public schooling in place. For the most part, schools were put in place by various religious denominations. However, industries and cities began to grow throughout America in the early 1800s, and immigrants arrived in large numbers (Katz, 1976). This influx of diverse cultures created chaotic conditions for education, amid the already grossly uneven structures and opportunities in place. By the mid-1800s, there was an outcry for public tax-supported schools, or “common schools,” which coincided with Horace Mann’s campaign for the establishment of free public schooling for America’s children (Katz, 1976). These schools would be free and open to all White children

around six years of age and older (Wright, 2006). They were to be governed by local communities and were subject to minimal state regulations (Mondale & Patton, 2001).

These rapid changes incurred by the Industrial Revolution significantly impacted education policy. The strange new mix of farmers, immigrants, and Catholics to a predominantly Protestant population generated a litany of issues, including a troubling rise in crime. Mann's tax-supported Common School movement sought to reform American education in hopes that this reformation would bring the diverse groups together and decrease crime. His efforts would dub him "the father of American Public Education" (Hayes, 2006). By 1860, Common Schools were widespread in the North and slowly emerging in the South. As Mann had hoped, individualistic values were being replaced with Common School values, such as order, fraternity, and economic growth, thus helping to restore a nation of conflicting religions and customs. The Common School movement also endeavored to boost the economy by arming the work force with critical academic skills (Fowler, 2013).

These Common Schools were implemented in various venues, such as barns, private homes, and churches, dependent on the needs and availabilities of the community (Reese, 2005). Even though these Common Schools provided families with accessible and free educational opportunities, children still often missed school to help their families at home.

As each government pursued social uniformity through education initiatives, compulsory school attendance was a further attempt at regulation across the country. Compulsory school attendance is one example of this regulation. Other examples include differentiated grades in school, longer school calendars, emerging state and local education agencies and leaders, and teacher professional development opportunities. As the economy began to become global

through booming industries, Americans became concerned about how they could compete internationally through industrial and technological advances (Fowler, 2013).

### **African American and Native American Students**

Non-White children seeking education encountered many challenges, particularly African American and Native American children. The education of these children was a slow process, often fed by the belief that they held substandard intellectual capabilities. When schools were made available to them, there was often little pressure for them to reach anything beyond primary schools.

African Americans were originally brought to this county to serve as slaves. The education of the slaves was left up to the discretion of the slave owners. As a result, the education they received varied greatly from plantation to plantation. Some White men held the belief that the slaves were an inferior race, incapable of learning scholarly information. This perception was likely a result of the lack of education African Americans received, as opposed to the potential for them to learn.

When President Lincoln signed the Emancipation Proclamation in 1862, American slaves were declared free men and women. However, their free status did not provide immediate opportunities for the education of their children. In the southern United States, education was especially difficult for African American families, as there were racially charged efforts to prevent them from a quality education. There is evidence that the South generally allocated very limited funds to Black schools, diverting resources from Black to White schools. After the signing of the Emancipation Proclamation, nearly a century passed before the landmark case of *Brown v. Board of Education* (1954) declared that separate schools for African American children were not equal (Mondale & Patton, 2001).

Approximately two-thirds of African Americans lived in the South shortly before the Civil War. African American children had minimal access to education, while those living in the northern states were given the opportunity to receive a public school education. That said, the schools in the North were predominantly segregated schools, disallowing African Americans to attend school with White students (Mondale & Patton, 2001).

Over 100 years before *Brown v. Board of Education*, parents of African American students in Boston petitioned to end segregated schools. While evidence clearly showed that the Black schools were inferior to the White schools, nothing had been done to improve them. An African American father requested that his daughter be permitted to attend a White school closer to their home than the Black school she was assigned to attend. When this request was denied, the father filed suit, giving birth to the first segregation case in American schools: *Roberts v. City of Boston* (1849). After the Massachusetts Supreme Court ruled against the father, it was brought before the United States Supreme Court, which held that “separate but equal” was sufficient grounds for a segregation claim (Mondale & Patton, 2001).

Before the ruling of *Brown v. Board of Education*, there were several initiatives to improve the quality of segregated Black schools. Booker T. Washington of the Tuskegee Institute and Julius Rosenwald, philanthropist and president of Sears Roebuck, built schools for African American children across the South that were considered state of the art at the time. The schools became commonly known as Rosenwald schools and have been considered the most important initiative to advance African American education in the early 20th century. By 1928, one-third of the South’s rural African American children and teachers were served by Rosenwald Schools (Aaronson & Mazumder, 2011).

Native American students experienced many challenges related to education as well. In 1819, Congress passed the Indian Civilization Act, which authorized up to \$10,000 a year to support the efforts of religious groups and other individuals willing to live among and teach Native American children. This act led to what was commonly known as mission schools (Reyhner & Eder, 2006).

In the late 19th century, the federal government's Indian Office created and expanded a system of day and boarding schools for Native Americans, opening the first off-reservation boarding school, the Carlisle Indian Industrial School in Carlisle Pennsylvania in 1879. These boarding schools provided half-day academic and half-day vocational programs; all instruction was delivered in English. The boarding schools were often run like military schools. Discipline was severe and often consisted of confinement, deprivation of privileges, and threats of corporal punishments and diet restrictions. Another common threat was disease, particularly tuberculosis and measles (Reyhner & Eder, 2006).

Capt. Richard Henry Pratt, the founder of the Carlisle Indian Industrial School, said his goal was to civilize the Indians into total cultural assimilation. In an 1892 speech, he declared, "Kill the Indian in him, and save the man." Converting the Native Americans to Christianity was also deemed essential to the cause of assimilation. The boarding schools were expected to develop a curriculum of religious instruction with an emphasis on the Ten Commandments and the Psalms (Reyhner & Eder, 2006).

Many Native Americans resisted the schools, often refusing to enroll their children in the "White man's schools." 1893, Congress authorized the Bureau of Indian Affairs (BIA) to withhold annuities and rations from parents who refused to send their children to such schools. In some cases, authorities were sent onto the reservations to seize children from their parents. It was

not until 1978 with the passing of the Indian Child Welfare Act that Native Americans obtained the right to deny their children's participation in off-reservation schools (Pratt, 1964).

In the 1920s, federal policy regarding Indian school was called into questioning as the Indian reservations experienced high poverty. The government-run Indian schools were accused of providing student labor to keep the schools running, as well as to save the government money (Pratt, 1964). More child-centered, culturally appropriate education opportunities were demanded for Native American children (Reyhner & Eder, 2006).

### **Compulsory Attendance**

Compulsory attendance laws are also referred to as compulsory school or compulsory education laws. The desired intent of these laws is to ensure students attend school between designated ages.

In 1852, Massachusetts was the first state to pass a compulsory school attendance law, which required parents to send their children, ages 8-14, to a public school in their area for specified period of time, with at least six consecutive weeks of instruction (Katz, 1976). The impetus behind the law was to address parental neglect of their children's educational needs. The legislation was also considered a means in which to reduce child labor, a growing concern across the country. While this was a first step in mandating compulsory attendance, much like earlier education-related policies, the law of 1852 was rarely enforced. Children under the age of 15 could be employed, provided they had received at least three months of schooling immediately prior to their employment. Other loopholes in the law were taken advantage of by factories and farm owners so that children could work instead of attend school. Economic survival of the family often trumped the requirements of the attendance law (Button & Provenzo, 1983).

Over the next 50 years, other states began to create and implement compulsory attendance laws similar to that of Massachusetts. During this time, there were increased international strains, rises in immigrant populations, and industry advances. Rising competition between European nations escalated during the late 19th century. In 1890, 27 states had adopted compulsory education statutes. By 1900, six more states followed suit: New Mexico (1891), Pennsylvania (1895), Kentucky (1896), Indiana (1897), West Virginia (1897), and Arizona (1899). Momentum for compulsory education in the southern states was slower. Tennessee implemented compulsory education in 1908, followed by North Carolina (1907), Virginia (1908), Arkansas (1909), and Georgia (1916) (Katz, 1976).

By 1918, all states had some form of compulsory attendance laws in place, Mississippi being the last state to pass such legislation (see Appendix A). The laws were not standardized, or consistent, with significant variations in exemptions and the minimum periods of required student attendance. In 1897, the minimum number of required school years ranged from 7 to 16 years. Some states sent truant children to reform school, while others placed the responsibility on the parents (Katz, 1976).

While the compulsory attendance laws varied from state to state, the one characteristic they did share was their unenforceability. In the late 19th century, the compulsory laws had rendered themselves ineffective across the country. Parents and students did not regard the laws seriously, nor did those who were supposed to enforce them. Therefore, it was no surprise that an 1888-1889 report on school attendance revealed a striking disregard for state attendance laws, many of which were seriously flawed in practicality and articulation (Katz, 1976).

Between 1900 and 1940, former “dead letter” compulsory attendance laws were transformed in many states into more practical and effective statutes. For the most part,

compulsory education shifted from a relatively simple statute requiring a specific number of required days to a “more complex network of interrelated legal rules” (Katz, 1976, p. 21). These restructured rules included truant officers, defined roles, truant schools, jurisdictional power, and child labor regulations. Child labor laws were updated to layer with attendance protocols.

By 1920, compulsory attendance laws were observed more than ever before, though not necessarily strongly enforced. More than 78% of students eligible for enrollment in public schools were enrolled, and 7.7% were enrolled in private schools; fewer than 15% of those required to attend were not enrolled. For children whose ages did not permit them to work, the regular attendance was 90.6%. Katz (1976) posited that these statistics suggested “schooling was becoming established not only as legal standard but also a social standard” (p. 22).

Education policy continued to evolve, particularly during World War I, World War II, and the Cold War (Fowler, 2013). Secondary curricula became differentiated through ability groupings, standardized tests were born, and junior high schools were established. The school movement to “track” was another response to increased international competition by providing educators a method to sort children based on their academic performance and potential. Children who were perceived as more academically inclined were pushed toward higher educational opportunities, while those students who were considered lagging scholars were tracked toward vocational endeavors.

Despite these reforms in education, there was still a disconnect in providing an equal education opportunity for students, particularly among races, genders, and social classes. As a result, several movements toward equality in education emerged in the 1960s and 1970s, which propagated a sharp increase in new education legislation around the country. These laws and associated policies created a new educational bureaucracy. Moreover, these organizational shifts

in education coincided with a growing dissatisfaction with public education. Where parents once had complete autonomy to make educational decisions for their children, their authority was largely diminished in just a few decades (Fowler, 2013).

Compulsory attendance laws have continued to be extremely important in America's public schools. The No Child Left Behind (NCLB) Act of 2001 required school districts, for the first time, to submit attendance data to their state government in order to receive federal funding for education. Race to the Top (RttT) initiatives have also placed great focus on the importance of attendance for student success.

Pulliam and Patton (2007) pointed out that educators and law enforcement officials find it difficult to enforce these laws. There are many under the surface variables that affect a student's attendance, such as child abuse and neglect, drug abuse, and apathy.

There are some who believe that students should be given the choice to attend school or not, going as far as to state that attendance laws should be repealed. Similarly, Milton Friedman, Nobel laureate, posits that compulsory attendance laws should be abolished because there is no clear justification for compulsory attendance, particularly the high costs incurred as a result of mandatory school attendance. In his national bestseller, *Free to Choose*, Friedman wrote, "But it far from clear that there is any justification for the compulsory laws themselves. . . . Like most laws, compulsory attendance laws have costs as well as benefits. We no longer believe the benefits justify the costs" (pp. 162-163).

Friedman's main objection to compulsory attendance laws seemed to be that such laws are "unwarranted justification for governmental control over parents" (Alexander & Alexander, 2012, p. 285). This view has been shared by others long before him during the 19th century when there was a great outcry raised by public school opponents who believed compulsory attendance

was an unnecessary government intervention that would deny the parents' rights to direct the education of their children, as well as weaken private schools. They believed the child and parent should be given the freedom to choose or not to choose education.

Some consider Friedman to be the igniter for modern education reform as his ideas have been extremely influential within the school choice movement. He is often cited by parents and organizations who seek to expand parental authority in the education of children. Friedman advocated using vouchers to bring market-like principles to the public school system, as well as reforming its monopoly and lack of performance incentives (Friedman & Friedman, 1980).

The more recent Charter School movement has been linked to Friedman's crusade for school choice, as well as his recommended voucher systems. Proponents of school vouchers and charter schools argue that those systems promote free market competition among private and public schools by allowing families to choose their own schools. In doing so, schools would be forced to continually improve in order to maintain current student and attract new ones. This would lead to increased school performance and accountability measures (Winters & Greene, 2003).

### **Significant Cases and Events That Shaped Compulsory Attendance**

Due to the rises in immigration, industrial expansion, international competition, and increased global tensions (some ending in war) in the early to mid-19th century, there were many shifts in education policy during that time. Further changes to education policy were prompted by corruption of local government and school systems and an exponential growth in enrollment in secondary schools (Fowler, 2013). Growing parental discontent with these imposed changes led to much litigation, particularly in the areas of compulsory attendance and parental authority over education matters for their children.

Even when compulsory attendance laws were still emerging in the late 1800s to early 1900s, there was considerable concern regarding their constitutionality. As such, four early court decisions, decided by the highest appellate courts in Ohio, Indiana, New Hampshire, and Pennsylvania, established the constitutionality of compulsory attendance: *Quigley v. State of Ohio* (1891), *State of Indiana v. Bailey* (1902), *State of New Hampshire v. Jackson* (1903), and *Commonwealth of Pennsylvania v. Edsall* (1904). Of those, the Ohio case was the only one to justify compulsory attendance on grounds of *parens patriae*, which allows the state to act in the best interest of the child when the parent is determined as negligent or incompetent. The Indiana and Pennsylvania cases justified the constitutionality of compulsory attendance on the grounds of the state police power, while the New Hampshire case justified constitutionality based on the duty of the legislature (Fowler, 2013).

The United States Constitution does not include an explicit parental right to control the education of one's child. State courts have been given the discretion to decide the extent in which the state can regulate education. In almost every state, parents who fail to comply with compulsory education laws have been and continue to be subject to fines and jail sentences. While states have traditionally controlled the education of children, including the process and content of instruction, the Supreme Court has often held that parents have the fundamental right to direct the education of their children (Wheeler, 1995).

In the 1920s, two cases challenged the states' rights in having complete discretion over children's education: *Meyer v. State of Nebraska* and *Pierce v. Society of Sisters*. These two cases were the first to link the Fourteenth Amendment to the workplace and school, and both underscored the rising tension between the state's interests and the parents' interests in their children's education.

In 1919, Nebraska imposed a statute that disallowed public or private school foreign language instruction to students below eighth grade. The rationale behind the statute was the improved assimilation of immigrants who speak languages other than English. Sometime later, a teacher at a private school was convicted for teaching German to a 10-year-old student. The lower and state courts upheld the conviction, and it was presented to the United States Supreme Court as a due process issue based on the liberty interests of the Fourteenth Amendment, along with an economic interest represented by Mr. Meyer's financial standing. While the United States Supreme Court acknowledged the state's ability to develop school curricula and appreciated the Nebraska's impetus on American ideals and citizenry, it ruled that the ban on foreign languages exceeded the state's powers (*Meyer*, 1922). The Court posited that the law did not enhance education, but instead, "attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own" (p. 401). As a result, the United States Supreme Court found that the Nebraska law was in violation of the United States Constitution and ordered the judgment of the lower courts to be reversed.

In the same year, Oregon amended the state's Compulsory Education Act (1922), which had required all children ages 8 to 16 to attend public school. The original Act allowed for five exceptions, one being attendance at a private or parochial school. The amended Act disallowed the private school exclusion, stating that parents who did not comply could be charged with a misdemeanor, punishable by a fine and incarceration. As a result, parents began to withdraw their children from private schools, for fear of criminal charges being brought against them.

It was no surprise that private secular schools and parochial schools objected to the Act's amendment. A Catholic parochial school, the Society of Sisters of the Holy Names of Jesus and

Mary, and a military academy, Hill Military Academy, sued Oregon's Governor, the State Attorney General, and the County District Attorney. They claimed that the amended statute was impeding their profits and depreciating their property, thus violating their due process rights. The court ruled that the Fourteenth Amendment guaranteed appellees against the "deprivations of their property without due process of law consequent upon the unlawful interference by appellants with the free choice of patrons, present and prospective" (*Pierce*, 1925, p. 534). Furthermore, it declared that the right to conduct school was a property right, and that parents have the liberty to "direct the education of children by selecting reputable teachers and places" (p. 534). Both schools won their cases in the State Court, which allowed an injunction prohibiting the statute's enforcement. The defendants then appealed their case to the United States Supreme Court.

The United State Supreme Court heard the case in 1925 and called on the doctrine of *Meyer v. Nebraska* to proclaim that the Oregon Act of 1922 unreasonably interfered with the "liberty of parents and guardians to direct the upbringing and education of children," adding that "the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations" (*Pierce*, 1925, p. 535). The Court unanimously upheld the lower court's ruling disallowing enforcement of the amended statute.

Many years later in 1972, the United States Supreme Court called on the rulings of both *Meyer v. Nebraska* and *Pierce v. Society of Sisters* in deciding *Wisconsin v. Yoder*. This case established the foundation for judicial responses to compulsory education legal challenges. Four years earlier in 1968, three Amish men living in Wisconsin were arrested for refusing to send their children to a public high school, per the state's compulsory education law. Jonas Yoder,

Wallace Miller, and Adin Yutzy argued that sending their children to high school after eighth grade conflicted with their Amish religion and culture. The trial court admitted that the Wisconsin law did interfere with the parents' religious beliefs, but still found the law to be a reasonable and constitutional exercise of governmental authority, resulting in a conviction and fine of \$5 for each parent. The Wisconsin Circuit Court concurred. However, the Wisconsin Supreme Court reversed the convictions, citing the State had not shown cause to supersede the Amish parents' rights to exercise their religion freely (*Yoder*, 1972).

The State argued that an exemption of Amish students from high school failed to recognize the rights of children to a secondary education, as well as failed to regard the State as *parens patriae* in providing secondary education to children, regardless of their parents' requests. They further argued that the Amish children would be ill equipped as adults without a proper secondary education (*Yoder*, 1972).

The state court petitioned the United States Supreme Court to review their decision holding that the respondents' convictions were "invalid under the Free Exercise Clause of the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment" (*Yoder*, 1972, p. 207). The United States Supreme Court affirmed their judgment, relying heavily on *Meyer v. Nebraska* and *Pierce v. Society of Sisters* in their decision (Shulman, 2008). The Court ruled Wisconsin's compulsory education law violated the First Amendment's Free Exercise Clause because it intervened with the Amish's "deeply held religious convictions." Justice Douglas, dissented maintaining that a child who wanted to attend a public high school, despite the wishes of his parents, should be allowed to do so (*Yoder*, 1972). Chief Justice Burger took an opposing stance, stating that a state's interest in universal education "is not totally free from a balancing process when it impinges on fundamental rights and

interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children. . .” (p. 214).

This case was considered through two lenses of cases: Due Process Clause cases protecting the parents’ rights (including those of religious propensities) and Free Exercise Clause cases guaranteeing religious freedom. By joining the interests of both lines, the *Yoder* judgment ensured “a more solid constitutional footing” for religious parenting than earlier cases had established, thus extending “the scope of parents’ constitutionally protected rights” (Shulman, 2008, p. 184).

Justice Burger also discussed the relationship between compulsory school attendance laws and child labor laws, particularly the Federal Fair Labor Standards Act of 1938. He posited that this law and those like it help explain how the age of 16 became the established cut-off point for formal education. He pointed out that the two main functions of a secondary education are custodial and economic in nature. In other words, participating in school kept children out of trouble and off the streets, as well as deterred them from entering the labor market. His argument undermined the State’s policy of compulsory school attendance, making it difficult for it to defend such statutes if the motive is for “institutional baby-sitting and an aid to adult employment” (Katz, 1976, p. 31). Justice Berger did concede that by keeping children off the labor market, some could be afforded a better livelihood.

In the 1970s, parental discontent with compulsory education culminated in a deadly altercation when Utah resident and fundamentalist Mormon, John Singer, withdrew his children from public schools because he did not want them to be “indoctrinated” by the State. He claimed his children had been exposed to drugs, sex, and homosexuality, and he was unhappy with the

school's lack of religious teachings. As a result, he and his wife, Vickie, began a home school in their living room (Dibble, 2005). Two weeks after the children were removed from school, the local school district superintendent visited the Singers and invited them to an upcoming school board meeting to discuss their decision, to which they declined. The school board responded by providing the Singers with a copy of Utah's compulsory education law, reminding them that while they could apply for an exemption, the reasons for that exemption would have to be approved by the school board. In a letter, John Singer told them to "go to hell" (Fleisher & Freedman, 1983).

The school filed a complaint in juvenile court to force the Singers into compliance. When they refused, both were charged with "contributing to the delinquency and neglect" of their children. John Singer was presented with a warrant for his arrest, but he refused to go with the officer. Early the following year, he relented and accompanied the Sheriff to court, to which he agreed to devise a home school plan to accommodate the school board's requirements for an exemption, which included monitoring, specifically testing twice a year and evaluations by a psychologist. After a few months of putting this plan into action, the Singers began to waver in their compliance. By April 1975, the school psychologist assigned to the children determined they were significantly lagging behind their peers academically. Despite this determination, the Singers decided the following year that they would no longer admit outsiders into their home to test their children (Fleisher & Freedman, 1983).

Consequently, John Singer found himself back in court defending his decision to home school his children. He cited *Wisconsin v. Yoder* in an attempt to frame Utah's compulsory laws as unconstitutional. The judge did not concur and found both John and Vickie Singer in violation for neglecting their children's education. He ordered the children be placed in temporary care

and control of the Department of Children and Family Services (DCFS). Ultimately, the children were not removed, but the DCFS were given the right to monitor the children (Fleisher & Freedman, 1983).

Over the next year, tension between the Singers and the courts began to escalate, garnering local and national media attention. After failing to appear at any required hearings, the court issued another arrest warrant for the Singers. When law enforcement officers arrived at John Singer's home to arrest him, he greeted them with a fully loaded handgun. In response, an officer fired his gun at Singer, and he died within minutes. Vickie Singer was arrested and taken in custody, but was released soon thereafter and rejoined with her children (Fleisher & Freedman, 1983).

The impact of this case has been far reaching, spanning decades in shaping public attitudes about home schools and compulsory education laws, as well as igniting the parental rights movement in education. Despite the controversy that arose from these unfortunate events, it should be noted that the John Singer case was an extreme situation and quite unusual. John Singer made little effort to comply with the law and responded with violence when the State attempted to enforce the rules (Dibble, 2005).

## **Compulsory Attendance Statutes**

### **State Statutes**

School leaders and policymakers across the county continue to advocate for expanded free and compulsory school age requirements. Many states have begun granting students earlier access to free education by way of Pre-K classes so that children can begin their academic learning before entering kindergarten. Similarly, several states are considering extending the

upper age limit for compulsory attendance to mitigate the numbers of students dropping out of school (Aragon, 2015).

The cases provided in this study involve liability of parents or guardians in relation to compulsory school attendance. The liability is applicable to all parents of school-age children. While compulsory education exists in all states, it should be noted that there are both subtle and significant differences between states in their age requirements and grade completion, as evidenced in Table 1. For example, in Delaware, students must be enrolled in school between the ages of 5-16. However, in Oregon, the requirement is between the ages of 7-18. In Arizona, students must attend between the ages of 6-16 or complete tenth grade. In Montana, the age requirement is 7-16 or complete eighth grade.

The District of Columbia, as well as 24 other states, currently requires students to attend school until they reach 18 years of age, 11 states require students to attend until they reach 17 years of age, and 15 states require students to attend until they reach 16 years of age. In Massachusetts, children as young as three years old are considered to be of compulsory school age. In terms of required years of total education, some states require students to complete as few as nine years, while others require as many as thirteen (Aragon, 2015).

Most state departments of education have information regarding compulsory school attendance posted on their websites, so that parents and stakeholders may be informed to their state's requirements for compulsory school attendance. In addition, local schools provide attendance and truancy information to parents in their school handbooks and/or websites.

Table 1

*State by State Compulsory Attendance Laws by Enactments, Age Requirements, and Minimum/Maximum Ages*

State	Enactment	Compulsory Attendance Age (2015)	Minimum Age Limit to Which Free Education Must Be Offered	Maximum Age Limit to Which Free Education Must Be Offered
Alabama	1915	7-16	5 <sup>1</sup>	17 <sup>2</sup>
Alaska	1929	7-16 <sup>3</sup>	5	20
Arizona	1899	6-16 <sup>4</sup>	5	21
Arkansas	1909	5-18	5	21
California	1874	6-18	5	21
Colorado	1889	6-17	5	21
Connecticut	1872	5-18 <sup>5</sup>	5	21
Delaware	1907	5-16	5	21
District of Columbia	1864	5-18	5 <sup>6</sup>	17
Florida	1915	6-16	4	—
Georgia	1916	6-16	5	20
Hawaii	1896	5-18	5	20
Idaho	1887	7-16	5	21
Illinois	1883	6-17	4	21 <sup>8</sup>
Indiana	1897	7-18	5	22
Iowa	1902	6-16 <sup>9</sup>	5	21
Kansas	1874	7-18	5	†
Kentucky	1896	6-18	5	21
Louisiana	1910	7-18	5 <sup>10</sup>	20 <sup>11</sup>
Maine	1875	7-17	5 <sup>12</sup>	20
Maryland	1902	5-17	5	21
Massachusetts	1852	6-16	3 <sup>13</sup>	22
Michigan	1871	6-18	5	20
Minnesota	1885	7-17	5	21
Mississippi	1918	6-17	5	21
Missouri	1905	7-17 <sup>14</sup>	5 <sup>15</sup>	21
Montana	1883	7-16 <sup>16</sup>	5 <sup>14</sup>	21
Nebraska	1887	6-18	5	19
Nevada	1873	7-18	5	†
New Hampshire	1871	6-18	—	21
New Jersey	1875	6-16	5	20
New Mexico	1891	5-18	5	—
New York	1874	6-16 <sup>17</sup>	5	21

*(table continues)*

State	Enactment	Compulsory Attendance Age (2015)	Minimum Age Limit to Which Free Education Must Be Offered	Maximum Age Limit to Which Free Education Must Be Offered
North Carolina	1907	7-16	5	21
North Dakota	1883	7-16	5	21
Ohio	1877	6-18	5	22
Oklahoma	1907	5-18	5 <sup>18</sup>	21
Oregon	1889	7-18	5	19 <sup>19</sup>
Pennsylvania	1895	8-17	6 <sup>20</sup>	21
Rhode Island	1883	6-18 <sup>21</sup>	5	21
South Carolina	1915	5-17	5	22
South Dakota	1883	6-18 <sup>22</sup>	5	22
Tennessee	1905	6-18	5	†
Texas	1915	6-18	5	26
Utah	1890	6-18	5	—
Vermont	1867	6-16 <sup>23</sup>	5	—
Virginia	1908	5-18	5	20
Washington	1871	8-18	5	21
West Virginia	1897	6-17	5	22
Wisconsin	1879	6-18	4	20
Wyoming	1876	7-16 <sup>24</sup>	5	21

Source: National Center for Education Statistics (2015). *State education reforms*. Retrieved from [https://nces.ed.gov/programs/statereform/tab5\\_1.asp](https://nces.ed.gov/programs/statereform/tab5_1.asp)

#### Legend for this Table

—Not available. In this state, local education agencies determine their maximum or minimum age, or the information is not available in the statute.

† Not applicable. State has not set a maximum age limit.

<sup>1</sup>In Alabama, the parent or legal guardian of a 6-year-old child may opt out of enrolling their child by notifying the local board of education, in writing, that the child will not be in school until he or she is 7 years old.

<sup>2</sup>In Alabama's city school systems, students are entitled to admission until age 19.

<sup>3</sup>Alaska requires that students attend until they are 16 or complete 12<sup>th</sup> grade.

<sup>4</sup>In Arizona, students must attend until they are 16 or complete 10<sup>th</sup> grade.

<sup>5</sup>In Connecticut, the parent of a 5- or 6-year-old child may opt out of enrolling their child until he or she is 7 by signing an option form.

<sup>6</sup>District of Columbia students who are at least 3 years old on or before September 30 are eligible for admission to the preK-3 program. A student who is 4 years old before September 30 is eligible for the preK-4 program, and a student who is 5 years old or before September 30 is eligible for kindergarten.

<sup>7</sup>An adult student who is a resident of the District of Columbia is eligible for free instruction in the schools.

<sup>8</sup>In Illinois, reenrollment is denied to any child 19 years of age or older who has dropped out of school and who cannot, because of age and lack of credits, attend classes during the normal school year and graduate before his or her 21<sup>st</sup> birthday.

<sup>9</sup>In Iowa, children enrolled in preschool programs (4 years old on or before September 15) are considered to be of compulsory attendance age.

<sup>10</sup>Each city and parish school board may provide for a child younger than 5 to enter kindergarten if that child has been identified as gifted by the state guidelines.

<sup>11</sup>In Louisiana, admission must be granted to any student who is 19 years of age or younger on September 30 or 20 years old on September 30 and has sufficient course credits that he or she will be able to graduate within one school year of admission or readmission.

<sup>12</sup>In Maine, students must be at least 5 years old before October 15, or 4 years old by October 15 if they are enrolled in a public preschool program prior to kindergarten (where offered).

<sup>13</sup>Each school committee establishes its own minimum age for school attendance.

<sup>14</sup>Missouri requires attendance until 17 or the completion of 16 credits toward high school graduation.

<sup>15</sup>A child between 5 and 7 years old in Missouri may be excused from attendance at school if a parent or guardian submits a written request.

<sup>16</sup>In Montana, attendance is required until students are 16 or complete 8th grade.

<sup>17</sup>In New York, the boards of education in the Syracuse, New York City, Rochester, Utica, and Buffalo school districts are authorized to require children who are 5 years old on or before December 1 to attend kindergarten unless the parents elect not to enroll their child until the following September, or the child is enrolled in a non-public school or home instruction. New York local boards of education may require 16-and 17-year old students who are not employed to attend school.

<sup>18</sup>In Oklahoma, children who are least 4 years old but not older than 5 on or before September 1 may attend either half-day or full-day programs in their district.

<sup>19</sup>In Oregon, a district may admit a student who has not yet turned 21 if he or she requires additional education to receive a diploma.

<sup>20</sup>The board of school directors in any school district may establish kindergarten programs for children between the ages of 4 and 6.

<sup>21</sup>In Rhode Island, the compulsory age is 16 if a student has an alternative learning plan for obtaining a high school diploma or its equivalent.

<sup>22</sup>In South Dakota, the compulsory age limit is 16 if a child enrolls in a general education development test preparation program that is school-based or for which a school contracts, and the child successfully completes the test or reaches the age of 18.

<sup>23</sup>In Vermont, individuals who are at least 20 years old may enroll in high school if they do not yet have their diploma. Individuals who between the ages of 16 and 20 may enroll in the General Educational Development Program.

<sup>24</sup>Wyoming requires students to attend school until they are 16 or complete 10th grade.

In Alabama, one may review the Code of Alabama, 1975, online at <http://alisondb.legislature.state.al.us/Alison>; it contains education-related laws in the state, including those related to compulsory attendance. A quick search will reveal attendance requirements, enrollment reports, truancy information, and exemptions.

### **Truancy Officers**

The system/school attendance officers are vital members for supporting student attendance. In Alabama, each school system is required to employ at least one Attendance Officer whose responsibility is to “secure the enrollment and attendance of all mandatory school-age children within his/her attendance district” (ALSDE, *School Attendance Manual*, p. 2). Some attendance officers may have additional duties within the system, depending on the size and constraints of the staff. Per Ala. Code §16-28-16 (1975), attendance officers must investigate any reported cases of non-attendance or non-enrollment. If no valid reason is provided, the Attendance Officer will give the parent or guardian written notice that requires the child’s attendance within three days of the notice. The Attendance Officer is also required to seek a criminal prosecution against the parent or guardian in those situations where no valid reason could be established. The Attendance Officers must keep accurate records of these notices, as well as prosecuted cases and service performed. Any school-age child may be taken into custody by the Attendance Officer when the child is discovered away from home during school hours without the parent or guardian (ALSDE, *School Attendance Manual*, 2015).

### **Vaccinations**

In an effort to protect the health and welfare of all students, states require students to be vaccinated. Each state decides which immunizations are necessary for student enrollment and attendance. As Tables 2-4 demonstrate, the immunization requirements and allowable

exemptions vary by state and are subject to regular updates or changes (CDC, 2015). Over the years, there have been many challenges to compelled vaccinations for school admission or attendance. As in the case of *Anderson v. State* (1951), some courts struck down challenges to a state's mandatory vaccinations on religious grounds, even when there were no imminent epidemic threats. Conversely, other court outcomes, such as *State v. Miday* (1965), have upheld religious exemptions against compelled vaccinations when such practices were prohibited by one's religion. In Alabama, the board of education requires every student entitled to admission into an Alabama public school to present a certificate of immunization, medical, or religious exemptions upon admission into the respective school (ALSDE, *Alabama Attendance Manual*, 2015).

### **Residency and Attendance Zones**

Most state laws require that children be residents of the school district in which they attend public school. The establishment of attendance zones and the authority of local boards of education to determine residency requirements are codified through local school system and statewide policies and state constitutions. The establishment of attendance zones, as well as residency requirements, have much to do with the funding schools receive and the allocation of resources (Alexander & Alexander, 2012).

A student's residency is determined by the residence of the parent or guardian who has custody or control of them. Each state's constitution compels its respective legislature to provide free public education to established ages of children, which creates a state entitlement, or property right, for all school-age children who live with their parents or guardians inside the boundary of a school's attendance zone (Lunenburg, 2011).

For the most part, courts have upheld the authority of school systems to ensure the integrity of those zones by taking steps to reasonably identify students who reside in the district's attendance zones, as well as those who do not. The United States Supreme Court has held that an "appropriately defined and uniformly applied residence law is constitutionally valid" (Alexander & Alexander, 2012, p. 295). The state's interest in providing education to its children is rationale enough to support residency requirements.

School districts may inquire about a change in a child's custody and deny admission if the reason is to evade the school district's attendance zone requirements. In some states, the courts have held that children residing in one school district could pay tuition to attend school in another district, with the provision that both school districts agree to the arrangement (Alexander & Alexander, 2012).

### **Exceptions**

There are exceptions made for students in meeting compulsory attendance requirements. While they may vary to some degree from state to state, some general exceptions include, but are not limited to, the following:

- (1) Students with no accessibility to public transportation and who have to walk over two miles to school.
- (2) Students who have violated drug, alcohol, and weapon policies or have committed or threatened harm to others.
- (3) Students are who are instructed by private tutors or enrolled in church schools or private schools.
- (4) Students who are legally employed under the provision of child labor laws.

- (5) Students with communicable or contagious diseases or who have a physical or mental condition that makes attendance difficult.
- (6) Students who are enrolled in a career and technical programs or other work-based program. (Aragon, 2015)

In addition to statutory compulsory attendance, the Supreme Court in *Wisconsin v. Yoder* (1972) granted an exemption of First Amendment freedom of religion grounds to Amish children who had successfully completed eighth grade. See Figure 1 for a sample exemption request form for public schools.

### **Private Tutors**

A private tutor “means and includes only instruction by a person who holds a certificate issued by the State Superintendent of Education and who offers instruction in the several branches of study required to be taught in the public schools . . .” (ALSDE, *School Attendance Manual*, 2015, p. 23). The definitions and requirements of private tutors may vary from state to state, but traditionally, these tutors must teach a minimum number of hours per day each year. In Alabama, a private tutor is required to teach at least three hours a day for 140 days each calendar year, between the hours of 8 A.M. and 4 P.M. They must do so using the English language, per Ala. Code §16-28-5 (1975) (ALSDE, *School Attendance Manual*, 2015).

The *Alabama Code* further requires private tutors to file a statement identifying the child or children to be instructed, the subjects to be taught, and the period of time the instruction will be provided (see Figure 2). This must be provided prior to instruction and is filed with the county or city superintendent of education in the district in which the instruction is to take place.

SAMPLE

**REQUEST FOR SCHOOL EXEMPTION**

School System \_\_\_\_\_ Date \_\_\_\_\_

To be completed by principal:

School \_\_\_\_\_ Grade \_\_\_\_\_

Name \_\_\_\_\_ Sex \_\_\_\_\_

Birthdate \_\_\_\_\_ Age \_\_\_\_\_

Parents or  
Guardian \_\_\_\_\_ Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

Date Enrolled \_\_\_\_\_ Days Present \_\_\_\_\_

Days Absent \_\_\_\_\_

REASON FOR REQUEST:

To be completed by Attendance Worker:

VERIFICATION:

\_\_\_\_\_  
Principal

Attendance Officer

Superintendent/Designee

Figure 1. Example of form necessary for granting school exemptions. Source: Alabama Department of Education (2015). *School attendance manual*. Montgomery, AL: Author.

SAMPLE

System _____ Name of Child's Previous School _____			
Full Name of the Private Tutor _____			
Alabama Professional Educator Certificate Number _____			
Elementary _____ Secondary _____			
Name, age, and grade of the student(s) who will receive instruction:			
Name	Age                      Grade		
_____	_____		
_____	_____		
_____	_____		
_____	_____		
State the time of day the student(s) will receive instruction:    From _____ To _____			
On what days of the week: Mon.    Tue. ___ Wed. ___ Thur.    Fri. ___			
How many days per year? _____	THE TUTOR MUST: (1) Keep a daily lesson plan. (2) Keep a register of attendance.		
Should child or children cease to receive instruction from the tutor, the parent must notify the local superintendent for placement in a school.			
_____	_____		
Name of Parent (Please Print)	Name of Superintendent (Please Print)		
_____	_____		
Signature of Parent	Date	Signature of Superintendent	Date
_____	_____	_____	_____

Figure 2. Suggested form for students instructed by private tutor. Source: Alabama Department of Education (2015). *School attendance manual*. Montgomery, AL: Author.

The private tutor must keep a register of work and show the daily hours utilized for instruction, as well as the attendance of the child or children being instructed. An attendance report must be provided at least weekly to the respective board of education. Additional reports may be solicited as needed (ALSDE, *School Attendance Manual*, 2015).

### **Homeless Children**

Homeless children and youth frequently change their residences, and public schools have been charged to help maintain stable school environments for these students to better help them succeed academically. As a result, homeless children may be subject to special rules in relation to compulsory school attendance.

The federal Stewart B. McKinney Homeless Assistance Act of 1987, later reauthorized as the McKinney-Vento Homeless Education Assistance Improvement Act of 2001 under NCLB, defined a homeless person as “one who lacks a permanent nighttime residence or one whose residence is a temporary living arrangement” (Lunenburg, 2011, p. 3). The law required each state to adopt and implement a plan for educating homeless children, which also included transportation and other school services. School systems must make school placement determinations on the basis of the “best interest” of the homeless child. To better identify students who may be considered homeless, schools ask students and their parents to complete a form that solicits responses about their current living situations (see Figure 3).

## Everyday Unified School District

\*[This form was not developed nor is it endorsed by the U.S. Department of Education. It is not a required form. It was adapted for use as an example].

This questionnaire is intended to address the McKinney-Vento Act. Your answers will help the administrator determine residency documents necessary for enrollment of this student.

1. Presently, where is the student living? *Check one box.*

Section A	Section B
<input type="checkbox"/> in a shelter <input type="checkbox"/> with more than one family in a house or apartment <input type="checkbox"/> in a motel, car or campsite <input type="checkbox"/> with friends or family members (other than parent/guardian)	<input type="checkbox"/> Choices in Section A do not apply
<p><b><u>CONTINUE:</u></b> If you checked a box in <b>Section A</b>, complete #2 and the remainder of this form.</p>	<p><b><u>STOP:</u></b> If you checked this section, you do <b><u>not</u></b> need to complete the remainder of this form. Submit to school personnel.</p>

2. The student lives with:

- |   |  |
|---|--|
| <input type="radio"/> 1 parent<br><input type="radio"/> 2 parents<br><input type="radio"/> 1 parent & another adult | <input type="radio"/> a relative, friend(s) or other adult(s)<br><input type="radio"/> alone with no adults<br><input type="radio"/> an adult that is not the parent or the legal guardian |
|---|--|

School: \_\_\_\_\_

Name of Student \_\_\_\_\_ Male  Female

Birth Date \_\_\_\_/\_\_\_\_/\_\_\_\_ Age: \_\_\_\_\_ Social Security# [if appropriate] \_\_\_\_\_  
 Month / Day / Year

Name of Parent(s)/Legal Guardian(s) \_\_\_\_\_

Address \_\_\_\_\_ ZIP: \_\_\_\_\_ Phone/Pager: \_\_\_\_\_

Signature of Parent/Legal Guardian \_\_\_\_\_ Date: \_\_\_\_\_

School Use Only - Campus Administrator's determination of Section A circumstances:

→ FAX to Attendance, Guidance and Counseling 777-777

If the parent has checked Section B above, completion of form is not required. For any choices in Section A, this form must be completed and faxed to Attendance, Guidance and Counseling Department immediately after completion. All campuses must keep original forms separately from the Student Permanent Record for audit purposes during the year.

Name and phone number of a School Contact Person who may know of the family's situation:

\_\_\_\_\_ Date faxed: \_\_\_\_\_

Figure 3. Sample student residency questionnaire. Source: U.S. Department of Education (2004). *Education for homeless children and youth program*. Washington, DC: Author. Retrieved from <http://www2.ed.gov/programs/homeless/guidance.pdf>

*The McKinney-Vento Homeless Education Assistance Improvements Act of 2001* states: In any State that has a compulsory residency requirement as a component of the State's compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths, the State will review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths. (*McKinney-Vento*, sec. 721)

In response, many states have implemented inter-district open enrollment plans, which allow students to apply for transfers to any public school district within the state. These transfer requests are often subject to statutory restrictions, and the participation by individual districts may be optional, depending on the plan (Lunenburg, 2011).

### **Significance of School Attendance**

#### **Truancy**

According to common law, truancy can be defined as the willful unexcused refusal of a student to attend school (in defiance of authority) and in violation of an applicable compulsory attendance law. Truancy can also be defined as the parent or guardian's failure to send his or her child to school as required by a compulsory attendance statute (Amendola et al., 2012). Truancy is typically characterized as a certain number or frequency of unexcused absences (Balfanz & Byrnes, 2012). Most school systems uphold illness, injury, and death in the family as excused absences, which normally require a parent note. Students who have excessive absences as a result of illness must provide a doctor's note, and planned absences, such as a trip, may require students to provide documentation prior to the event. Unexcused absences typically fall into one

of three categories: signed excuse for an absence not considered excused by policy, failure to submit a parent note and/or documentation, or failure to attend class, despite presence at school (Hartnett, 2007).

In 2004, The Alabama Department of Education adopted a resolution that requires the parent or guardian of an absent student to explain in writing, within three school days, the reason(s) for the absence (*Resolutions*, 2015). Failure to furnish an explanation is evidence of the child being truant each day he or she is absent. A child can also be deemed as truant for any absence determined by the principal to be unexcused based on the state's *School Attendance Manual*. Seven unexcused absences within a school year "constitute a student being truant for the purpose of filing a petition with the Court" (ALSDE, *Resolutions*, 2015).

While truancy definitions and protocols may vary state to state, school systems around the country are closely monitoring attendance data in an effort to improve student performance. With the focus on attendance, truancy reduction initiatives are being implemented in hopes to increase attendance and make its importance known to students, parents, and stakeholders. Most of these programs aim "to improve school attendance in the short term, with the longer term goals of raising grades and encouraging high school graduation for students who are at risk of dropping out" (Heilbrunn, 2007, p. 1).

### **Chronic Absenteeism**

Chronic absenteeism is not the same as average daily attendance (the attendance rate schools use for state report cards of federal accountability) or truancy. Chronic absenteeism occurs when students have missed 10% of a school year (approximately 18 days a year) for any reason, excused or unexcused. This is critical because the evidence indicates "it is how many days a student misses that matters, not why they miss them" (Balfanz & Byrnes, 2012, p. 7). It

should be noted that a school could potentially have a daily attendance rate of 90%, but still have 30% of students chronically absent, because on different days, different students make up the 90% (Balfanz & Byrnes, 2012).

Chronic absenteeism is evidenced more among low-income students. The youngest and oldest students tend to incur the highest rates of chronic absenteeism; students in third through fifth grades attending most regularly. Chronic absenteeism begins to climb in middle school, with seniors having the highest rates (Balfanz & Byrnes, 2012).

### **Students Who Are Missing School**

Students miss school for a variety of reasons. Balfanz and Byrnes (2012) present three broad categories to explain student absences. The first are students who *cannot* attend school because of sickness, injury, family responsibilities, unstable housing, job duties, or a juvenile justice system involvement. The second category is made up of those students who *will not* attend school because of bullying, safety concerns, or embarrassment. The final category are those students who *do not* attend school because (1) they, or their parents/guardians, do not value school attendance; (2) they have something else they would rather do; or (3) they have no consequence for missing school.

As mentioned earlier, chronic absenteeism is most prevalent among low-income students. Homelessness and temporary home dislocation can cause students to miss school, as their parents endeavor to secure or reestablish a home. In many cases, students must remain at home to provide care for younger siblings. Adolescents are sometimes absent from school so that they can support the family financially. In other cases, they are lured into criminality. Those who become involved in the juvenile justice system then miss additional days at school while being detained and attending court proceedings (Balfanz & Byrnes, 2012).

## **Missing School Matters**

Research shows that students who regularly attend school have higher grades than those students with many absences. Balfanz and Byrnes (2012) posit that getting students to school every day, “even without improvements in the American education system, will drive up achievement, high school graduation, and college attainment rates” (p. 4). Truancy and chronic absences are known to increase achievement gaps at all grade levels (Balfanz & Byrnes, 2012). Research has shown that missing just 30 hours of instruction negatively affects a student’s academic performance (Commentary, 2002).

Attendance Works, a state and national initiative that promotes better policy and practice for school attendance, conducted an attendance and achievement correlation study, using the 2013 National Assessment of Educational Progress (NAEP). They found that students with poor attendance in the month (missing three or more days regardless of excused or unexcused status) prior to the assessment scored significantly lower than their peers who had no absences that month. While the correlation between attendance and achievement may seem obvious to educators, Blad (2014) suggests that this study provided a new lens in which to view the extent of the correlation since it was a national study, not bound to each state’s interpretation or tracking of chronic absenteeism.

In kindergarten, truancy is associated with lower achievement in first grade, with the impact being double for students in low-income families (Balfanz & Byrnes, 2012). In terms of low-income students in general, “one of the most effective strategies for providing pathways out of poverty is to do what it takes to get these students in school every day” (p. 4).

The link between high school dropout and truancy have been demonstrated in many studies, indicating that dropouts may begin have attendance concerns as early as the first grade

(Epstein & Sheldon, 2002). Students who have significant absences often fail to earn credits for the classes they have missed, either because of failing tests or incomplete assignments, or because of attendance policies established by the school or school system. Students who must repeat grades are at much greater risk of ultimately dropping out of school, even if the retentions occur in elementary school (Abrams & Haney, 2004; Herzenhorn, 2004). In some cases, schools expel students for chronic absences, which often ends in dropouts as well (Heilbrunn, 2007).

Several studies have shown relationships between truancy and substance abuse. Using data from the Rochester Youth Development Study, Henry and Thornberry (2010) concluded that truancy appears to be a strong predictor of substance use, likely a result of reduced school relationships combined with much unsupervised time spent with peers. Not only is truancy connected to increased use of a substance, once the youth initiates substance use, “truancy is also related to a substantial escalation of use” (Henry & Thornberry, 2010, p. 123). Other risky behaviors associated with truancy are weapon-related violence, suicidal thoughts and attempts, and early sexual intercourse (Blum et al., 2000).

Garry (1996) suggests that truancy is a stepping-stone to juvenile delinquency. As far back as 1915, social scientists referred to truancy as the “kindergarten of crime.” One early criminologist noted that nearly a quarter of the young male offenders had a history of truancy, with truancy largely representing their earliest offences (Gavin, 1997). According to law enforcement agencies, students who are skipping class are prone to committing crimes, such as shoplifting, burglary, and vandalism (Garry, 1996).

There is limited data on the relationship between truancy and adult crimes. However, chronic absenteeism clearly leads to high school dropouts, and dropouts are highly represented in the penal systems. The 1997 Bureau of Justice data indicated that 41.3% of the incarcerated

population did not earn a high school diploma or GED (Harlow, 2003). Heckman and Maserov (2005) posited that “one of the best established empirical regularities in economics is that education reduces crime” (p. 12), adding that completing high school is a major crime prevention strategy. Poorly educated individuals are much more likely to commit crimes than those who are more educated. Furthermore, low-income teenage mothers who are poorly educated are more likely to have children who later participate in crime activities (Heckman & Maserov, 2005). Lockner and Moretti (2004) estimated that an increase in the high school graduation rate by just one percent could yield 1.8 billion dollars in social benefits, reducing the number of crimes by at least 94,000 each year. Social benefits include lower medical costs, reduced losses in wages, and reductions of incarceration costs.

Schools with absent students may lose much needed state and federal funding that is determined by each school’s attendance data. Therefore, this loss of funding affects the truant students’ peers as well (Garry, 1996).

### **Local, National, and State Attendance Initiatives**

In response to growing student attendance concerns, many local school boards and state departments have redesigned existing school policies, provided attendance initiatives, and instituted more deliberate attendance monitoring systems. The importance of school attendance is without question; students must be present in their schools to reap the benefits from the curriculum, meet academic and other diploma requirements, and participate in the many other important opportunities and advantages that schools can offer.

As high poverty, and often, high minority schools tend to experience excessive numbers of chronic absenteeism, local schools and districts have reached out to both faith-based and community-based organizations to partner with them in their attendance improvement efforts.

For instance, Bessemer High School in Bessemer, Alabama, both high minority and high poverty, held a Truancy Town Hall in September 2015 to raise awareness for the importance of student attendance at school. This meeting coincided with Attendance Awareness Month, a national annual event to mobilize schools and communities in order to promote regular attendance and reduce chronic absences. It was held in a large church in lieu of the traditional Wednesday night church service. Several panelists were asked to speak to the parents, students, and community members who attended. Of those panelists, there were state department truancy experts, the school board president, the system's truancy officer, two local judges who decided the school system's truancy cases, and the city's police chief. After a presentation on the connection between high absenteeism and poor academic achievement and higher criminal activity, the panelists responded to many questions provided by the audience. Perhaps, the police chief and the judges had the greatest impact on the audience as they described specific cases of truant students and their parents. However, one parent summed up the overall importance of their children's education in one sentence when he announced, "You can't teach them if they ain't there!" (Bessemer City Schools, 2015).

Several years ago, Alabama initiated a Comprehensive System of Learning Supports, aligned to the state's Plan 2020 education initiative, to "provide a framework and structure to coordinate multiple activities that break down those barriers in a proactive, organized manner" (Crain, 2013). It is intended to be a preventive approach to chronic absenteeism and disengagement, rather than reactive after the issues have manifested themselves. In a 2012 Learning Supports report, there were 9,700,000 unexcused school absences in the 2011-2012 school year. Of those, 1,900,000 were excused. In response to these high numbers of absences which in turn infer vast instruction lost, the Comprehensive System of Learning Supports is

working with interested schools and school systems to help mitigate those excessive absences through coordinated best practices and partnerships (ALSDE, 2013).

The Comprehensive System of Learning Supports offers six beliefs in their work:

- (1) There must be an overarching belief that each student is entitled to receive the supports needed to ensure that he or she has equal opportunity to learn and to succeed in school.
- (2) A Learning Supports System doesn't just focus on an individual student with problems. A school-based learning supports leader and leadership team represents the type of mechanisms needed for overall cohesion and ongoing development of learning supports programs and systems.
- (3) A Learning Supports System is a process by which schools, families and communities facilitate learning by alleviating barriers, both external and internal that can interfere with learning and teaching.
- (4) A Learning Supports System is essential to alleviate the fragmentation that exists within current systems and increase the effectiveness and efficiency by which they operate.
- (5) The challenge is to transcend what any one system alone can provide.
- (6) The role of the state and regional agencies is to align, assist, and support community-level changes. (ALSDE, 2013, p. 10)

Alabama currently has two accountability models for public schools: ESEA Accountability Model and PLAN 2020 Accountability Model. In June 2013, Alabama's ESEA Flexibility Waiver to NCLB was approved by the United States Department of Education and immediately implemented. It was due to expire in June 2015; a renewal was submitted in April 2015 and subsequently approved in August 2015. In the original and renewal waiver document, attendance rate is a significant indicator toward school accountability. For schools with a Grade

12, attendance rate is considered the average daily attendance for the entire year. In 2014-2015, schools were asked to either show improvement from the previous year or meet or exceed the goal of 90% based on data from two most recent years' average for the school or district. In 2015-2016, schools were asked to meet or exceed the goal of 90% based on data from the three most recent years' average for the school or district (*ALSDE Update on Accountability*, 2015).

NCLB and subsequent state NCLB waivers were replaced by *Every Student Succeeds Act (ESSA)*, when President Obama signed it into law on December 10, 2015. The law will take effect in the 2017-2018 school year. Among the accountability metrics that must be broken down by subject is chronic absenteeism, both excused and unexcused. The *ESSA* requires that states report the chronic absenteeism rates, and it will allow Title II federal dollars to be spent on professional development to reduce absenteeism (*ESSA*, 2015).

### **Summary**

While compulsory attendance laws were initiated in the mid-1800s, they continue to influence current legislative and judicial opinions. Much like compulsory attendance laws and educational agendas are inextricably intertwined, so are the morals, convictions, and historical events surrounding them. Over the last 100 years, there have been many challenges and much legal precedence concerning compulsory education, which have had substantial legislative and judicial importance. The three seminal cases deliberated by the lower courts and ultimately, the United States Supreme Court (*Meyer*, *Pierce*, and *Yoder*) considered compulsory school attendance as a parent's constitutional right to make decisions of educational matters for his or her child. All three decisions favored the parents instead of the State and set the tone for how far states could go in controlling and regulating education.

Education is not considered a fundamental right under the United States Constitution. While the intent behind compulsory attendance laws was not to infringe upon parental control of a child's education, it has, nevertheless, been an effect. As such, the United States Supreme Court reviewed how compulsory school attendance laws and policies breached the individual student and parents' rights as provided by the United States Constitution. For the most part, the cornerstones for compulsory school attendance challenges were infringements of the First, Fourth, Ninth, and Fourteenth Amendments.

The United States Supreme Court has not made judgments on the importance or legitimacy of compulsory attendance statutes. Instead, the Court placed more consideration in the states' interest in regulating and standardizing the education for their children. That said, while there are many commonalities among states in regard to compulsory attendance statutes, there are also both subtle and distinct differences in the nuances of the laws.

Improving student attendance is an enormous challenge confronted by schools across America. Millions of students are missing entirely too much school with far reaching negative effects. Student absenteeism affects student achievement, school discipline referrals, truancy, and high school dropout rates. In response, promising initiatives and practices are being implemented in a massive effort to turnaround truancy and chronic absenteeism.

CHAPTER III  
METHODOLOGY AND PROCEDURE

**Introduction**

This study represents a qualitative, document-based research study, resulting from the analysis of case law. The research sources were court cases involving criminal liability of parents and guardians in relation to compulsory school attendance. One hundred years of cases spanning from 1918-2014 were examined to ensure a sufficient number of cases for analysis and comparison, as well as to determine any trends that may be revealed. Both primary sources and secondary sources were reviewed to provide a substantive background for this analytical and interpretive study.

**Research Design**

The researcher in this study served as the participant observer. The methodology utilized in this study was document-based, also known as archival research. Such research centers around records or documents, such as court cases, and compels the researcher to be the key instrument of data collection and analysis.

The research design is intended be both qualitative and descriptive. State and federal court cases involving criminal liability of parents and guardians related to compulsory attendance were selected from the West Digest System to discover insightful issues, principles, relationships, trends, and outcomes.

## **Research Materials**

The cases discussed in this study are documents containing primary information, which include court opinions and case transcripts of cases involving criminal liability of parents/guardians in relation to compulsory school attendance from 1918-2014. Each of these cases was identified and collected from the Westlaw online database and from the Bounds Law Library, located on The University of Alabama campus, as well as Bounds Law Library legal databases available online through MyBama. The West Digest System is one of the most extensive resources in legal research. It is particularly helpful in directing researchers to court cases that are similar in legal issues. The West Digest System classifies the law into seven classifications: contracts, crimes, government, persons, property, remedies, and torts. This digest is arranged by extensive topic areas and serves as a subject index to case law. Its key system further divides broad topics into subtopics (headnotes are assigned a topic, and key numbers correspond to the legal subject addressed in the headnote). The key number from the West Digest System was 141E (Education) with the subcategory of 688 (Criminal Liability of Parent or Guardian) under the heading of Admission and Attendance. All cases are published opinions from a state court of appeals, state circuit court, state supreme court, United States District Court, United States Court of Appeals, or the United States Supreme Court. All relevant cases were identified, reviewed, and analyzed, resulting in a large quantity of raw data.

## **Research Questions**

The research questions seek patterns of unanticipated as well as expected relationships (Stake, 1995). The research questions were the following:

1. What are the issues in court cases involving criminal liability of parents/guardians in relation to compulsory attendance?

2. What are the outcomes in court cases involving criminal liability of parents/guardians in relation to compulsory attendance?

3. What are the trends in court cases involving criminal liability of parents/guardians in relation to compulsory attendance?

4. What legal principles can be derived from court cases involving criminal liability of parents/guardians in relation to compulsory attendance?

### **Methodology**

The purpose of this research was to study issues, outcomes, and trends in cases involving liability of parents and guardians in relation to the school truancy of their children. This document-based, qualitative study focused on court cases decided by the United States Supreme Court, the United States Courts of Appeal, the United States Federal District Courts, and state appellate courts. This research is historical in nature, as the court decisions span the years between 1918-2014.

Because the intention of this study is to determine issues, principles, trends, and outcomes among cases, a qualitative research approach was conducted. Creswell (2013) suggests that researchers conduct such research when they “need a complex, detailed understanding of the issue” (p. 48). Gall et al. (2007) define qualitative research as “inquiry that is grounded in the assumption that individuals construct social reality in the form of meanings and interpretations,” adding that the dominant methodology is to discover “meanings and interpretations by studying cases intensively” and by “subjecting the resulting data to analytic induction” (p. 650). That said, an important skillset for this research was interpretation, deduction, and analysis to accomplish the intention of this study. Furthermore, it was paramount that the data collected was accurate, as the reliability and validity of this document-based research could not be expressed quantitatively.

Document-based research involves skimming, reading, and interpretation, combining tenets of content and thematic analysis. Content analysis is the process of organizing data into categories stemming from the central research questions (Bowen, 2009). The researcher should be able to identify important information as it relates to those questions, fleshing out irrelevant data (Strauss & Corbin, 1998). Thematic analysis recognizes patterns within the data, allowing for emerging themes to reveal themselves. This process involves a deliberate, more focused review of the data in which the researcher looks more closely at the data. In doing so, the researcher may establish codes and categories to reveal themes related to a phenomenon. The researcher should be objective in his or her approach so as to represent the information fairly (Bowen, 2009).

While document-based research is often employed in conjunction with other research methods, Bowen (2009) acknowledges that it can be quite effective as a stand-alone methodology in certain studies, particularly those in which documents are the primary, if not only, source of information available to the researcher. This is especially true in scenarios where the phenomenon or event can no longer be observed.

Yin (1994) noted other advantages of document-based, qualitative studies. The inclusion of exact names and details of events makes documents helpful in the research process. Documents can also provide broad coverage, as they may cover extensive spans of time, events, and settings.

While many cases may be similar in nature, each one has a different story to tell, providing valuable insight for the researcher. By reviewing the court cases of liability of parents in relation to compulsory education, the researcher will not only glean timely and relevant

information about the issue, but can also use the knowledge and findings of the study in facilitating the development of school policies and procedures.

### **Data Collection**

The search of the West Digest System under the Key Number of 688 (Criminal Liability of Parent or Guardian) resulted in 124 cases between the years of 1891-2014. The researcher reviewed each case and only included cases of parent/guardian liability in relation to compulsory school attendance that went before a court between 1918-2014, resulting in 101 cases. The researcher elected to begin the research in 1918 because all current states had enacted compulsory attendance laws by that year. Alaska and Hawaii, both with compulsory attendance laws, would later join the United States in 1959.

The 101 cases were arranged in chronological order. The researcher made a digital copy of each one and arranged them from the earliest case (1918) to the most recent (2014) in order to prepare for case briefing. Each was carefully read, reviewed, and analyzed for the purpose of this study.

Each brief was generated from the reading of the court opinion. A trial brief can be defined as an attorney's collection of notes that details how he or she plans to conduct an impending trial (Statsky & Wernet, 1995). In their book *Case Analysis and Fundamentals of Legal Writing*, Statsky and Wernet (1995) suggested the following case briefing format:

1. Citation--pertinent information that identifies a particular case.
2. Key Facts--important facts surrounding a particular case.
3. Issue--specific legal question being considered.
4. Holding--answer(s) to a legal issue provided by the court's opinion; the court's application of law to the particular case.

5. Reasoning--explanation of the court's rationale in a holding regarding an issue.
6. Disposition--order of the court as a result of its holding. (p. 41)

This briefing method is a useful way of standardizing analyses of particular cases. As such, the researcher can identify and label patterns, as well as develop coding strategies for comparison purposes. This process, which can be likened to interviewing subjects in a qualitative case study, ensured a comprehensive review in answering this study's research questions.

### **Data Analysis**

Like other qualitative research methods, document-based research requires that data be examined and interpreted in order to find meaning, gain understanding, and acquire empirical knowledge (Corbin & Strauss, 2008). Document analysis produces data that are organized into themes and categories specifically through analysis of the content (Labuschagne, 2003).

Stake (1995) posits that interpretation is a significant part of all research. In collecting data for qualitative research, Corbin and Strauss (2008) stress that the process compels the researcher to interact with the data, ask questions about the data, compare the data, and finally, draw conclusions from the data. Qualitative research involves the use of interpretative or theoretical frameworks that informs the study of research problems; the data analysis is both inductive and deductive and establishes themes or patterns (Creswell, 2013). Anfara and Mertz (2015) add that such interpretation "situates qualitative research clearly within the scholarly conversation, adds subtlety and complexity to what appear at first glance a simple phenomenon, and allows for building a repertoire of understandings" (p. 228).

A holistic analysis approach as described by Creswell (2013) was useful for this study. The data collected were analyzed in terms of relevant issues, principles, trends, and outcomes

among cases related to parent and guardian liability in compulsory education scenarios in American schools. The data were then briefed as suggested by Statsky and Wernet (1995).

In qualitative studies, data collection and data analysis should be a concurrent development from the beginning of the research process. Great care was placed on the organization and management of the data so that common themes aligned to the research questions could be constructed (Merriam, 2009). As a result, it was important for the researcher to employ an effective method for organizing and managing the data.

The researcher coded the cases as an additional means to reveal themes, patterns, and relationships among cases. A code in qualitative research is normally a word or short phrase that “symbolically assigns a summative, salient, essence-capturing” attribute to data (Saldana, 2013, p. 3). By coding and discerning concepts, Saldana (2013) suggests that researchers may attain higher level and more abstract concepts. In this study, the researcher began with general codes, or concepts, and then progressed to more specific sub-codes during the course of the research process.

A particular coding process called “attribute coding” proved helpful in providing essential information and contexts for analysis and interpretation. Attribute coding is the notation of basic descriptive information such as settings, demographic, time frames, and other variables of interest for qualitative analysis. Attribute coding is “appropriate for virtually all qualitative studies, but particularly for those with multiple participants and sites and studies with a wide variety of data . . .” (Saldana, 2013, p. 70).

For this study, the researcher created a digital repository for the cases using a Microsoft Excel© spreadsheet. The main spreadsheet’s header categories were the following: Year, Case, Court, State, School Level, School Type, Violation, Ruling, Main Issue, and Amendments Cited.

Many other spreadsheets were created with subcodes and filters for the header categories on the main spreadsheet. Information for each of the 101 cases reviewed in this study was entered according to those categories. The spreadsheets were manipulated or sorted by the header categories or subcodes, which was quite helpful in reviewing and analyzing the cases.

### **Summary**

This chapter described the methodology for qualitative legal study, historical in scope, as related to liability of parents and guardians in regard to compulsory school attendance. Using the Westlaw Digest System to identify pertinent cases, the researcher analyzed cases from 19158 to 2014, distinguishing important relationships and disparities among them (Statsky & Wernet, 1995).

Bowen (2009) states that document analysis is not “a matter of lining up a series of excerpts from printed material to convey whatever idea comes to the researcher’s mind” (p. 33). Instead, it is a process of reviewing and analyzing documents so that empirical knowledge is attained and a better understanding is established. This research is both relevant and timely, as schools across the country are experiencing growing concerns in the issue of compulsory attendance, particularly as state and national policies are holding schools more accountable for the attendance of their students. Through this study, the researcher endeavors to reveal case law, trends, and outcomes that would be helpful to educational leaders at all administrative levels of education. Such information could prove helpful in mitigating future litigation related to compulsory school attendance and parent liability. Furthermore, findings from this study could help inform future compulsory school attendance legal and policy actions.

In the next chapter, the researcher produces the case briefs, reduces data from the briefs, analyzes the data, and then answers the research questions to deepen the understanding of the issue compulsory school attendance in relation to parent and guardian liability.

CHAPTER IV  
DATA PRODUCTION AND ANALYSIS

**Introduction**

This chapter provides a description of 102 court cases concerning the liability of parents in regard to the school truancy of their students from 1918 through 2014. The data from these cases were derived from a case-by-case analysis according to the key facts and reasons established by each court. The cases were analyzed utilizing a standard format established by Statsky and Wemet (1995) as described in their book, *Case Analysis and Fundamentals of Legal Writing*. The cases are listed in chronological order. Each case brief begins with the case citation, followed by the key facts, issue(s), holding(s), reasoning, and disposition.

**Case Briefs**

**1918**

Citation: *Troyer v. State*, 29 Ohio Dec. 168 (1918).

Key Facts: Ora Troyer was arrested for failing, neglecting, and refusing to cause his nine-year-old daughter, Ruth to attend school. He had previously been arrested on the same charge, in which he pleaded guilty and was fined.

The defendant was of the Mennonite faith and was opposed to defending his country in time of war. He moved his family into an orphanage that was maintained by the Mennonite church, but utilized as a public school. As such, certain patriotic teachings and exercises, which included a pledge of allegiance and physical salute to the flag, were required at this school. The defendant instructed his daughter not to participate in these exercises.

At the trial of the first offense, it appeared that the defendant kept his daughter away from the school room, but after pleading guilty and paying the fine, he instructed her to go to school in the morning, and if she was sent out of the room for refusing to pledge to the American flag, to stay out until the noon recess and then go back to school. She did so, and this behavior continued until the time of second arrest.

Issue(s): Should the defendant be acquitted for his actions as a “conscientious objector?”

Holding(s): A “conscientious objector” who has been convicted a second time for failing to cause his child to attend school, by sending the child to school with the instruction not to participate in patriotic exercises and knowing the child would be sent away from school, could not be excused from the compulsory attendance law.

Reasoning: The attendance statute required attendance in good faith and compliance with rules and participation in school exercises. The defendant compelled his daughter to refuse school exercises and was therefore, subject to criminal proceedings for failure to cause his daughter to attend school. Furthermore, forbidding a child to participate in the salute to the flag was not a conscionable matter, for conscience could “lead to respect for government and to its defense, especially in time of war,” instead of promoting “disloyalty and treason.”

Disposition: The Court of Common Pleas of Ohio found no error in the previous proceedings, which convicted the defendant and sentenced him to 25 days in the county jail.

## **1919**

Citation: *People v. Himmanen*, 108 Misc. 275 (N.Y. Misc. 1919).

Key Facts: Oscar Himmanen was convicted of a violation of the Education Law, after a trial before a justice of the peace. He appealed the decision.

The defendant was the father of four children aged of 12, 11, 10, and 7 years old. Prior to February 1919, the school furnished transportation for his children to and from school. However, transportation was discontinued that month. Thereafter, the defendant failed to cause his children to attend school.

The defendant's residence was 3.5 miles from the school by one road and a little less than 2 miles by a shorter road. The testimony provided at the trial showed that the shorter road was muddy and had standing water during rainy weather. The testimony also showed that one of his school-age children was lame as a result of a leg injury. The defendant posited that the distance from his house to the school was so great and the roads were not well maintained that it was unreasonable to require him to send his children to school.

Section 624 of the Education Law provided that "every person in parental relation to a child within compulsory school ages and in proper physical and mental condition to attend school, shall cause such child to attend upon instruction," etc. In the defendant's school district, children between the ages of 8 and 16 years old were required to attend school.

Issue(s): Was the distance of one road and poor condition of the other a justifiable reason to preclude the defendant from charges of violating the compulsory school attendance law, particularly when one child was crippled and another was not yet school age?

Holding(s): The County Court of Chemung County, New York, held that the excuses provided by the defendant could not serve as proper defenses to the complaint against him. When a parent refused to perform his duty of causing his children to attend school, he violated the law "in both letter and spirit" and should incur the provided penalties.

Reasoning: The distance and/or condition of the roads could not be a defense in the defendant's prosecution of the Education Law relating to compulsory education. Furthermore,

the fact that one child was under school age and another had a leg injury did not relieve the defendant of the charge of violating the statute with respect to the other two school-age children. The excuse of one child's physical impairment should have been presented by proper petition to the state department of education, or it should have been presented in the form of an appeal from the decision of the school district discontinuing the transportation of the children.

If the statute that required parents to cause their children to attend school could be evaded by simple excuses, the purpose of the state in providing and insisting on education would be frustrated and impaired. Failure to comply with the statute should only be excused for a very good reason.

Disposition: The County Court of Chemung County, New York, affirmed the defendant's conviction for violating the Education Law.

Citation: *People v. Saddlemire*, 180 N.Y.S. 257 (1919).

Key Facts: Merritt Saddlemire was convicted of failure to cause his 8-year-old son to attend school in School District No. 5 in the town of Wright, Schoharie County, New York, from May 6 to May 16, 1919. He appealed the decision.

Issue(s): Was there proof of residence to sustain the defendant's conviction for violating the compulsory attendance law?

Holding(s): In prosecution of a parent for failure to cause a child to attend school under Education Law, §§ 621-624, it could not be presumed that because a child attended school in a certain district, he was a resident of that district. Furthermore, a court could not legally presume that because a person resided in a town at the present time, he resided in it a year of 30 days prior to such time.

Reasoning: There was nothing in the trial court's concession to prove that the father and son were residents of District No. 5 at the time the child was alleged to be absent from school. There was no evidence in the case to show where they resided prior to the day of the trial or the days in question. Therefore, it involved the jurisdiction of the court and the question whether there was proof of the commission of the crime within the court's jurisdiction.

The information did not expressly allege where the defendant resided at the time when the boy was not in attendance at school, and there was nothing in the testimony to show his place of residence at the time of the child's absence. This resulted in a lack of proof of a crime and failed to show that the court had jurisdiction in the case.

Disposition: The County Court of Schoharie County reversed the defendant's conviction for violating the compulsory attendance law.

## **1921**

Citation: *Commonwealth v. Butler*, 76 Pa.Super. 113 (1921).

Key Facts: Burdine Butler, the defendant, was convicted by a justice of the peace of a violation of § 1414 of School Code, May 28, 1911, P.L. 383, 24 P.S. § 1421, requiring compulsory school attendance. He appealed to the quarter sessions under section 1423, where he was indicted and convicted.

The prosecution was a result of the defendant's refusal to have his son vaccinated. He brought his son to the Howard Township School on several occasions, but his admission was denied because the defendant declined to provide the certificate of vaccination required by § 1 of the Act of June 3, 1919, P.L. 399.

Issue(s): (1) Were errors made in excluding evidence the defendant offered? (2) Did the trial judge err in instructing the jury? (3) Should the defendant have been granted a new trial because the school district was not a municipality, as provided by the Act?

Holding(s): The Superior Court of Pennsylvania held (1) the evidence was properly excluded; (2) no attempt was made to bring the defendant's son within any exception of the compulsory attendance law, and the evidence warranted the instructions by the trial judge; and (3) evidence clearly demonstrated that the defendant was not deserving of a new trial.

Reasoning: It was irrelevant to inquire into the effect of specific vaccinations upon the defendant, and he could not be permitted to introduce testimony of the effect of those vaccinations on other individuals. The defendant's offer to prove certain exemption regulations was also correctly excluded because no offer of proof was presented to bring his son within the exceptions of the Act.

The judge correctly instructed the jury, as there was no confusion in the charge. The School Code required compulsory school attendance, with the certain exceptions; no attempt was made to bring the defendant's son within any exception.

A school district could be reasonably included within the designation of a "municipality." As such, it was intended in the provisions of the Act of June 18, 1895, P.L. 203, requiring compulsory vaccinations for the purpose of public health "in the several municipalities" on the Commonwealth.

Disposition: The judgment was affirmed.

Citation: *Commonwealth v. Florence*, 192 Ky. 236 (1921).

Key Facts: The appellee, W. E. Florence, was indicted for failing and refusing to send his child to school. A demurrer to the indictment was sustained, and the Commonwealth appealed that judgment.

It was evident that the demurrer was sustained on the belief that the act was invalid because the compulsory school attendance statute violated section 51 of the Kentucky's Constitution. Section 51 provided that "no law enacted by the general assembly shall relate to more than one subject and that shall be expressed in the title." It was also asserted that § 2 of the compulsory school attendance statute was meaningless because it omitted essential words.

Issue(s): Did the court err in sustaining the demurrer to Florence's indictment for failing and refusing to send his child to school?

Holding(s): In reviewing the grounds upon which the act could be attacked and being unable to sustain any of them, the Court of Appeals of Kentucky held that the lower court erred in sustaining the demurrer and dismissing the indictment.

Reasoning: However unclear the statute's title may have been in its attempt to specify existing laws to be repealed, the purpose was clearly expressed. The act's title did profess to repeal specific inaccurately described sections of previous statutes and to enact "new provisions relating to the compulsory attendance of pupil children in the common schools" of the state. The Court added that no one reading the title of the act could possibly be led to believe that the legislative intent was to enact new compulsory school attendance provisions. Therefore, the act could not have been declared unconstitutional because of its title.

Words inadvertently omitted from a statute should have been supplied within the context of the legislative intent and by referring to previous and latter sections. In § 2, the words "between the ages of 7 and 16, shall cause such child or children" are omitted. However, they

appeared in section 3. Common sense made it certain that it was the children, not their parents, who should have been attending school. The Court believed it was the citizens' authority, as well as their duty, to supply omitted words that are plainly indicated elsewhere in the act.

Disposition: The judgment to sustain the demurrer and dismiss the indictment was reversed, and the cause was remanded for further proceedings.

## **1922**

Citation: *Wright v. State*, 21 Okla.Crim. 430 (1922).

Key Facts: J. E.D. Wright, the plaintiff, was convicted in a county court for violating the state's compulsory school attendance laws. The information charged that he neglected, refused, and failed to send his eight-year-old daughter, Felicia, to attend the public school of her district, or approved private school, for two-thirds of the time the school was in session. He appealed this decision.

Mrs. Wright, Felicia's mother, testified that she had been providing the child instruction in the courses taught in public schools for approximately five hours each day. Mrs. Wright had graduated from a normal training school, in which pedagogy, language, mathematics, history, literature, and other branches had been included in the curriculum. In addition to these core courses, Mrs. Wright also provided Bible and religious instruction to her daughter, as well clay modeling, paper cutting, and art. Felicia's student work was offered for display and demonstrated considerable proficiency in the areas of instruction she had received.

The evidence also showed that the father, Mr. Wright, was an experienced teacher, having taught in the public schools of Kansas for three years, as well as several years in Oklahoma. He had also been employed by the government for three years as a teacher in the

Philippine Islands and taught for one year at a business college in Kansas. The testimony showed that he worked with his wife in providing instruction to Felicia.

The parents, members of the religious sect known as Seventh Day Adventists, testified that they wanted to train their children to become missionaries and ministers and claimed that the instruction and moral influences found in public schools would not well equip their children for that work. For this and other reasons, they opted to teach their daughter at home.

In the trial court proceedings, the testimony of the parents about their daughter's training was not successfully questioned by any of the state witnesses. In open court, Mr. and Mrs. Wright offered to show demonstrative evidence that their daughter had received quality instruction, but that offer was refused.

Issue(s): Did the court err in convicting Mr. Wright, an experienced teacher, for violating the compulsory attendance law when he and his wife provided instruction to their daughter at home?

Holding(s): The Oklahoma Court of Criminal Appeals held that the proof was not at all convincing that the child's education was in any way neglected. It seemed to them that the State had misconstrued "the scope and spirit of the statute upon which this prosecution was based."

Reasoning: So long as the child's education was not neglected, the Oklahoma Court of Criminal Appeals felt that the parents, under the Constitution and laws of the state, had the right to manage and supervise the education of their child, as long as it was done in an appropriate and effective manner.

Furthermore, the lower court had given a lengthy instruction about the necessary qualifications of public school teachers, which the jury may have applied to the parents as private tutors. The Court felt these instructions were in error; under the terms of the statute and under the

Constitution, a parent could have his child instructed by a competent private tutor or educated in a non-public school, without strict adherence to the public school teaching standards prescribed by the state.

Disposition: The Oklahoma Court of Criminal Appeals reversed the judgment of the trial court, which had convicted Wright for violating compulsory school laws.

## **1924**

Citation: *State v. Johnson*, 188 N.C. 591 (N.C. 1924).

Key Facts: T.C. Johnson, the defendant and father of four school-age children, was convicted of violating the compulsory school attendance law and appealed to the superior court. Johnson demurred to the warrant he had received and moved to quash it because it failed to charge a criminal offence. The motion was overruled, and the defendant accepted. After providing evidence and pleading not guilty, he was again convicted in the superior court. The defendant appealed.

Issue(s): (1) Was the warrant issued in error? (2) Did the court prove beyond a reasonable doubt that the defendant was guilty of the charge against him?

Holdings(s): The Supreme Court of North Carolina held that (1) the warrant should have been quashed or amended so as to state the charge properly and sufficiently; and (2) that the court failed to prove beyond a reasonable doubt that the defendant was guilty of the offense.

Reasoning: In the warrant, the defendant was only charged with failure to cause attendance in the public schools; it did not contain the criminal offense charge. Therefore, it should have been revoked or amended.

In criminal prosecutions, it was required that the charges state the essentials of the offense and must be proved beyond a reasonable doubt. The statute made it an offense when the

parents failed to send their school-age children to attend school for a period equal to the time the public schools were taught in the children's district. In such cases, the authorities were to set forth the substantial features of the offense in the warrant or bill of indictment, proving the alleged offense beyond a reasonable doubt. In this case, the State only proved that the children were absent from school. However, it did not present facts that permitted the inference of a failure for the children to attend any other properly conducted or recognized school.

Disposition: The Supreme Court of North Carolina reversed the judgment and ordered a new trial for the defendant.

## **1926**

Citation: *State v. McDonald*, 53 N.D. 723 (1926).

Key Facts: Jacob Fried, the relator, sought relief from a judgment of the district court of Morton County in which he was prosecuted for violating the Compulsory School Attendance Law, § 1342, Comp. Laws 1913, as amended by chapter 206, Sess. Laws 1917. The defendant was the sheriff of Morton County.

Fried's family, which included four school-age children, lived more than 2.25 miles from the nearest school. Because of this distance, the school board offered to pay the defendant 50 cents per day for transporting his children to school, per chapter 206, Sess. Laws 1917, subdivision 4. This amendment provided that if no approved school existed within 2.25 miles from a child's residence, the school board would, "pay for the transportation a sum of not less than 25 cents, nor more than 50 cents, per day to any one family living more than 2.25 miles from the nearest school. . . ." Furthermore, the school board would furnish transportation or the lodging, if acceptable to the family; when such transportation was furnished, the Compulsory Attendance Law would apply.

Issue(s): Should the parent have been subject to prosecution under the Compulsory School Attendance School?

Holding(s): Where the school board offered to pay 50 cents per day per family for transporting students who lived more than 2.25 miles from the school, but did not offer actual transportation of the students, parents could not be subject to the penalties of the compulsory school attendance law. The Court held that no offense was stated in the complaint and based on the facts, Fried could not be held guilty for violating the Compulsory School Attendance Law.

Reasoning: The Court believed that the statute's language was plain, stating that only when transportation was provided and the parent failed to send his child to school that the penal provisions of the law became applicable. The Court could not construe that the word "transportation" within the statute was equivalent to receiving payment for transportation.

Disposition: The Supreme Court of North Dakota reversed the conviction, and ordered that Fried be released and his fine remitted.

*State v. Kessel*, 54 N.D. 81 (N.D. 1926).

Citation: Frank Kessell, the defendant, was convicted by a justice of the peace for failing to send his six school-age children to school between the dates of October 6, 1924 and January 6, 1925. He appealed the conviction.

The defendant argued that because the offense was alleged to have occurred in 1924 and be a violation of the provisions of §1342 of the Compiled Laws for 1913, the complaint was demurrable whereas the section had been amended in 1915 and later in 1917.

The defendant, who lived in the badlands, also contended that complaint was defective, and the evidence was insufficient to justify the conviction because he lived more than 2.25 miles from the school by any established road. Sess. Laws 1917, chap. 206 declared that if no school

was taught the required length of time within 2.25 miles from the child's residence "by the nearest route," the school board would pay for transportation or equivalent lodging, if acceptable, to the family, and that when such accommodations were furnished, the compulsory attendance law would apply to children living more than 2.25 miles and less than 6 miles.

Issue(s): (1) Was the initial complaint against the defendant demurrable because it did not state a public offense within the provisions of §1342 of the Compiled Laws for 1913? (2) Should the defendant have been immune from prosecution because his residence was more than 2.25 miles by established roads?

Holding(s): The Supreme Court of North Dakota held that (1) the complaint fulfilled the requirements of the statutes governing information and indictments; and (2) the evidence sufficiently established that a school was within 2.25 miles of the defendant's home by the nearest route, regardless if it was a road or trail and, as such, he was properly prosecuted.

Reasoning: The Court thought there was no merit in the defendant's contentions that the complaint was demurrable based on the timeframe of the alleged violation. The facts constituting the alleged offense were sufficiently stated; these facts and the existence of a statute penalizing the defendant on account were sufficient to constitute the offense.

The Court was also of the opinion that under the statute, a complaint was sufficient without adding the qualification "by the nearest route." The allegation should have been interpreted as meaning 2.25 miles by nearest route because if the residence had been more than 2.25 miles by nearest route from the school, the compulsory attendance law would not have been applicable unless transportation was provided.

The county surveyor testified that he conducted a survey from the defendant's residence to school; the distance between the two by trail was 1.97 miles. The testimony of the distance

was clearly sufficient, providing that the trail could be considered the nearest route. Even though the defendant lived in the badlands where the section line roads were not laid out and instead often relied on “trails,” those trails were considered as good as any other roads in the township.

Disposition: The Supreme Court of North Dakota affirmed the defendant’s conviction.

Citation: *Barber v. School Board of Rochester*, 82 N.H. 426 (N.H. 1926).

Key Facts: George J. Barber, the plaintiff, brought about a bill against the School Board of Rochester and another to determine the respective rights and duties of parents and public officers to school-age children’s vaccinations. His demurrer to the defendants’ answer was overruled, and the case was transferred from the superior court on the plaintiff’s exceptions.

The plaintiff’s bill was on behalf of his minor children and himself. He alleged that in 1924, his school-age children were excused from being vaccinated after providing a proper certificate. In 1925, the school board requested a new certificate, which the plaintiff refused to provide. The defendant, the school board, responded that the children were “fit subjects for vaccination” and could not return to school until they were vaccinated or provided a new certificate. Under Texas’s statute, a child could not attend school unless vaccinated, or properly excused from vaccination (P.L., c. 123, s. 1). By other provisions, the parent or child’s custodian was liable to penalties for failing to cause the child to attend school (P.L., c. 123, s. 1).

Issue(s): (1) Was the vaccination statute unconstitutional? (2) Could a school board require a new exemption certificate after one had been furnished?

Holding(s): The Supreme Court of New Hampshire Strafford held that (1) the statute was constitutional; and (2) the meaning of the statute was that a new certificate could be required whenever there was reasonable grounds to believe that there may have been a change in the child’s condition, making him no longer “an unfit subject for vaccination.”

Reasoning: The Court conducted an extensive review of previous cases concerning the constitutionality of vaccination statutes. In some instances, the acts were compulsory, and in others, the compulsion was indirect, or partial, as in this case. According to all cases cited, the statutes were considered valid.

The statute did not specify how often a certificate could be required. It was the legislative intent of the statute to provide efficient protection of citizens; conditions making it unnecessary to vaccinate a child at one time may not have existed later. The plaintiff rested his case upon the proposition that one vaccination certificate be sufficient for all time in all cases. However, the statute provided that new certificates could be required if there was suspicion that a child had a change in health that made him fit for vaccination.

Disposition: The Supreme Court of New Hampshire overruled the plaintiff's exceptions.

## **1927**

Citation: *Byler v. State*, 26 Ohio App. 329 (Ohio Ct. App. 1927).

Key Facts: Seth Byler, the plaintiff in error, was tried and convicted in the court of a justice of the peace of Stark County, Ohio, for failing to send his daughter, Fannie, to school, as required by the state's compulsory school attendance statute, Section 12974, General Code of Ohio. An excerpt of the affidavit read, "During said time and then and there unlawfully, willfully, and negligently, did fail to send said minor, Fannie Byler, to school or to the proper grade of school; this being the second offense of this nature within said county."

Error was prosecuted to the common pleas court, where the justice's judgment was affirmed. Byler brought error to the Court of Appeals of Ohio, seeking to reverse the judgments of both the lower courts.

Issue(s): (1) Did the affidavit state an offense in violation of any statutory provision? (2) Did the affidavit set forth and state a second offense? (3) Was the transcript of the testimony sufficient to warrant a conviction of a second offense, if it was acknowledged that the charge was sufficiently stated in the affidavit?

Holding(s): The Court of Appeals of Ohio held that (1) the affidavit stated a first offense; (2) the affidavit did not state a second offense in such language as to advise the accused of that fact and was insufficient in law; and (3) the evidential facts were completely inadequate to sustain the claim of proof of the accused's former conviction of an offense similar to the one currently in question.

Reasoning: While the affidavit may not have been as clear, definite, and certain as it could have been, it did advise the accused of the offense for which he was charged. It was clear to the court that the language was in keeping with the legal requirements to state a first offense under the compulsory school attendance statute.

The Court felt that the line "this being the second offense of this nature used to charge the same" was too general and fell short in satisfying the law. It did not make clear to Seth Byler the fact that he had been charged a second time for failing to send his child to school. A second offense, if convicted, had a higher penalty than a first offense. Therefore, it should have been stated in clear language and much certainty.

As to the question of evidence, a search of the record failed to find proof that a first offense had occurred. However, the jury returned a guilty verdict, which included a finding of a second offense. The magistrate imposed a fine of \$25 on the accused, which was only authorized for a second offense, as provided in Section 12984, General Code. Without proof of a first offense conviction, the judgment of conviction and fine by the justice of the peace were in error.

Disposition: The Court of Appeals of Ohio reversed the judgment of Byler's conviction in the court of the justice of the peace and subsequent affirmance by the common pleas court.

The cause was remanded to the magistrate's court for a new trial.

Citation: *Parr v. State*, 117 Ohio St. 23 (Ohio 1927).

Key Facts: Mr. and Mrs. Clay Parr were convicted of violating the compulsory education law in the court of appeals of Marion County for failing to cause their seven-year-old daughter, Daisy May, to attend school. They appealed to the Court of Appeals, where the conviction was affirmed. They then brought error to the Supreme Court Ohio.

Issue(s): (1) Were the Sections of the General Code, 7762, 7762-3, 7762-5, 7762-7, 7763, and 12974, relative to compulsory school attendance, in conflict with the Ohio Constitution or the United States Constitution? (2) Did the record provide sufficient evidence to sustain the conviction?

Holding(s): The Supreme Court of Ohio held that (1) the compulsory school attendance statutes were constitutional, and (2) the record disclosed sufficient evidence to sustain the conclusions reached by the justice of the peace and affirmed by the Court of Appeals.

Reasoning: Compulsory education laws had been generally upheld by the courts. Statutes that made the education of children compulsory had become quite general in the United States, and their constitutionality was beyond dispute; the natural rights of parents to the custody and control of their children were subordinate to the state's power and could be restricted and regulated by municipal laws. It was of utmost importance for parents to have their children educated, not just for the child, but for the general public as well. If a parent neglects or refused to cause his child to be educated, he could be coerced by law to comply.

The State introduced testimony of physicians and others to back up its claim that Daisy May was healthy enough to attend school. The parents and their physicians denied this to be true. This was presented as an issue of fact, with the burden upon the State to establish the guilt of the accused beyond a reasonable doubt. The record showed sufficient evidence to uphold the conclusions reached by the justice of the peace who heard the testimony, saw the witnesses, and had sufficient opportunity to weigh evidence. As a result, the Court did not feel justified in changing the conclusion.

Disposition: The Supreme Court of Ohio affirmed the judgment of the Court of Appeals, which had affirmed the judgment of the court of common pleas and the justice of the peace.

Citation: *State v. Maguire*, 100 Vt. 476 (Vt. 1927).

Key Facts: After a trial by jury, W. G. Maguire was convicted of neglecting to send his son, Robert, to school as required by law under the provision of G.L. 1258. He brought exceptions and petitioned for a new trial. It was conceded that his son did not attend school on the day claimed by the State: February 8, 1926. His defense was that his son was too ill to attend school during the days of absence in question.

The affidavit stated that Robert Maguire contracted the “flu” on December 26, 1925, and that Dr. Ellis, the regular physician, was called to treat their son. Dr. Ellis continued to treat the boy up to and including February 6, 1926. At one point, Robert tried to attend one day of school, but had to leave at the morning recess due to his health issues. The doctor’s testimony in the affidavit read, “The boy’s health from the 26th day of December 1925, to and including the 6th day of February, 1926, was such that said boy was unable to attend school and that the boy was kept out of school in accordance with his suggestions and advice during the period aforesaid.”

Conversely, Mr. Ralph, the town's truant officer stated that he saw the boy every day or so around his parents' building and in front of their house, as well as playing with his brother. Nothing that he saw led him to believe that the boy was sick. Similarly, the district superintendent testified that he visited the respondent's home in January, and the child appeared in normal health.

Dr. Ellis was to be a key witness for the respondent, but was out of the state during the trial. The respondent moved for an adjournment until the doctor could return, but the motion was overruled.

The respondent presented several exceptions, including an abuse of discretion, insufficient evidence, and lack of reasonable doubt. The judgment was that there were no errors, and the respondent should take nothing by his exceptions. The petition for a new trial remained.

Issue(s): Should the respondent be granted a new trial because the court abused its discretion in overruling the respondent's request for an adjournment?

Holding(s): The Supreme Court of Vermont held that while an abuse of discretion did not appear, the respondent was still entitled to a new trial.

Reasoning: The Court believed it true that a person charged with a crime was entitled to a reasonable opportunity to seek and present witnesses necessary to his defense, which included a possible postponement of his trial. However, the motion must disclose not only the witness's absence, but, among other things, the materiality of his testimony. The first affidavit cited in this case fell short in this respect. Therefore, an abuse of discretion in overruling the motion did not appear.

However, the supporting affidavit by the doctor provided much more detail about the boy's condition. It stated, "In my opinion the boy was not in condition to go to school the 6<sup>th</sup> day

of February, 1926, nor could he be fit to attend school on the 7<sup>th</sup> day of February, 1926, unless his condition was improved.” In this respect, the affidavit went farther than the one filed by the respondent in support of his motion for adjournment. The materiality of the evidence in the second affidavit showed the respondent introduced evidence tending to show that his son’s condition on February 8<sup>th</sup> had not improved and that his face was as swollen as it had been on February 6<sup>th</sup>.

While the Court held that no abuse of discretion appeared when the trial court overruled the plaintiff’s motion for adjournment, it did not confine itself to that ground alone in considering a new trial. An examination of the transcript, which included witness accounts from both parents and two physicians, showed a better scope of the child’s illness, from his swollen face, mouth sores, difficulty sleeping, and albumen and phosphate in his urine on the days in question.

In the trial court, the countervailing evidence had been confined to the testimony of the truant office and district superintendent, which questioned the child’s illness as he had been spotted playing outside and even meeting at a creamery company. However, Dr. Ellis’s evidence from the second affidavit was of such a nature as to render reasonably probably that a different judgment would occur in another trial.

Disposition: The Supreme Court of Vermont ruled that there was no error to exceptions, but judgment and sentence was vacated, and the verdict was set aside. The respondent’s petition for a new trial was granted, and the cause remanded for a new trial.

Citation: *State v. Lewis*, 194 N.C. 620 (N.C. 1927).

Key Facts: M.S. Lewis was convicted of unlawfully and willfully failing to send his children to public school in Kannapolis in the district in which his family resided, as required by the compulsory school attendance statute. He appealed and assigned errors.

It was provided by C. S., 5758, with certain exemptions, that every parent, guardian, or other person in the State with a child between the ages of 8 and 14 years old would “cause such child to attend school continuously for a period equal to the time which the public school in the district in which the child resides shall be in session.”

Issue(s): Was the compulsory school attendance statute defective in its language?

Holding(s): The Supreme Court of North Carolina agreed that the statute was defective by omission and should be taken advantage of by motion of arrest of judgment.

Reasoning: No crime was charged in the warrant upon which the defendant had been tried and convicted. The statute did not make the failure to cause the attendance of a school-age child in the public school a crime. The offense was defined as the failure of the parent or custodian’s part to cause the child to attend school continuously for a period equal to the time the local district’s public school was in session. Citing, *Pierce v. Society of Sisters* (1925), the Court felt it would be an infringement upon the rights of private schools to require that all school-age children attend one of the public schools of the district in which they live.

Disposition: The Supreme Court of North Carolina agreed with the defendant and found error in the lower court’s judgment of a conviction.

**1929**

Citation: *State v. Burroughs*, 102 Vt. 33 (Vt. 1929).

Key Facts: Herbert A. Burroughs, the respondent, was tried and convicted in the Addison County municipal court upon the complaint of the State's attorney, which charged him with violating G.L. 1254, because on January 19, 1928, the respondent neglected to send his daughter, Edith Burroughs, to school as required by law. He brought exceptions to the admission of certain evidence and the court's charge to the Supreme Court of Vermont.

The record showed the respondent, beginning with January 19, 1928, to and including the day of trial March 31, 1928, except for two days on which the child had excused absences, failed to get the child to school on time, varying from 10 to 50 minutes late. The State also showed that the child was absent from school on certain days before January 18, 1928. The respondent argued that the State was in error to prove instances when his daughter was either absent or tardy before or after January 19, as he was charged with failure to send her to school on January 19.

The respondent also contended that the State only provided the child's tardiness as support for the complaint. However, the statute under which the complaint was brought was not directed against tardiness. The compulsory school attendance statute in question provided that "a person having the control of a child between the ages of 8 and 16 years shall cause such child to attend a public school continuously for the full number of days for which such school is held."

Issue(s): (1) Did the court err in allowing the State to introduce evidence independent and distinct from that charged to the respondent? (2) Did a child's tardies fall under the penalties provided for violations to the compulsory school attendance statute? (3) Should the respondent have been convicted for absences that occurred before he was notified to have his daughter in attendance?

Holding(s): The Supreme Court of Vermont held that (1) the court did err in permitting evidence independent from that charged; (2) the statute could not be construed to include tardies; (3) and prosecutions of persons failing to send their children to school could be pursued only for infractions that occurred after notice to send child to school had been provided.

Reasoning: The general rule in a criminal procedure was that evidence that is independent or distinct from the offense be considered inadmissible. The record showed that the State was permitted to introduce independent evidence, and doing so was in error.

If the term “continuously” in the statute was taken literally, a parent could incur a penalty from keeping his child from school a single day, no matter how justifiable. It was more reasonable to hold that the words “continuously for the full number of days for which such school is held” were employed by the lawmakers for the purpose of establishing a compulsory school attendance period in a general sense. Tardiness was left to be regulated by school authorities.

Nothing in the record showed that the court limited the use the jury could make of evidence of absences before the respondent was notified to have his child in attendance. General Laws, section 1258, expressly made notice that compulsory school attendance prosecutions could only be maintained for infractions of the statute that occurred after such notice.

Disposition: The Supreme Court of Vermont reversed the respondent’s conviction for violating G.L. 1254.

Citation: *State v. Hoyt*, 84 N.H. 38 (N.H. 1929).

Key Facts: The State issued complaints against Oscar Hoyt, Richard Daniels, Lucius Covey, and Truman Covey for failure to cause their children to attend public school. The case was transferred from the Superior Court to the Supreme Court of New Hampshire on agreement

of parties. Each defendant filed a statement of defense alleging “that on said day said child was instructed and taught by a private tutor in his own home in the studies required to be taught in the public schools to one of his years.”

Issue(s): (1) Was the compulsory school attendance statute unconstitutional for denying a parent’s federal guarantee of liberty? (2) Could the children being taught by private tutors serve as a defense to the charge of violating the compulsory school attendance statute?

Holding(s): The Supreme Court of New Hampshire that (1) the statute did not infringe upon personal liberty, and as such, was constitutional; and (2) a child being instructed by a private tutor was no defense to the compulsory school attendance violation.

Reasoning: The school laws were put in place to protect the state from the consequences of ignorance, as well as guard it from “incompetent citizenship.” While previous decisions recognized the existence of important restrictions upon state power to compel education, there was nothing to indicate that the statute’s provisions infringed the federal guarantee of liberty. While attendance at some school may be required, the state may supervise the school attended to ensure its quality. The power to “reasonably regulate” in requiring attendance, good character of teachers, and certain curricula were within the statute, and therefore, held to be constitutional.

If the defendant’s allegations that their children were taught by private tutors in their home could be interpreted as attendance at a private school, there had been no mention that the home instruction be designated as a private school. No private school status had been approved, as required by the statute, and therefore, the enterprise could not be considered an approved private school.

Disposition: The Supreme Court of New Hampshire concurred with the State in their charge of the defendants for compulsory school attendance statute violations. Defendants were fined \$10 each.

### **1930**

Citation: *Bishop v. Houston Independent School District*, 199 Tex. 403 (Tex. 1930).

Key Facts: Appellant, P.W. Bishop, sought a mandatory injunction against appellee, Houston Independent School District, to require the admission of his 13-year-old daughter to the school in which she had been suspended for violating the school rule that prohibited her from taking lunch during the noon recess except from the school cafeteria and food from her home. The trial court sustained the appellee's abatement plea because the appellant failed to secure the right to appeal to the highest school authorities.

The Court of Civil appeals reversed the judgment of the trial court, holding that the compulsory education statute's method of suspension or expulsion was mandatory, adding that the suspension in question was unauthorized and void. During the appellee's motion for rehearing, the Court of Civil Appeals certified several questions for the Supreme Court's determination.

The school district contended that the provisions of Article 2898, R. S., 1925, should be followed when the board of trustees decided that a student should be suspended or expelled from school under the compulsory education law for violating school rules. Bishop, however, believed that the provisions of the article were cumulative of the board's power to suspend the public school privileges and were not meant to curtail the same.

Issue(s): Were the provisions of Article 2898 mandatory for the management and control of students within the provisions of the compulsory education statute?

Holding(s): The Court of Civil Appeals erred in holding Article 2898 for the management and control of students within the compulsory education statute's provisions mandatory and exclusive in relation to attendance at public schools. As a result of this holding, no answer was needed to be made to the court's remaining questions.

Reasoning: It was evident that the lawmaking body's purpose in enacting Article 2898 was to provide an additional remedy to the board of trustees in enforcing compliance with reasonable rules in place to encourage and maintain proper discipline in the state's public schools. If Article 2898 was considered mandatory, its provisions would interfere with those giving power to the Board of Trustees of the Houston Independent School District to manage and control its public schools. There would also be a conflict with the provision of Article 2780, R. S., 1925, which stated that the board of trustees of independent school districts were vested with "exclusive power to manage and govern" their schools. The Court found it difficult to reach the conclusion that the lawmaking body enacted the statute to shift the enforcement of discipline in public schools from the school districts to the juvenile courts. Instead, a more reasonable conclusion was that the statute was created to supplement the board of trustees' power so that they could work with the juvenile courts for further action when necessary.

The Court was not concerned with the reasonableness of the board of trustees' rule, as it was within the power of the board to enact the rule designed to protect the health of students during the hours in which they were committed to the care of school authorities. Because the Court believed the rule to be reasonable, it noted that the appellant, who had advised his child to violate the rule that resulted in a suspension, could be proceeded against under the penal provisions of the compulsory education law, Art. 299, P. C., 1925.

Disposition: The Court of Civil Appeals reversed the judgment for the defendant, which had held Article 2898 mandatory and exclusive in the matter of attendance in public schools. The opinion of the Commission of Appeals answering the certified questions was adopted and ordered certified.

## 1936

Citation: *Arps v. State*, WL 2098 (Ohio Ct. App. 1936).

Key Facts: After the justice of the peace court prosecuted the parent for not sending his children to public school, the common pleas court affirmed the guilty verdict for the violation of the provisions of 7763 et seq, GC, related to attendance at public schools. The parent appealed the decision to the court of appeals. Because of their poor health, the parent contended that they should not have been compelled to attend school.

Issue(s): Should the parent be able to use his children's poor health as a defense to his conviction for violating mandatory attendance at public schools? Did the justice of the peace have final jurisdiction of a prosecution under 12974 GC for the violation of 7763 GC?

Holding(s): The Court of Appeals of Texas held that failure to secure a school excuse for attendance did not preclude the parent charged with the violation of 7763, GC, from defending himself on the grounds that his children's poor health should have excluded them from mandatory attendance. The justice of the peace did not have the final jurisdiction in such a prosecution. His jurisdiction only allowed him to inquire into the issue and then either discharge the defendant or send him to the proper court for further proceedings.

Reasoning: The justice of the peace's finding and judgment were against the weight of evidence in which the parent provided significant testimony about the health of the children during the time they did not attend school. This testimony was questioned by the State. The state

of the children's health was an issue of fact with the burden to establish guilt beyond a reasonable doubt resting on the State.

While the question of the justice of the peace's jurisdiction was not raised in the trial court or in error proceedings, the Court believed that because the case could be tried again, it was important to remind the parties involved that the justice of the peace only had jurisdiction to inquire into a cause presented under the provision of 12974 GC for the violation of 7763 GC and then either discharge the accused or refer him to the proper court.

Disposition: The judgment of the court of common pleas affirming the justice of the peace's judgment was reversed, and the cause was remanded to the justice of the peace for a new trial and further proceedings, as provided by law.

Citation: *State v. Ghrist*, 222 Iowa 1069 (Iowa 1936)

Key Facts: The defendant was charged with the offense of failing to send his child to school. The Municipal Court of Ames acquitted him, and the State appealed the decision.

The defendant and his family, which included his 14-year-old son, resided in the Ames Independent School district. His son had been a victim of infantile paralysis and continually suffered from pain. His son entered kindergarten in the Ames public school in 1926. In 1927, he entered first grade at the same school and remained in that grade for three school years. He then moved to second and third grade in two respective years. He withdrew from second grade in February of that year to attend a parochial school, where he remained until 1933. He returned to Ames in September 1934, entering the fifth grade. Because he struggled so much academically that school year, the school board determined that he should attend the Franklin School the following school year. This school did not group students by grade levels. Instead, the schoolwork was determined on an individual basis and was dependent on the proficiency of each

student. Many students who attended this school had difficulty achieving academic success in other schools as a result of mental handicaps, physical limitations, and/or speech deficits.

The defendant refused to send his son to this school and demanded that he continue as a student in the same grade at his current school. His father feared that his son would not want to attend a school the other children called the “dumb school.” He also objected to the building in which the Franklin School was held, stating that it was inferior to other schools in the district. The school board denied the defendant’s request and make it known that the Franklin School was the only school in the Ames Independent School District that the child could attend.

Because the defendant refused to send his son to the Franklin School, he was charged with violating the state’s compulsory attendance law, section 4410, Code 1935. The trial court found the defendant not guilty. The State appealed.

Issue(s): Did the school board have the power to establish the Franklin School, an ungraded school? Did the school board exhibit an unreasonable exercise of authority in assigning the defendant’s son to the Franklin School?

Holding(s): The Iowa Supreme Court held that it was not beyond the powers of the Ames Board of Directors to establish and maintain an ungraded school in their district. From the entire record, there did not appear unreasonableness to warrant a holding that the school board exceeded its authority in determining where students could attend school.

Reasoning: Several state codes, from 1873 to 1935, provided that school boards could establish graded or union schools. The earlier statutes were quite permissive, as the ungraded school was the original and generally accepted view of public school. The Court could find no mandatory legislation that graded schools be established, not that all schools in a district be

graded. Although graded schools had become the norm, the fact remained that the legislature permitted school districts to operate ungraded schools as well.

As to the question of the school board's exercise of authority, evidence was provided to substantiate the child's inability to meet the academic standards in the graded school. It was also on record that the child suffered from infantile paralysis and experienced constant pain that likely affected his performance in school. As a result, it was not unreasonable for the school board to assign him to a school that could better serve his individual and physical needs.

Disposition: The Supreme Court of Iowa reversed the lower court's decision to acquit the defendant.

## **1937**

Citation: *State v. Drew*, 89 N.H. 54 (N.H. 1937).

Key Facts: Lawrence E. Drew, the defendant, was convicted for not causing his 8-year-old son to attend school. He brought exceptions to this ruling. He contended that his motion to dismiss should have been granted on the ground that the vaccination law was invalid as it conflicted with the Fourteenth Amendment to the United States Constitution and Articles 4, 5, 12, and 19 of the New Hampshire Bill of Rights. Among other allegations, the defendant believed there was no legal authority to compel vaccinations or make it a requirement to attend school and that forcing such vaccinations was an assault on a child. He also asserted that the State should not practice medicine.

Issue(s): Did the vaccination law violate the defendant's Fourteenth Amendment rights?

Holding(s): The Supreme Court of New Hampshire held that the statute requiring vaccination for school attendance was valid, as had been held in similar cases previously.

Reasoning: Neither the defendant nor his son had the constitutional right to education which could not be limited by a reasonable requirement, such as having the child vaccinated before attending school. It was irrational for the defendant to declare that he performed his duty as a citizen and father when he demanded that his son be admitted to school with vaccination. On the contrary, it was his legal duty to have his son vaccinated. His claim that the statutes involved the State in the practice of medicine was also irrational. The defendant could not claim constitutional rights with making concessions of some of his natural rights, as provided by Article 3 of the Bill of Rights.

The defendant's views did not appear to be more than opinions, and none involved any question of religious liberty. As such, those opinions were irrelevant and could not affect the validity of the statute or entitle him to an exception.

The statute did not involve an assault or trespass upon a child's body. Because it required parents to have their children vaccinated to attend school, it was a reasonable measure for the protection of the public health.

Disposition: The Supreme Court of New Hampshire overruled the defendant's exceptions.

## **1938**

Citation: *In re Richards*, 166 Misc. 359 (1938).

Key Facts: A truant officer of the Central School District No. 1 in Oxford, New York, filed a petition alleging that 8-year-old Alice Richards was a neglected child on the ground that her mother, E. Florence Klose, unlawfully kept her out of school.

The mother and her daughter lived 1.25 miles from the school. The road on which they lived was lonely, poorly maintained, and unfenced. Instead of allowing her daughter to walk that road to school, the mother taught her at home and was competent to do so.

Issue(s): Because the child was so young, was the mother justified in keeping her from school so that she would not have to walk alone on a potentially dangerous road?

Holding(s): The Children's Court of Chenango County, New York held that it was not unreasonable to refuse to permit the very young child to walk that distance along a lonely and poorly maintained road, particularly when the mother was competent to teach her at home.

Reasoning: In enactment of the compulsory provision of the education law, particularly that of subjecting the parent to punishment by imprisonment, the parent must be found to be willful and defiant with an unlawful intent. In this case, the mother did not have unlawful intent, as she was concerned about the safety of her young child. She taught her daughter at home, which she was competent to do.

Disposition: The Children's Court of Chenango County, New York dismissed the proceeding against the mother.

## **1939**

Citation: *People ex rel. Fish v. Sandstrom*, 279 N.Y. 523 (1939).

Key Facts: Charles and Hilda Sandstrom were convicted of violating New York's compulsory attendance law. Their 13-year-old daughter, Grace, had refused to salute to the flag at her school. She was repeatedly requested to do so by the teacher and the principal, but never relented. Each time she refused, she was sent home for her non-compliance to the flag salute, to which her parents sent her back to school.

The defendants were members of, or associated with, the religious order known as Jehovah's Witnesses. Part of their belief was that allegiance could only be given to God. They believed that to compel Grace to salute the flag was contrary to their religious convictions, as well as the free exercise of religion. A proceeding was taken before the justice of the peace to punish the parents under section 627, subdivision B (2), of the Education Law, alleging that the parents unlawfully and maliciously kept their school-age daughter from attending school. They were convicted and appealed the decision to the Suffolk County Court, who affirmed the ruling. The defendant parents then appealed to the Court of Appeals of New York.

Issue(s): (1) Could the parents be convicted of a compulsory attendance violation if their daughter refused to salute the American flag, which repeatedly resulted in her being sent home?; and (2) Did the required flag salute violate the girl's free exercise of religion, as guaranteed by the United States Constitution?

Holding(s): The Court of Appeals of New York held that the defendant parents could not be convicted of keeping their daughter from attending a public school, where they repeatedly sent her back to school after she was sent home for her refusal to salute the flag.

As to the parents' contention that the required flag salute violated their daughter free exercise of religion, the court held that saluting the flag was in no sense an act of worship, nor did it constitute a religious observance. For the preservation of peace and for the prevention of war, the State could take measures to ensure that the youth respected law and order, as well as valued America's protection and blessings, which the flag represents.

Reasoning: Contrary to the allegations, the parents did not fail to send their daughter to school. They repeatedly sent her back to school after she was sent home for refusing to salute the flag. If the girl was insubordinate or disobedient to all the proper orders and regulations of the

school, she should have been disciplined accordingly. In similar cases, the procedure had been to expel the student, not punish the parents unless they disobeyed the law.

Disposition: The Court of Appeals of New York ruled that the conviction of the defendant parents be reversed and the information dismissed.

## **1942**

Citation: *In re Latrecchia*, 128 N.J.L. 472 (N.J. 1942).

Key Facts: Appellants, Francesco and Raffaele Latrecchia, were convicted in the Juvenile and Domestic Relations Court of Bergen County of “disorderly persons” because they had not kept their two children, ages 13 and 14, in regular attendance at school. They claimed they were powerless to do so because their children were expelled from school, and the school would not accept them when they reported for attendance.

The appellants and their children were followers of Jehovah’s Witnesses. The children refused to salute the American flag at school, pursuant to N.J.S.A 18: 14-80. Because they would not salute the flag, school authorities expelled them and sought to have the parents fined for not making the children comply with the school’s rule of students saluting the American flag.

Issue(s): Did the evidence authorize the conviction of the parents as “disorderly persons” in failing to keep their children in regular attendance at school?

Holding(s): The Supreme Court of New Jersey held that the evidence did not authorize the parents’ conviction as “disorderly persons” for failure to send their children to school.

Reasoning: It could not be claimed that the parents refused to send the children to school as the evidence showed otherwise. Tactful guidance is important in educating children. That said, public education could only be justified because of the benefit to all in having its children attend. As held in previous cases, the American flag was dishonored by a child’s salute in “reluctant and

terrified obedience to a command of secular authority” which may infringe upon his or her moral or religious convictions.

Disposition: The Supreme Court of New Jersey set aside the conviction.

## **1943**

Citation: *State v. Davis*, 69 S.D. 328 (S.D. 1943).

Key Facts: Appellants and their son, Donald Davis, were members of the sect known as Jehovah’s Witnesses. Donald, a sixth-grade student, refused to comply with the school regulation requiring all students to salute to the American Flag at specific times. While pledging, children were required to extend their right hands forward, palm upward. Jehovah’s Witnesses are taught that the flag is an image with the meaning of Exodus, Chapter 20, verses 4 and 5:

Thou shalt not make thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth: Thou shalt not bow down thyself to them, nor serve them.

When Donald refused to salute to the flag, he was dismissed from school by school authorities and then remained absent for an extended period. Appellants were later arrested and charged with the violation of SDC 15.3201 and 15.9915. Appellants were found guilty by jury and appealed the judgment.

Issue(s): Should the parents have been convicted for failing to send their son to school when their son was dismissed from it for refusal to salute to the American flag?

Holding(s): The Supreme Court of South Dakota held that where failure of the parents to send their son to school was due solely to their religious beliefs that were unconstitutionally infringed by the school’s flag salute student requirement, parents were improperly convicted of non-compliance to the state’s compulsory attendance law.

Reasoning: The school officers and teachers did not have the authority to require Donald to participate in the flag salute, and dismissing him from school for his failure to participate was unjustified. The appellants' failure to send Donald to school was due solely on their religious convictions, which the Supreme Court had held previously were unconstitutionally impinged by the flag salute requirement. Therefore, the convictions could not be sustained.

Disposition: The Supreme Court of South Dakota reversed the convictions.

## **1944**

Citation: *Commonwealth v. Conte*, 154 Pa. Super. 112 (Pa. Super. Ct. 1944).

Key Facts: The defendant was convicted and sentenced by a justice of the peace in a summary proceeding for violating the compulsory attendance provisions of the School Code. From the imposed sentence, an appeal was permitted. After the hearing, the defendant was found guilty and sentenced. An appeal followed.

The appellant was a member of the group known as Jehovah's Witnesses and father of two children, James Conte, age 10, and Dorothy Conte, age 8. The children attended Boothwyn School in the Upper Chichester District in Delaware County. The children refused to comply with the school regulation requiring all students to salute the American flag every morning. The students were asked to recite the Pledge of Allegiance with their right hand over their hearts, extending the right hand, palm upward, toward the flag at the words "to the flag" and hold the position until the end, when the hand could drop to the side. The basis for the children's refusal to participate in this exercise was their religious belief as Jehovah Witnesses. Jehovah Witnesses believe that the flag salute is idolatrous and unscriptural per the Bible. The children believed that saluting the flag in the required manner defied their religious convictions and would cause their death in the upcoming Armageddon. When the children refused to comply with the flag salute

exercise, they were sent home each day from school by the school authorities. The father was thereby charged with violating the School Code.

Issue(s): Was the children's expulsion for failure to salute and pledge to the flag justified?

Holding: The Superior Court of Pennsylvania held that the children's expulsion was improper and unjustified, and the appellant's prosecution and convictions for their alleged unlawful absences could not be affirmed.

Reasoning: The Court adhered to previous United States Supreme Court decisions related to students failing to participate in America flag pledge and salutes, particularly as they related to First Amendment freedoms of speech and worship. Consequently, the action of the school authorities to compel the flag salute and pledge transcended constitutional limitations of the power.

Disposition: The Superior Court of Pennsylvania reversed the appellant's conviction.

Citation: *Commonwealth v. Crowley*, 154 Pa. Super. 116 (Pa. Super. Ct. 1944).

Key Facts: This case is similar to *Commonwealth v. Conte* (1944) and was held in the same court, the Superior Court of Pennsylvania. In this situation, Helen Crowley, the defendant, was the mother of two daughters, ages 9 and 13. The daughters were enrolled in public school. As part of the routine course of study at this school, students were required to pledge and salute to the American flag, a regulation approved by the State Board of Education. The defendant's children refused to salute to the American flag, stating that their religious beliefs as Jehovah's Witnesses and Biblical teachings prevented them from doing so. They requested to be excused from participating in the salute and pledge, but school authorities denied the request. The

children were then expelled from the school and ordered not to return until they agreed to participate.

Issue(s): Were school authorities authorized to require students to participate in the flag pledge and salute?

Holding(s): The Superior Court of Pennsylvania held that school authorities were not authorized to require students to participate in the flag pledge and salute upon their refusal to do so based on their religious beliefs as Jehovah's Witnesses. Because the children's expulsion was due to their failure to participate, the mother's conviction for violating the compulsory attendance statute could not be sustained.

Reasoning: Because the children's deeply held belief as Jehovah's Witnesses that the flag salute was contrary to their faith and Biblical teachings, authorities could not compel them to participate in the exercise. As such, their expulsion was unjustified.

Disposition: The Superior Court of Pennsylvania reversed the conviction.

## **1945**

Citation: *Matter of Gardner v. Domestic Relations Court of City of New York*, 184 Misc. 44 (N.Y. Misc. 1945).

Key Facts: Petitioners sought an order, or prohibition, to restrain the respondents from taking further action in proceedings that had been instituted against them in the Domestic Relations Courts of the City of New York, Children's Division. In December 1944, petitioners were served with summonses which stated that a petition had been filed alleging a violation of Section 630 of the Compulsory Education Law failing to "return employment certificates of minors upon termination of their employment at The Gardner Bowling Center, Incorporated."

Respondents contended that they could rely on the jurisdiction conferred by section 642 Educ. of the Education Law to enforce Section 630, irrespective of whether such action involved specific instances of delinquency or neglect. Petitioners objected to the petition on jurisdictional grounds.

Issue(s): Did the Children’s Court Branch of Domestic Relations Court of New York City have jurisdiction of proceedings for an alleged violation of Compulsory Education Law for failing to return employment certificates of minors whose employment was terminated?

Holding(s): The Supreme Court, Kings County, New York held that the Children’s Court branch of the Domestic Relations Court had no jurisdiction to enforce penal statutes, except as the violation charged may be incident to specific delinquency or neglect.

Reasoning: The judge felt that the petitioners had the right to seek a prohibition; while it was not a common practice to do so, it was helpful to uphold justice and prevent the exercise of unauthorized power. In this case, the Children’s Court had jurisdiction of “delinquent children,” and while it was conceivable that such children were issued employment certificates at the Gardner Bowling Center, the court’s jurisdiction was not affirmatively demonstrated. On the contrary, it was stated in the respondents’ memorandum of law that the proceeding was “independent and apart from any other pending case of cases.” Furthermore, to allow such courts to proceed against and punish an adult or employer regardless of whether it had been shown their conduct contributed to delinquency, neglect, or dependency, would be a violation of the restriction imposed by constitutional language.

Disposition: The Supreme Court, Kings County, New York granted the petitioners’ motion.

Citation: *Everson v. Board of Education of Ewing TWP*, 133 N.J.L. 350 (N.J. 1945).

Key Facts: A New Jersey law allowed reimbursements of money to parents who sent their children to school on buses operated by the public transportation system. Children who attended private schools also qualified for this transportation subsidy.

Ewing Township did not have its own high school, so pursuant to the law, it routinely paid the high school tuition and transportation costs to students who attended high school in Trenton or Pennington, New Jersey. Before 1941, Ewing students attended public high schools in those two school districts. In 1941, the state law was amended so that attendance and transportation to non-profit schools would be included. Some Ewing parents sent their children to Catholic private schools in Trenton, and the Ewing Board of Education paid the tuition. The school board also directly reimbursed the transportation costs to parents of 16 students attending parochial high schools, as well as parents of five students who were enrolled in parochial schools in Trenton.

Arch Everson, a Ewing resident, contended that the board of education had violated the Fourteenth Amendment's due process clause and the First Amendment's Establishment Clause in employing public tax funding to reimburse transportation costs to parents whose children attended parochial schools. He believed that those public monies were being used unconstitutionally to facilitate children's attendance at schools organized by religious affiliations.

In 1944, a New Jersey trial court sided with Everson that the use of such funds for the purpose of reimbursing parents' transportation to parochial schools was unconstitutional. It was noted that that many state courts had ruled on the issue, finding such reimbursements as unconstitutional. Conversely, several state courts had ruled in favor of parents in similar cases by

citing the “child benefit theory,” which allowed parents to receive public funds rather than the religious schools without violating the First Amendment’s Establishment Clause. In 1945, the Ewing Board of Education appealed the decision to the Court of Appeals of New Jersey.

Issue(s): Did the state law permitting the use of public funds to reimburse parents of students for transportation costs violate the First and Fourteenth Amendments to the United States Constitution?

Holding(s): The Court of Errors and Appeals for New Jersey held that state law did not violate the State or United States constitutions.

Reasoning: The questioned use of public monies supported the state’s interest in compulsory education for all students and did not serve private purposes, or more specifically, the parochial schools in which the students attended. The intent of the 1941 law was that students could be transported to parochial schools only as an incident to the transportation of students to public schools since the statute provided that students attending schools could be provided transportation by any school district from any point “on an already established school route to any other point on such established school route.” The Compulsory Education Law, R.S. 18:8-78, authorized payment of such expenses from local taxes as payment of “incidental expenses” or transportation of pupils.” Furthermore, without such a provision, parents without regular means of transportation could be placed in a situation in which it would be nearly impossible to comply with compulsory education requirements.

Disposition: The Court of Errors and Appeals for New Jersey reversed the lower court’s decision and found for the Ewing Board of Education.

**1946**

Citation: *State v. Pettifield*, 201 La. 609 (La. 1946).

Key Facts: The relator, George Pettifield, was tried and convicted on a bill of information that charged him with violating the compulsory attendance school law, Act No. 239 of 1944. With no right to appeal, he was sentenced to pay a fine of \$50 and serve 30 days in jail; the jail sentence was suspended. Pettifield applied for and was granted a writ of certiorari by the Supreme Court of Louisiana to review the proceedings and assess their validity. Pending the decision of this Court, all proceedings were ordered stayed and suspended.

Pettifield was a man of limited education and financial means. He worked the entire week during school hours as a bus driver for 70¢ an hour to support his wife and 13 children. The record showed that he sent all of his children between the ages of 7 and 15 to school, and they attended regularly, with the exception of one son, Charles, who was absent frequently. It was indicated that Charles was an incorrigible and delinquent child. Because of Pettifield's work schedule, it was impossible for him to personally supervise his errant son's school attendance.

Section 10 of the compulsory school attendance law made it a misdemeanor for any parent, guardian, or other person having control of a child to violate the provision of the act, subject to a fine of \$10 or 10 days, or both, at the court's discretion, for each unjustifiable absence. The same section added, "Visiting teachers, or other persons authorized to serve instead of visiting teachers as provided in Section 5 hereof, with the approval of the parish superintendent of education, shall have the authority and it shall be their duty to file proceedings in court to enforce the provisions of this Act." Section 5 made it mandatory that each parish school board employ at least one competent and qualified full-time visiting teacher whose duty was to enforce the compulsory attendance laws.

Issue(s): Was the defendant convicted on improper evidence? Was the bill of information fatally defective on its face?

Holding(s): The Supreme Court of Louisiana held that the motion in the arrest of judgment on the basis of defective information should be maintained, as specific evidence was not provided to support the defendant's conviction. The bill of information was fatally defective.

Reasoning: The Court felt that the State should have shown the prosecution was initiated through the visiting teacher, or proper authority, with the approval of the parish superintendent of education as provided in the Section 5 and 10 of the compulsory school attendance statute. For an accusation to be valid, the State should have shown that the defendant unjustifiably failed to send his son to school. The information provided in this case was fatally defective in charging the defendant with unlawfully failing to send his son to school in violation of Act. No 239 of 1944; it only stated a conclusion of law without providing specific facts and information upon which the conclusion was based. This conduct was contrary to Article 227 of the Code of Criminal Procedure and Section 10 of Article I of the Constitution.

Disposition: The conviction and sentence were annulled and set aside. The motion in arrest of judgment was maintained, and the relator was ordered discharged.

## **1948**

Citation: *Rice v. Commonwealth*, 188 Va. 224 (Va. 1948).

Key Facts: Three sets of parents were charged and found guilty by jury for violating Virginia's compulsory attendance law, Section 683 of the Code. They sought to prevent the enforcement of compulsory school attendance laws on religious grounds. The parents believed that the Bible commanded them to teach and train their children; sending them to public school was incompatible with their religious convictions. They relied upon the First Amendment of the

Constitution of the United States, which provided for free exercise of religion. They also invoked the Fourteenth Amendment, which provided for due process and equal protection of the laws.

A visiting teacher conducted an investigation of the families involved. In each case, the parent or parents informed the visiting teacher that their children would not be attending public school because of their deeply held religious beliefs compelling them to instruct their children at home. The visiting teacher determined that the children had been receiving certain instruction in their respective homes, although the instruction did not cover the same number of days and hours per day as the public schools. No effort was made to secure a tutor or qualified teacher, nor was there any attempt from the parents to qualify as a tutor or teacher to teach at home, as prescribed by the State Board of Education.

Issue(s): Should the defendants be exempt from the compulsory attendance statute because it infringed upon their rights to raise, instruct, and educate their children as held by their religious convictions? Should the jury be allowed to determine the parents' qualifications as instructors?

Holding(s): The Supreme Court of Appeals of Virginia held that the defendants' religious beliefs did not exempt them from complying with the reasonable requirements of the state's compulsory education laws. The Court held that parents' qualifications should be determined by competent State agencies that have been given the responsibility of supervising the maintenance of proper educational standards.

Reasoning: Section 683 of the Code gave parents the reasonable options to send their children to a public, private, denominational or parochial, or have them taught "by a tutor or teacher of qualifications prescribed by the State Board of Education and approved by the division superintendent in a home." The defendants claimed the right to refrain from sending their

children to any school at all because of their religious beliefs. These beliefs, however deeply rooted, did not exempt them from complying with the reasonable options provided by the Code. The constitutional protection of religious freedom did not extend immunity from compliance with reasonable civil requirements by the State. Furthermore, individuals could not be permitted, on religious grounds, to be the judge of their duties to comply with laws enacted by the State that were in the public interests.

As to passing on the parents' qualifications, the State Board of Education and local superintendents were much better equipped to review a parent's qualification as a teacher, as provided by Section 683, than the laymen who made up must juries. In order to determine an individual's aptitude and qualifications as a potential teacher, an investigation must be conducted. Members of a jury who were not themselves qualified to teach could not conduct such an investigation. Furthermore, the defendants made no effort to have their qualifications as teachers approved by the state. Therefore, they were in no position to lean on their instructional efforts to defend their admitted violation of the compulsory education law.

Disposition: The Supreme Court of Virginia affirmed the circuit court's judgment.

Citation: *Gingerich v. State of Indiana*, 226 Ind. 678 (1948).

Key Facts: Chester Gingerich, the appellant, was convicted of violating the compulsory school attendance law by allowing and encouraging his 14-year-old son to remain absent from public school. He appealed the conviction.

Gingerich was a farmer and member of the Old Order of Amish Mennonites. He lived with his wife and 13 children in Green Township, Indiana. Apparently, all of the public schools in Green Township had been closed and children from that township had to attend schools in the adjoining town, Penn Township. Gingerich's son Joe was 14 and had graduated from the eighth

grade in a Penn Township school. Gingerich refused to send Joe to a Penn Township high school, and consequently, an affidavit was filed against him in circuit court, alleging that he did “permit, compel, and encourage” his son “to become and remain absent from the public schools of the district which the said son was by law required to attend.”

Issue(s): (1) Should the appellant be free from prosecution since there was no school operating in Green Township? (2) Was the requirement for the appellant’s son to attend high school an unreasonable interference with his right to direct the upbringing and education of his children, as well as an unconstitutional invasion of his religious liberty?

Holding(s): The Supreme Court of Indiana held the evidence was clear and uncontradictory that in the county in which the appellant and his family lived there were both elementary and high schools for the children to attend. Therefore, the Court held that there was evidence to sustain the verdict.

The Court held that the question of the constitutionality of the compulsory school attendance law could not be presented on grounds that the verdict or finding was contrary to the law.

Reasoning: In determining the question of the appellant’s school district, the Court addressed the two phases of the state’s school laws. One was the phase by which the schools were provided and children were assigned. The other was the phase by which school attendance was required. The two phases of this school legislation were separate and distinct. A close reading of section 5 of the 1921 Act reveals that it did not require that a child be sent to a school designated by the proper authority or to any particular school: “Unless otherwise provided herein, every child between the ages of 7 and 16 years shall attend public school, or other school taught in the English language which is open to the inspection of local and state attendance

officers; and such child shall attend such school each year during the entire time the public schools are in session in the school district in which such child resides. . . .” The school could be in or outside the school district in which the student resided. Furthermore, it seemed to the Court that the “school district” referred to in Section 5 of the 1921 Act was the county, not the township.

As so the question of the statute’s constitutionality, in previous cases that were similar in nature, it was held that before constitutionality of a statute could be presented to the Court in a criminal case, it must have first been presented to the trial court by a motion to suppress or a motion in arrest of judgment. Therefore, it could not be presented to this Court upon an assignment of error that the trial court erred in overruling a motion for a new trial on the grounds that the verdict was unlawful.

Disposition: The Supreme Court of Indiana upheld the judgment.

## **1951**

Citation: *Anderson v. State*, 84 Ga. App. 259 (1951).

Key Facts: Otis Anderson and another were convicted for violating the state statute requiring all parents to enroll their children, between the ages of 7 and 16, in a public or private school. Both asked for a new trial.

The defendants were members of a religious sect that disavowed the use of medicinal aides. They claimed that the court should have upheld Art. 1, Sec. 1, Par. XII of the Constitution of Georgia (Code, § 2-112) that stated, “All men have the natural and inalienable right to worship God, each according to the dictates of his own conscience, and no human authority should, in any case, control or interfere with such right of conscience.” By asking them to vaccinate their children for purposes of attending school, they claimed that if they were forced to

make a decision between depriving their children of an education and allowing them to receive medical treatment against their religious convictions, they would choose the former.

Issue(s): (1) Did the evidence fail to support the verdict because rules of the county board of health should not apply in incorporated areas? (2) Did the defendants have a right to abstain from vaccinating their children, on grounds that such vaccinations would threaten their right to worship?

Holding(s): The Court of Appeals of Georgia held that the contention that the evidence failed to support the verdict on grounds that the defendant lived in an incorporated area was without merit.

Freedom of worship was not an issue in this case. The defendants' religious conviction that they should practice healing without medicine was not a legal justification for refusing to abide by the statute.

Reasoning: The required vaccinations as a prerequisite for the defendants' children to remain in school was pursuant to the county board of education's rules and regulations, as authorized by Code (Ann. Supp.) § 32-911, not by the county board of health's regulations. As a result, the board of education did have jurisdiction of the school in question.

The defendant's right to exercise his religious freedom ended when it overlapped and transgressed the rights of others. The purpose of the statute requiring students to be vaccinated was to prevent the spread of diseases, not just for those vaccinated, but also for the protection of others with whom they might come in contact. Ultimately, the defendants' refusal to have their children vaccinated infringed the rights of others.

Disposition: The Court of Appeals of Georgia ruled that the judgment of the trial court overruling the motion for a new trial was without error. The judgment was affirmed.

**1953**

Citation: *People v. Turner*, 121 Cal.App. Supp. 2d 861 (1953).

Key Facts: The home-schooling defendants were convicted of violating the Education Code for failure to send their three children to a public school or approved private school or private instruction by qualified instructor. They claimed that their home instruction fell within the classification of a private school within the meaning of section 16624 of the Education Code and should therefore, be exempt from the statute.

Issue(s): (1) Did the defendants operate a private school, within the meaning of the statute? (2) Was the statute unconstitutional for depriving the parents of the right to determine how and where their children may be educated?

Holding(s): The Los Angeles Superior Court held (1) the defendants did not operate a private school within the meaning of the statute; and (2) the Court saw no basis for a holding of unconstitutionality.

Reasoning: If a “private school,” as used in section 16624, included a parent or private tutor instructing at the home, there would be no reason to make specific provisions exempting the latter.

If the statute, without qualification or exception, required parents to enroll their children in public schools, it would be constitutional. However, the statute provided alternatives and exemptions to parents.

Disposition: The Los Angeles Superior Court affirmed the judgment and order denying the motion for a new trial. The appeals from other orders were dismissed as well.

**1955**

Citation: *Commonwealth v. Smoker*, 177 Pa. Superior Ct. 435 (1955).

Key Facts: Samuel Smoker, the defendant, was convicted for violating the provisions of the Public School Code. He appealed the conviction.

The defendant was the father of Mervin Smoker, who was assigned to an elementary school in Lancaster County, Pennsylvania. Samuel Smoker refused to send his son to school after eighth grade, which was the custom of his Amish religion. He filed an application with the secretary of the school district to permit Mervin to work at home and assist in taking care of his ill grandfather. The permit was approved by the secretary and sent to the Superintendent of Public Instruction of the Commonwealth of Pennsylvania, who later refused on grounds that there was an older son who could do the work and care for the grandparent.

Issue(s): (1) Did the compulsory school attendance statute violate the defendant's First and Fourteenth Amendments of the United States Constitution and Article 1, Section 3, Constitution of Pennsylvania in regards to religious freedom? (2) Should the defendant be declared innocent because his son should have been granted a work permit?

Holding(s): The Superior Court of Pennsylvania held that (1) the statute did not violate the defendant's religious freedoms; (2) the permit was properly refused in this case, and as such, the defendant could not use the refusal of it as a defense.

Reasoning: This Court had previously decided a similar case involving an Amish child who completed eighth grade (*Commonwealth v. Beiler*, 1951). It held that the Public School Code did not violate the Constitution and that United States Supreme Court decisions were clear on this issue and determined the matter.

Section 1330 of the Public School code, 24 PS § 13-1330, provided an exemption from compulsory school attendance if a child was 14 years old, had completed eighth grade, and had received a work permit. Regulations for such a permit required that it be issued only when the child's family was "in dire financial circumstances." Because there was no evidence to show the family in this case was in a financial hardship, the Superintendent of Public Instruction refused the permit. There was no merit in the defendant's assertion that the regulations were unreasonable or that they were an attempt by the Superintendent to legislate. To issue permits for a family's convenience or religious belief would subvert the intent of the compulsory school attendance laws.

Disposition: The Superior Court of Pennsylvania affirmed the conviction.

Citation: *Commonwealth. v. Renfrow*, 332 Mass. 492 (1955).

Key Facts: J. Harvey Renfrew and his wife were charged with neglecting to send their minor child to attend school as required by G. L. (Ter. Ed.) c. 76, Section 1. Both were found guilty and appealed the decision to the Superior Court.

The defendants and their family were Buddhists and voiced their right to religious freedom in teaching their son at home. They contended that their son should be excused from attendance for "being otherwise instructed in a manner approved by the superintendent or the school committee," as provided in a clause in the compulsory school attendance law. Moreover, they stated a grievance that the instruction at the school conflicted with the principles of Buddhism, even if such instruction was allowable under the law. For instance, they presented concerns about their son being taught the Twenty-Third Psalm and the Lord's Prayer.

Issue(s): Should the defendants' son be granted an exception from compulsory school attendance for, among other things, conflicts to his Buddhist beliefs?

Holding(s): The Supreme Judicial Court of Massachusetts held that it was proper of the jury to return a guilty verdict at the trial where all facts were provided. Mere reading of the Bible or reciting the Lord's Prayer in a public school classroom did not justify failure of the parents to send their son to school.

Reasoning: None of the defendants' arguments or evidence constituted any defense to the complaints. Home education of their child without approval demonstrated noncompliance to the statute. The right to religious freedom is not absolute. That said, for more than a century, the statute provided that a portion of the Bible be read daily in public schools without note or comment; no student was required to take any personal part in the reading if his parent or guardian informed the teacher in writing that there were objections.

Dispositions: The Supreme Judicial Court of Massachusetts overruled the exceptions.

Citation: *State v. Hershberger*, 103 Ohio App. 188 (Ohio Ct. App. 1955).

Key Facts: The defendant was charged with failure to send his children to school as required by Ohio's compulsory education laws. He was found guilty and sentenced to pay a \$20 fine and prosecution costs. The court also ordered the defendant to furnish bond in the sum of \$250 to "keep the peace" for a period of two years. The defendant appealed.

The defendant was a member of the Old Order of the Amish Mennonite Church who established a private school, along with other member of his faith. He sent his children to this school. The one-room school consisted of eight grades, all taught by one teacher, except for occasional assistants. The teacher had less than an eighth-grade education and no prior teaching experience. The teacher testified that Amish children were not allowed to attend public schools because the first eight grades of public school provided "too good" of an education.

No question of religious freedom was presented in this case. The defendant's right to worship was not infringed in requiring him to provide for the proper education of his children. Furthermore, his right to instruct his children in his Amish faith was not questioned.

The State claimed that this private school did not provide instruction equivalent to that at a public school, and the defendant, in sending his children to this school, violated the provisions of the compulsory education laws.

Issue(s): (1) Was the instruction provided at the Amish private school equivalent to the instruction given to children of like age in the district's public school? (2) Did the defendant receive excessive fines for his conviction?

Holding(s): The Court of Appeals of Ohio, Third District, held that (1) the Amish school did not provide an equivalent education to that provided at the public school; and (2) the fine ordered by the court was contrary to law.

Reasoning: It was obvious from the record that the instruction provided at the Amish private school was not equivalent to instruction given to similarly aged students in the district's public school. The evidence disclosed by the record supported the trial court's finding.

The compulsory school attendance statute provided that a court could require a person convicted of a violation to give a \$100 bond with surety on the condition that he or she will send the child to school as provided by the law. It also provided that a person convicted of a misdemeanor could be required to pay a sum in which the judge found proper to "keep the peace" and be of good behavior. The Court found the trial court's order to be contrary to law.

Disposition: The Court of Appeals of Ohio, Third District modified the judgment and, as modified, affirmed. The defendant did violate the compulsory school attendance law. However, the court order to pay \$250 was reversed, requiring that the defendant only pay \$100.

**1956**

Citation: *Palmer v. District Trustees of District No. 21*, 289 S.W.2d 344 (1956).

Key Facts: The plaintiffs-appellees, the District Trustees of District No. 21 (Glenwood Common School District No. 21), filed a suit to set aside an order of the Upshur County Board of Trustees to transfer a number of students from Glenwood Common School District No. 21 to East Mountain Common School District No. 31. They also sought injunctions to restrain the defendants, Mrs. L.M. Bain and Mrs. Clayton Willis, from picking up and transporting those out-of-district students to the East Mountain School and to restrain the East Mountain District from accepting or teaching those students. Lastly, the plaintiffs-appellees sought damages against the defendants.

The trial court found that the Upshur County Board of Trustees' order was void. It granted the appellees a temporary injunction ordering the defendants to refrain from transporting the students to the East Mountain Common School District No. 31 from receiving or instructing them (with the exception of two students).

The defendants-appellants appealed this temporary injunction. They contended that the enforcement of the void transfer order was an invasion of their property rights for which they were entitled to an injunction. They believed that the voluntary admission and instruction of the students at East Mountain was not illegal, nor was the transporting of those students in Mrs. Bain and Mrs. Willis's private vehicles to the school. They also posited that the trial court had no authority to grant the temporary injunction.

Issue(s): (1) Was the voluntary teaching of the children in question by the East Mountain district illegal or unlawful? (2) Did the trial court have the authority to enjoin Mrs. Willis and

Mrs. Bain from voluntarily transporting the students in their private vehicles to the East Mountain School?

Holding(s): The Court of Civil Appeals of Texas held that (1) where East Mountain voluntarily taught the students in question, even though they were out of district and had not been lawfully transferred, their attendance was not unlawful; and (2) the district of the students' residence could not prevent private individuals from transporting the students to school.

Reasoning: The Court felt that because the legislature had made provisions for non-resident students within the V.A.C.S. statute, it was apparent that it was well understood that some students attend public schools outside their home district without being formally transferred; therefore, it must not have been unlawful or criminal. The V.A.C.S. also recognized that local school boards could teach students not entitled to free tuition. That said, the Court thought the East Mountain School Board had the discretionary authority to voluntarily admit and teach non-resident students, even if they had not been formally transferred under the transfer statutes. This could be acceptable as long as doing so would not be prejudicial or detrimental to the other East Mountain District students who lived within the district.

The Court found no authority which would authorize the trial court to enjoin the voluntary transportation of the students in question by Mrs. Willis and Mrs. Bain in their private vehicles to East Mountain School. Mrs. Willis and Mrs. Bain had the constitutional right to transport the children, with the permission of their parents. Such actions were neither criminal nor illegal, and therefore, the trial court was not authorized to grant an injunction against them.

Disposition: The Court of Civil Appeals of Texas reversed the judgment of the trial court granting the temporary injunction against Mrs. Willis and Mrs. Bain and the Each Mountain School District, and the judgment rendered dissolved the injunction.

**1957**

Citation: *Sheppard v. State*, 306 P.2d 346 (1957).

Key Facts: Defendants Roy and Desa Sheppard were charged and later convicted in the court of common pleas with the violation of the compulsory education laws. Both appealed the convictions.

The Sheppards were parents of eight-year-old twin children, Rose Mary and Roy Gary Sheppard. They withdrew their children from school to be taught at home by their mother. Mrs. Sheppard believed that her children required more personal attention and instruction than they received in their public school. Mrs. Sheppard testified that the reason she withdrew her twins from school the first year was because Roy had been frightened by a teacher who “grabbed him by the head and slammed him against a brick wall.” She claimed that in her home school, the children were taught five days per week, five hours per day.

The State called upon several witnesses to establish its case against the defendant parents. These witnesses included a former teacher, a former principal, and the school counselor, who also assisted with student attendance matters. While the teacher and principal could provide information about the children’s absences and any discipline issues, they could not provide evidence about the children’s home education. Roy Sheldon, the assistant supervisor of attendance, said he had the responsibility of giving written notice to parents of their children’s non-attendance. He provided a copy of a letter sent to the defendants, dated November 7, 1955, notifying them of their children’s accumulated absences and that a complaint would be filed against them if the children did not return to an approved school within five days. Sheldon said on October 10, 1955, he had a conversation with Mrs. Sheppard about the children, suggesting that she hire a private tutor in order for her to avoid charges. On January 18, 1956, Mrs.

Sheppard told him that she was teaching the children herself. He said, “I questioned her about the absence of the children, and she said that she was taking the children out and teaching them herself, and I told her in this case there was nothing left for me to do but file an action against them.”

Counsel for the defendant argued that Roy Sheldon, the complainant who verified the information, was not the proper person to sign the complaint against the defendants. In court, Sheldon testified that he was assigned by the superintendent of schools as an assistant to the supervisor of census and attendance, Herschell Edwards, and worked indirectly under his supervision. He admitted that he was not classified with the board of education in this role and filed the complaint against the defendants without consulting Mr. Edwards or his staff.

Issue(s): (1) Did the state produce sufficient evidence to show that the defendants failed to provide the children “other means of education, as provided by Sec. 10-10 of Tit. 70. O.S.A.?” (2) Did the trial court err in overruling the defendants’ demurrer to the evidence?

Holding(s): The Criminal Court of Appeals of Oklahoma held (1) in absence of evidence that the children were not receiving some means of education other than public or private school, the State had failed to prove the defendants’ violation of compulsory education laws; and (2) because the State failed to make its case, it was not necessary to consider the defendants’ evidence regarding their instruction.

Reasoning: The State made no attempt to produce evidence in regard to the education the children were receiving after leaving the public school. Each State witness testified that they did not know about the children’s current means of education, with the exception of Mr. Sheldon statement about Mrs. Sheppard’s communication with him about teaching her children at home. For these reasons, the Court concluded that the State failed to prove its case. The defendants’

evidence concerning their home school instruction had no bearing on the question of the sufficiency of the State's evidence in this instance. Therefore, it was unnecessary to treat other issues raised concerning the court's failure to admit certain evidence.

Disposition: The Criminal Court of Appeals of Oklahoma reversed the judgment and sentence, and the case was remanded with directions to dismiss.

Citation: *Dobbins v. Com.*, 198 Va. 697 (1957).

Key Facts: James Dobbins, father of Rosetta Dobbins, was charged and convicted for violating the compulsory school attendance law. He appealed the conviction.

For years prior to 1952, the West Point school board maintained two segregated high schools; the Beverly Allen School was for White students, and the West Point High School was for Black students. In 1951, the county established the Hamilton Holmes School for Black students, which was located approximately 18 miles from the corporate limits of West Point. In July 1952, the West Point school board closed Beverly Allen School and made arrangements to transport Black high school students of West Point to the Hamilton Holmes School. When West Point High School opened in September, Dobbins and several other Black parents tried to enroll their children for admission. The board denied their request because they were of the "Negro race," although they offered to transport them by bus to and from West Point to Hamilton Holmes. Dobbins and the other parents declined the offer, and because of their refusal to send their children to the segregated Black school, a prosecution was initiated.

Evidence showed that the physical and educational opportunities provided to students at West Point were far superior to those offered at Hamilton Holmes. This evidence was rejected by the court as irrelevant, but remained part of the record.

Issue(s): Was the defendant guilty of violating the compulsory school attendance law because he refused to send his child to the segregated Black school, after being denied the request to enroll his child at the segregated White school?

Holding(s): The Supreme Court of Appeals of Virginia held that the conviction of the defendant under compulsory school law was an unconstitutional application of the statute and denial of equal protection. As such, the defendant should not have been found guilty of the crime of which he was accused.

Reasoning: The defendant did not refuse to send his child to school, but instead, sought to have her attend a nearby school. The school board's refusal to admit her based solely on the color of her skin to the school attended by White children and the requirement that she attend a school quite a distance away with both poorer facilities and educational opportunities was an unconstitutional application of the compulsory school attendance law. These actions also denied the defendant his equal protection of the law as guaranteed by the Fourteenth Amendment of the United States. Furthermore, the rejected evidence of the segregated Black school's inferior materials and opportunities, as compared to the White school's materials and opportunities, was relevant to the issue of whether or not the defendant violated the statute.

Disposition: The Supreme Court of Virginia reversed the conviction.

## **1958**

Citation: *In re Skipworth*, 14 Misc.2d 325 (1958).

Key Facts: On October 28, 1958, Stanley and Bernice Skipworth were cited as respondents in a petition filed by the Board of Education charging them with neglect of their 12-year-old daughter, Charlene. The petition alleged that the child was without proper guardianship because her parents refused to send her to Junior High School 136 or an acceptable private

school. On October 29, 1958, Charles and Shirley Rector were also cited as respondents in regard to their 12-year-old son, Sheldon, who failed to attend Junior High School No. 139. Because the reasons were the same, the two cases were consolidated.

The parents acknowledged that they refused to send their children to school, but did stipulate that they had arranged for some private tutoring for the children. They asserted that both junior high schools offered educationally inferior opportunities as compared to those offered in predominantly White schools. They alleged two conditions for the inferior education: *de facto* segregation and discriminatory teacher staffing resulting in inferior teaching credentials at their assigned schools. As a result, the parents claimed that the children were denied equal educational opportunities in violation of the “equal protection of laws” guaranteed by the Fourteenth Amendment. They also posited that for the court to compel them to send their children to such inferior schools would be a further violation of the equal protection of laws.

Conversely, the Board of Education urged that the children be taken from their families by the court for refusing to send their children to public school. They also requested that the parents be fined and imprisoned.

Issue(s): (1) Did the parents have the constitutionally guaranteed right to elect no education for their children rather than subject them to a discriminatorily inferior education?; and (2) Did the Board of Education have the right to ask the court to punish the parents or deprive them of custody of their children, for refusal to accept the teaching staff discrimination that existed in the schools?

Holding(s): The Domestic Relations Court held that the parents had the right to keep their children from school rather than send them to a discriminatorily inferior education. Although the

court had no power to consider such charge, the Board of Education had no moral or legal right to ask for the parents' punishment or custody deprivation of their children.

Reasoning: The assigning of teachers was the exercise of a government function; the Fourteenth Amendment was violated even though discrimination in staffing of schools was due to teachers' voluntary decisions because the Board had, by default, given the power of assignment to teachers.

The court was satisfied from the parents' testimony and demeanor that this was not a case where parents had chosen to make a choice without regard to their children's welfare. On the contrary, it was the judge's impression that the parents were doing whatever was within their means to provide an alternate education, adding that their actions were for the "sake of their children and for the tens of thousands of other children like them who have been unfairly deprived of equal education" (p. 346).

Disposition: The Domestic Relations Court of the City of New York dismissed the petitions against the parents.

Citation: *State v. Pilkinton*, 310 S.W.2d 304 (1958).

Key Facts: Defendants, Ni and Catherine Pilkinton, appealed from the judgment entered upon the jury verdict that found them guilty of violating the state's compulsory school attendance laws, also known as V.A.M.S. Both defendants argued that they had the parental right and duty to direct the education of their seven-year-old daughter, Lily, which included home instruction.

Issue(s): Was the information under review sufficient to charge an offense under V.A.M.S.?

Holding: The Springfield Court of Appeals held that the lower court did not provide clear and convincing evidence that the defendants violated the statute.

Reasoning: The Court could not escape that the information charging the defendants with failure to send their children to public school contained no charge that they did not provide the child with substantially equivalent instruction at home. Therefore, the evidence was insufficient to charge an offense.

Disposition: The Springfield Court of Appeals reversed the convictions.

## **1961**

Citation: *In re Shinn*, 195 Cal. App. 2d 685 (1961).

Key Facts: Three minor children of school age were decreed as habitual truants under Education Code, section 12403, and that under Welfare and Institutions Code, section 700, they were wards of the juvenile court. The parents of the minors were ordered to send their children to school for the remainder of the school year. The parents appealed.

In February 1960, a petition was filed in the juvenile court alleging that John Shinn, age ten, Barbara Ann Shinn, age twelve, and Mary Elizabeth Shin, age 13, were habitual truants in danger of leading an idle or immoral life; each was in violation of the state's compulsory full-time education law. They appeared in court with their parents, Dr. Benjamin and Mary Shinn, on March 11, 1960. On February 25, 1960, the district attorney filed information against the parents, accusing them of nine counts with contributing to the delinquency of the minor children and that they willfully and unlawfully allowed the children to be absent from school without valid excuse.

The three minor children had been attending public schools in the El Centro School District for some time. When John was in first grade, his teacher found him to be an above-average student; his first report card was average, and he was placed in the middle reading group.

In second grade, his standard achievement test results indicated he was above grade level, and he was permitted by his father to skip the third grade. The father had requested that Mary Elizabeth move to the next grade as well, although her academic performance results did not indicate her aptitude above grade level. Barbara Ann was found to be an above-average student among other above-average students in her class. Dr. Shinn began providing supplemental lessons to the children at home.

After John moved to fourth grade, having skipping third grade, he was placed in a low reading group and became a discipline problem in class. He also exhibited contempt toward his teacher and the school. Dr. Shinn spoke with both the superintendent and the principal about these issues, ultimately declaring that he would remove John from school to teach at home. John embarked on an accelerated course of study at home and between February 1958 and September 1959, his father promoted him from fourth to ninth grade. John had no formal coursework in geography, United States history, art instruction, group physical education, or eighth-grade spelling. The Shinns' two daughters remained in public school for another year, while also participating in their father's supplemental education program. On May 5, 1959, Dr. Shinn, alleging disapproval with the public school's program, removed his daughters from school as well.

The principal advised Dr. Shinn of the compulsory education law requirements regarding children's education and parental responsibility. Dr. Shinn informed him that his children were participating in high school correspondence courses and requested approval by the superintendent. This approval could not be granted, as such courses could not be used as a substitute for the whole school program. On September 22, 1959, the superintendent of schools

reported to the county's welfare and attendance supervisor that the children were not enrolled in public schools.

The Shinns contended that their children were attending a private school within the meaning of the Education Code, section 12154, and that because their children were advanced beyond their traditionally assigned grade levels, it was inadvisable to enroll them in public school. Therefore, they should be exempted under Education Code, 12152.

Issue(s): Did the Shinns' educational program fall within the exceptions created by Education Code, sections 12152 and 12154?

Holding(s): The California District Court of Appeal, Fourth District, held that the Education Code, section 12152, provided no exemption to the minors involved in this case under the facts presented. The educational program described by the Shinns could not be classified as a private full-time day school within the meaning of Education Code, section 12154, which would allow them to be exempt from public school attendance. It was justified in concluding that the Shinns violated the compulsory education law.

Reasoning: The question of exemption was one for the school authorities to determine, not the parents. *People v. Turner* (1953) held that the compulsory education law exempting students in "private schools" did not include parent or private instruction at home. The Education Code required that the tutor or other instructor hold a valid state credential for the grade(s) taught. The Shinns had no such credentialing.

Disposition: The California District Court of Appeal, Fourth District, affirmed the juvenile court's judgment.

**1962**

Citation: *People v. Harrell*, 34 Ill. App.2d 205 (Ill. App. Ct. 1962).

Key Facts: The defendants in this case were convicted, after trial by jury, for failure to send their children to school. They appealed to the Illinois Supreme Court, which transferred the case to the Appellate Court of Illinois.

Sometime in the latter part of February or early March 1961, the defendants' children quit attending the public schools to which they were enrolled. The father, Mr. Harrell, claimed that he established a school at his religious "retreat" and that his children would resume their education there. However, records showed that no attendance records or registration cards were kept, and the school did not own any textbooks. A licensed physician, who was apparently responsible for organizing the school, acknowledged that he did not know a private school must have a comparable program to that at a public school.

Issue(s): (1) Did the defendants violate the compulsory attendance law by removing their children from public school to attend their "retreat's" private school? (2) Were the defendants not properly notified to have their children in school when the notice was served by the county school system superintendent instead of the truant officer?

Holding(s): The Appellate Court of Illinois, Fourth District, held that the jury properly found that the defendants kept their children out of public school before an adequate private school was provided to them. There was no reasonable doubt that the defendants were guilty in violating the compulsory attendance law.

Notification of the defendant parents that they were to send their children to school, given by the superintendent and not the truant officer, was sufficient to give the parents opportunity to

comply with the law before prosecution was pursued. It was immaterial as to whom served this notice.

Reasoning: The term “private school” as a lawful substitute for public education had been extended to include home instruction, where the teacher was competent, the required subjects were taught, and the children received an education equivalent to public schooling.

The purpose of Sec. 26.6 of the School Code was to give parents an opportunity to comply with the law before a possible prosecution. This purpose was accomplished in this case. The Court noted that all districts did not even have truant officers, adding that it was not material who served the notice. Furthermore, there could be no question that the defendants were indeed notified, since they retained counsel to conduct their defense.

Disposition: The Appellate Court of Illinois affirmed the defendants’ convictions.

### **1963**

Citation: *State v. Lowry*, 191 Kan. 701 (1963).

Mildred and Ray Lowry were charged with the violation of school truancy statutes (G.S. 1949, 72-4801, 4802, 4803). They contended that they were operating a private school in their home and, as such, were not subject to truancy act penalties. Both were convicted and received fines as provided by the law. They appealed to the Supreme Court of Kansas.

Dr. Ray Lowry was a practicing physician in El Dorado, and Mrs. Lowry, having taught previously in Kansas public schools, held a Kansas teacher’s certificate. In April 1962, the parents became unhappy with the quality of education their children were receiving in public schools. They sought an arrangement that would allow Mrs. Lowry to teach the four youngest children at home. They did not enroll their children in public school the following school year. In September 1962, the superintendent of the El Dorado schools informed the defendants that they

were in violation of the truancy act. In response, the defendants claimed they were operating a private school in their home and were therefore in compliance with compulsory attendance laws. A prosecution then ensued.

The defendants converted a room in their home to serve as the schoolroom. The only children in attendance were their own children, in Grades 3, 4, 6, and 7. Mrs. Lowry taught Spanish, reading, music, arithmetic, spelling, and language arts to each of the children, and they also engaged in physical education and salutes to the American flag. The trial court concluded that the defendants were performing home instruction instead of operating a private school.

Issue(s): Did the Lowry children attend a private school in their home that would exempt their parents from the truancy act?

Holding(s): The Supreme Court of Kansas held that while the instruction was provided by a competent instructor, the defendants were not operating a private school. Instead, it was merely scheduled home instruction.

Reasoning: To determine whether the defendants were operating a private school, the Court reviewed the purpose, intent, and character of the school in question. The school was located in the home, and the only students were their own children. Because the only grades offered were those in which their children participated, the schedule and instruction did not meet the statutory requirements of 72-1103. The only conclusion that could be reached was that the school was only conceived to educate their own children, and as such, it was merely scheduled home instruction, not a private school.

Disposition: The Supreme Court of Kansas affirmed the judgment of the trial court.

**1964**

Citation: *People v. Anonymous*, 44 Misc.2d 392 (N.Y. Misc. 1964).

Key Facts: The respondent, Anonymous, was charged with a violation of subdivision 5 of section 3212 Educ. of the Education Law of the State of New York which stated, “No person shall induce a minor to absent himself from attendance upon required instruction or harbor him in violating any provision of part one of this article.” The respondent was charged with inducing several students who were attending Public School 136, Manhattan, to be absent on June 1, 1964. He was also charged with harboring them in a basement in another location, as well as interfering with the New York City Board of Education attendance officers in pursuit of their duties. There was no familial or custodial relationship between the respondent and the children.

Issue(s): Was the respondent guilty of violating the Education Law of the State of New York?

Holding(s): The New York County Family Court held that the respondent was guilty of inducing minors to be absent from school and of interfering with school officials in performance of their duties, a violation of subdivision 5 of section 3212 Educ. of the Education Law of the State of New York.

Reasoning: Evidence showed that the students in question did indeed engage in picketing with the respondent and other adults at Junior High Schools 136 and 139, Manhattan, apparently to demand, among other things, the installation of a community center at Junior High School 136. The respondent and the children were also engaged in activities in a basement in the morning and early afternoon. Upon picketing, the respondent and children were confronted by school officials to disassemble, and the children were asked to return to school. The respondent refused the request.

Disposition: The New York County Family Court denied the motion to dismiss the petition, and the respondent was sentenced.

## **1965**

Citation: *State v. Miday*, 263 N.C. 747 (1965).

Key Facts: William Miday was convicted on three counts of violating the state's compulsory attendance laws. The defendant, a minister of the Miracle Revival Fellowship, enrolled his son, Paul, in the Robeson County Schools for the 1962-1963 school year. He did so without having his son vaccinated or immunized from specific diseases as required by law. He claimed that he qualified for an exemption set forth in G.S. 130-93.1 (h). His son was allowed to enroll and remain in school until November 5, 1962, when he was sent home for not meeting the legal immunization and vaccination requirements.

In September 1963, the Robeson County Board of Education filed a complaint against Mr. Miday for failure to enroll his son in the public school, as required by G.S. 115-166. Mr. Miday immediately presented his son for enrollment, but his admission was denied because he had not complied with the immunization requirements.

Shortly before this case was presented to the jury, the defendant provided an immunization record for his son, which indicated that Paul had been inoculated against diphtheria, tetanus, and whooping cough. The mother testified that these inoculations occurred before they became members of the Miracle Revival Fellowship. The State agreed to seek only convictions for failure to immunize the defendant's son against smallpox and poliomyelitis, as well as failure to send his son to school. The jury returned a verdict of guilty on all three counts. Mr. Miday appealed the decision to the Supreme Court of North Carolina.

Issue(s): (1) Should the court have excluded evidence about the defendant's religious convictions, related to vaccinations? (2) Did the defendant violate the compulsory school attendance law?

Holding(s): The Supreme Court of North Carolina held that (1) the exclusion of oral testimony with respect to the defendant's religious convictions and organization constituted prejudicial error; and (2) so long that the defendant, in good faith, was asserting his rights as he perceived them under the statute, he was not subject to conviction under the compulsory school attendance law.

Reasoning: G.S. 130-93.1 (h) stated, "This article shall not apply to children whose parent, parents, or guardians are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required. . . ." It was the court's opinion that it was not necessary for religious organizations to forbid vaccinations to come within the meaning of the statute or to authorize an exclusion. Instead, it was for the jury to determine whether or not the evidence concerning the teachings of the Miracle Revival Fellowship were such to justify the defendant's refusal to have his child vaccinated.

Mr. Miday did everything within his power to keep his child in school, except to waive what he believed was his statutory right to refrain from vaccinating his child on religious grounds. Therefore, he could not be convicted for failing to send his child to school.

Disposition: The Supreme Court of North Carolina reversed the defendant's conviction for failure to send his son to school, and a new trial was granted on the other two indictments for failure to have his son immunized against smallpox and poliomyelitis.

Citation: *State v. Vaughn*, 44 N.J. 142 (1965).

Key Facts: The defendants were convicted in the Englewood Municipal Court as disorderly persons for failing to send their child to public schools, a violation of the state statute N.J.S.A. 18:14-14. They appealed to the Bergen County Court, which dismissed the appeal. An appeal was taken to the Superior Court, Appellate Division, which ruled that the appeal should not have been dismissed. It reversed and remanded the case for trial de novo and directed the State to amend the complaint to reflect the language of N.J.S.A. 18:14-14, specifically alleging that the defendants failed to cause their child between 7 and 16 years of age regularly to attend public school or approved day school in which there was equivalent instruction, or receive equivalent instruction elsewhere.

There was some suggestion that the defendants would introduce evidence that the school in question was segregated as a defense to the charge. However, that matter was excluded at the original trial before the municipal court. The court did not consider it an appropriate justification for failure to comply with the compulsory school attendance law.

Issue(s): Must the State prove the statute's alternative provisions introduced by the word "or?"

Holding(s): The Supreme Court of New Jersey held that it was incumbent upon the defendant, if he were to rely upon either of the exceptions, to introduce evidence in support of it.

Reasoning: With respect to the alternatives of sending a child to a day school or providing equivalent instruction elsewhere, if the burden of proving the violation of either alternative rested upon the State, it would be charged with a fairly impossible task in trying to prove a negative proposition in situations in which the areas of disproof were quite wide. In other words, it would be exceedingly difficult to prove that a child does not attend any day school or that a child is not receiving equivalent instruction elsewhere. Therefore, it was both reasonable

and necessary that the alternatives be matters of exception to be raised by the defendant who sought to justify the failure of sending his child to a public school.

Disposition: The Supreme Court of New Jersey modified and affirmed the judgment of the Appellate Division.

## **1966**

Citation: *State v. Garber*, 197 Kan. 567 (1966).

Key Facts: The defendant, LeRoy Garber, was found guilty in the district court of Reno County, Kansas, for failing to send his 15-year-old daughter to school regularly. He appealed to the Supreme Court of Kansas.

LeRoy was a member of the Old Order Amish Mennonite Church. His daughter, Sharon, completed eighth grade in the public schools, but did not enroll in public school beyond that grade. In September 1964, Sharon enrolled in American School, a correspondence school in Chicago, Illinois, which was approved by the United States Office of Education for private home study. In September 1965, a group of Amish individuals in the Yoder community in Reno County, Kansas, established an Amish school called the Harmony School. Sharon enrolled in the school in October 1965. Its students were limited to those who had completed eighth grade in public schools but not yet reached 16 years of age. Formal classes were held at the school one morning per week, and the remaining four school days were set aside for home study and pursuit of vocational research and training. Sharon enrolled in the Harmony School in October 1965, the same month in which her father was served with a statutory notice of truancy (K.S.A. 72-4802).

Issue(s): (1) Was the defendant guilty of violating the state's compulsory school attendance law? (2) Did the compulsory school attendance law violate the defendant's constitutional guaranteed religious freedoms?

Holding(s): The Supreme Court of Kansas held that (1) the defendant, no matter how sincere or well-intentioned, was guilty of violating the compulsory school attendance law; and (2) there was no infringement upon religious freedoms as far as the defendant or his daughter was concerned.

Reasoning: Neither the American School nor the Harmony School constituted a private, denominational, or parochial school within the meaning of the compulsory school attendance statute. Both were essentially home instruction programs. Furthermore, K.S.A. 72-1106 provided that “a school month shall consist of four weeks of five days each of six hours per day on which pupils of a school are under direct supervision of its teacher or teachers. . . .” Sharon did not attend any school with those required days and hours under the direct supervision of a teacher.

The Court was unable to perceive how religious freedom was violated in this situation. The defendant and his daughter’s freedoms to worship remained absolute and were not affected by the compulsory school attendance law. The defendant was free to instruct his daughter in religious doctrines as he desired. The question of how long a child should attend school was not a religious one. Moreover, a person cannot use religious convictions to judge his duty to comply with laws enacted in public interest.

Disposition: The Supreme Court of Kansas affirmed the conviction.

## **1967**

Citation: *State v. Massa*, 95 N.J.Super. 382 (1967).

Key Facts: Defendants, Barbara and Frank Massa, were charged and convicted with failing to cause their 12-year-old daughter, Barbara, to regularly attend the public school in her district and for failing to either send Barbara to an approved private school or provide an

equivalent education elsewhere, a violation of N.J.S.A. 18:14-14. The defendants appealed the decision.

Witnesses for the State testified that Barbara had eighty-four consecutive absences from April 25, 1966 to November 16, 1966. Mrs. Massa testified that she taught Barbara at home prior to September 1965 and resumed in April 1965. She said that she enjoyed watching her daughter's mind develop and that home instruction would make better use of her instructional time, adding that much time in public school was wasted. Mrs. Mass introduced much evidence to support the quality of both her husband and her instruction, such as Barbara's tests, instructional strategies, visual aids, books, and photographs. An independent testing service report indicated that Barbara was performing considerably higher than the national average, except in math. Barbara also took violin lessons and dance.

The assistant superintendent of the local school system testified that the defendants were not giving Barbara an equivalent education, leaning heavily on Mrs. Massa's lack of certification and teaching experience and Barbara's social isolation in a home school setting.

Issue(s): Did the defendants provide their daughter with an education equivalent to that in the public school?

Holding(s): The Morris County Court, Law Division, New Jersey, held that the evidence established by the State did not show beyond a reasonable doubt that the defendants failed to provide their child with an equivalent education.

Reasoning: Much of the testimony provided by the State's witnesses dealt with lack of the mother's credentials. However, the court found the testimony to be inapplicable to the actual issue of equivalency under the New Jersey statute, which did not require a parent to be a certified teacher. From Mrs. Massa's testimony and oral arguments, the court was satisfied that she was

self-educated and well qualified to teach Barbara the basic subjects from Grades 1 through 8. The evidence provided by the State fell short of the required burden of proof that Barbara's education was not equivalent to that at public schools.

Disposition: The Morris County Court found the defendants not guilty and reversed the municipal court's conviction.

## **1968**

Citation: *Matter of Cavanagh v. Galamison*, 31 A.D.2d 635 (N.Y. App. Div. 1968).

Key Facts: Appellants Milton Galamison and Thelma Johnson were convicted on February 3, 1965, after a joint trial, of violating section 3212 Educ. of the Education Law by organizing boycotts against existing school facilities. They were each imposed a sentence of 10 days and a fine of \$10, or in default of that payment, a sentence of 10 days. They were directed that the fine and sentence would be suspended on the condition that they refrain from further violations of the Education Law. On February 11, 1965, the same court held that Galamison had disobeyed the judgment given to him and directed that he be committed to the Kings County Jail for 10 days, as well as pay a \$10 fine, or in default of that payment, serve an additional 10 days. On June 14, 1965, the court found that Galamison had continued his violation and convicted him of the continued violation, imposed a \$50 fine, or in default of payment, a 30-day sentence, and imposed a sentence of 10 days.

Issue(s): By invoking the general aura of "civil rights," should the defendants be granted constitutional immunity?

Holding: The New York Supreme Court, Appellate Division, held that the defendants were in violation of the Education Law by organizing boycotts against school facilities.

Reasoning: Invoking the general aura of “civil rights,” without reference to any specific provision of law, did not grant the appellants constitutional immunity, based on claims of free speech and right to petition, to violate the provisions of the statute requiring children to be in attendance at their places of instruction.

Disposition: The New York Supreme Court, Appellate Division affirmed the judgments from February 3, 1965 and June 14, 1965. The judgment from February 11, 1965 was reversed, and the case was remanded to the Family Court for further proceedings consistent with the Court’s findings.

## **1969**

Citation: *Maynard v. Shanker*, 59 Misc.2d 55 (N.Y. Misc. 1969)

Key Facts: Petitions alleged that the respondents and their organization, the United Federation of Teachers, deprived children of educational opportunities and facilities during a school strike in New York City, thus violating section 3212 Educ. of the Education Law and within the meaning of article 3 of the Family Court Act.

Issue(s): Did the respondents violate section 3212 of the Education Law and article 3 of the Family Court Act?

Holding(s): The New York County Family Court held that the facts and evidence could not support violations of the Education Law or the Family Court Act.

Reasoning: Section 3233 Educ. of the Education Law provided criminal sanctions for violations of the Education Law. In order to establish criminal liability to the alleged acts, the information must allege willful and unlawful intent. The petitions failed to state a criminal cause of action.

Article 3 of the Family Court Act dealt with neglect proceedings, defining “neglected child” in terms of a child whose parents or “other person legally responsible for his care” failed to provide for his welfare, which included education. None of the respondents could be characterized as legally responsible for the petitioners’ children.

Disposition: The New York County Family Court granted the motion to dismiss the petitions, and all petitions were dismissed.

## **1970**

Citation: *Kerr v. State Public Welfare Commission*, 470 P.2d 167 (1970).

Key Facts: John Kerr, the plaintiff-appellant, challenged an order that declared him liable for \$420 welfare aid over an 18-month period given to his father, James Kerr. The defendant entered the order under the Oregon Relatives’ Responsibility Law, ORS ch. 416. This order was reviewed by the circuit court, pursuant to the plaintiff’s petition, to which it affirmed the judgment of \$420 accordingly entered against the plaintiff. John Kerr appealed to the Oregon Court of Appeals.

John Kerr contended that he was a dependent child under ORS 410.476(1) (e), which provided that a child was within the jurisdiction of the juvenile court if “either his parents or any other person having custody had abandoned him, failed to provide him with the support of education required by law, subjected him to cruelty or depravity or failed to provide him with the care, guidance and protection necessary for his physical, mental, or emotional well-being. . . .” Kerr contended that his father, James Kerr, violated the compulsory school attendance laws and the child labor laws, as well as failed to furnish him with reasonable health and dental care.

James Kerr was a gypo logger who migrated from one Oregon forest area to another during much of his son’s first 18 years. They often lived in very remote areas, and life was

difficult for all members of the family. Each move often meant a disruption in education. James Kerr missed an entire year of school when he was around eight years old. At that time, the school bus did not provide transportation to their home, and the forgoing statute did not require his attendance. James Kerr did, however, manage to complete tenth grade.

During much of James Kerr's childhood, he worked after school and during vacations, without pay, for and under the supervision of his father. His brother often joined him in this work. He sustained several injuries during the course of this work and alleged that his father's conduct constituted cruelty.

Issue(s): (1) Was James Kerr exempt from liability for support under the Relatives' Responsibility Law? (2) Did this 1953 Act violate his equal protection of the laws to members of his class, specifically, children of parents receiving welfare aid?

Holding(s): The Court of Appeals of Oregon held that (1) the appellant was not exempt from liability for support under the Relative's Responsibility Law; and (2) the claim that the statute violated his equal protection rights was without merit.

Reasoning: The evidence supported the appellant's liability of \$420. Even if a parent running a small logging company employed his children without compensation at an age below that permitted by child labor laws, thus violating the Act, it would not constitute an exemption under the Oregon statute, ORS ch. 416.

ORS ch. 416 defined a person eligible for assistance as a "needy person." It further provided that a grant of assistance under the Act "shall be prima facie evidence that such person does not have income or resources sufficient to provide himself with food, shelter, and such other essentials as are necessary to sustain life and as are compatible with decency and good health."

Disposition: The Court of Appeals of Oregon affirmed the trial court's judgment.

## 1972

*Ossant v. Millard*, 72 Misc.2d 384 (N.Y. Misc. 1972).

Key Facts: Three petitions charged Lisa, age 13; Robyn, age 10; and Dana, age 7, as “person[s] in need of supervision” for sustained school absences. The petitioner was the attendance supervisor of the Penn Yan Central School District. The Law Guardian for the respondent children moved to dismiss the petition.

During the 1971-1972 school year, the respondent children were transported to their respective schools in the Penn Yan Central School District by school bus. The bus collected and returned the children to the door of their home each school day. Per a resolution by the school district's board of education on March 13, 1972, this transportation was terminated to avoid a potentially dangerous railroad crossing. Several other parents had voiced concerns about the safety of stopping a bus so near a railroad track, and after an investigation, the school district concurred and rerouted a bus stop two-tenths of a mile away. Soon thereafter, the respondents' parents requested that the previous door-to-door arrangement be reinstated, which the school board denied. Consequently, the respondents' parents would not allow them to attend school.

The court directed a request to the board of education to resume the door-to-door transportation until the case could be investigated and determined. The school board complied by providing a small bus for the children from their home to the newly assigned bus stop on the westerly side of the railroad crossing. The children were examined by a school physician, who indicated that all of the respondent children were in good health and fully capable of walking on foot to the new bus stop, a distance of two-tenths of a mile.

The board of education was required to provide transportation for elementary children who lived more than two miles from school and secondary students who lived more than three miles from school (Education Law, § 3621). However, the law did not require that a school district provide a student transportation directly to and from his home. Instead, it stated that the board of education could “designate places for school buses to receive and discharge pupils . . . in order to provide for the protection of such pupils.”

Issue(s): Did the petitioner prove that the children were in need of supervision as defined under subdivision (b) of section 712 FCT of the Family Court Act?

Holding(s): The Yates County Family Court in New York held that the petitioner failed to prove that the respondents were “person[s] in need of supervision” within the intent of the Family Court Act.

Reasoning: It was fundamental that the respondent children be found to have a conscious underlying intent to violate the state’s Compulsory Education Law before civil sanctions under the Family Court Act could be invoked. In other words, the children must be deemed truant by virtue of their own will and personal intent. As such, these children could not be labeled as truant because their parents prevented their attendance at school; there was not proof that the children consciously violated the provisions of the Compulsory Education Law.

Disposition: The Yates County Family Court dismissed the petition against the children. The court voiced its disgust that the children “be branded as willful violators of the Compulsory Education Law,” adding that it was clear that the respondent children were “caught up as pawns between the control of their parents and the authority of the school.” The court also ordered that temporary transportation be provided to the children until the board of education completed its investigation about possible solutions.

**1974**

Citation: *In Re Davis*, 114 N.H. 242 (1974).

Key Facts: A complaint was filed against Harold and Judith Davis, alleging they were neglecting their children because they failed to send them to school. The district court dismissed the complaint, and the town appealed to the superior court. The trial court ordered the children to attend school within the next few weeks of the proceeding. The trial court then reserved and transferred to the Supreme Court of New Hampshire all questions of law raised by its order.

The superintendent of schools testified that the Davis children had not attended school since September 1973, apparently due to their parents' concern about the conflict of their strictly held Apostolic Lutheran beliefs and the school's instructional program. For example, the parents' counsel alleged that it was contrary to their beliefs to view slides, television, or movies, and that the school's insistence that the children remain in class during such media presentations was unacceptable to the parents.

Issue(s): Were the parents guilty of neglect for failing to send their children to school?

Holding(s): The Supreme Court of New Hampshire held that the evidence was insufficient to support a charge of neglect.

Reasoning: The complaint in this case was not brought under the state's compulsory education law, but instead charged delinquency and neglect. Neglect could not be proven, especially given the fact that the parents had provided tutors for their children and that the entire issue with the school stemmed from the parents' serious concerns about their children's education.

Disposition: The Supreme Court of New Hampshire dismissed the complaint of parental neglect.

*Citation: Hatch v. Goerke, 502 F.2d 1189 (10th Cir. 1974).*

Key Facts: Donald and Viola Hatch, parents of children attending public schools in Canton, Oklahoma, brought about a civil suit, asserting several federal constitutional claims against local school officials and the local district attorney. The Hatches were American Indian and enrolled members of the Arapaho Tribe. They had three school-age children (two daughters and one son) who regularly attended Oklahoma public schools. Their 10-year-old son, Buddy, was allegedly expelled without a hearing from the fifth grade for failure to cut his hair and instead, wore it in Indian braids. The school policy for boys' hair required them to keep it trim, not extending below the eyebrows or the collar.

The plaintiffs claimed that their constitutional rights had been violated when the school required the cutting of their son's Indian-braided hair, thus infringing on their rights to raise their children according to their own religious, cultural, and moral values as protected by the First, Fifth, and Fourteenth Amendments of the United States Constitution. The plaintiffs cited *Wisconsin v. Yoder* in their argument.

The plaintiffs also argued that the Oklahoma compulsory school attendance statute, 70 O.S.A § 10-105, under which they were allegedly threatened with prosecution, was unconstitutionally vague and invalid, as applied to their son's case. The statute provided that violations were punishable by a \$50 fine or imprisonment for not more than 10 days, or both.

Issue(s): (1) Did the school rule requiring the Indian-braided hair to be cut violate the plaintiffs' right to raise their children according to their religious, cultural, and moral convictions? (2) Was the Oklahoma compulsory school attendance statute, 70 O.S.A § 10-105 et seq., unconstitutionally vague and overbroad?

Holding(s): The United States Court of Appeals, Tenth Circuit, held that (1) the claim that the required cutting of the student’s Indian braided hair violated the plaintiff’s parental rights to raise their children according to their beliefs lacked constitutional substance; and (2) the Oklahoma compulsory school attendance statute was not unconstitutionally vague or overbroad.

Reasoning: The Court did not feel that the allegations were sufficient to sustain a violation of constitutional rights. Citing *Freeman v. Flake* (1970), the Court held that the federal constitution and statutes did not impose on the federal courts the duty and responsibility of supervising the length of a student’s hair; instead it was an issue to be determined by the state and handled through state procedures. *Freeman* concluded that complaints which were based on “nothing more than school regulations of the length of a male student’s hair do not ‘directly and sharply implicate basic constitutional values’ and are not cognizable in federal courts. . . .”

The compulsory school attendance statute merely provided reasonable requirements for school attendance and other school-related rules. Quoting *Yoder*, the Court stated, “There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education.” The Court felt the statute’s purpose and scope were clear and that the vagueness claim was untenable.

Disposition: The United States Court of Appeals, Tenth Circuit, affirmed the dismissal of the claim challenging the hairstyle regulation and the claim asserting the unconstitutionality of the compulsory school attendance statute.

## **1976**

Citation: *Matter of Baum*, 86 Misc.2d 409 (N.Y. Misc. 1976).

Key Facts: Jeanne Baum was charged with neglect in failing to send her 13-year-old daughter, Siba, to school in the Middle County School District No. 11 in Suffolk County, New

York. Baum contended that racist remarks made by Siba's teacher and the lack of response by the school system were valid reasons for withholding her daughter from school. While the court refused to dismiss the petition of neglect, it did grant Baum's request for "a meeting between all interested persons . . . so that a swift, remedial result" could be reached.

Siba was a seventh grader, attending Selden Junior High School in June 1975. On June 9, 1975, Siba's English teacher, Carol Duarte, returned a book report about Geronimo to Siba. In this report, Siba was critical of the treatment of Native Americans. Ms. Duarte had written at the bottom of the paper, "I agree with your feelings of anger. However, I have an uncle who is a Wampanoag Indian and his point of view is that the Indians got what they deserved." Siba was instantly angered by this remark and confronted Ms. Duarte with her concerns in front of the class. Ms. Duarte asked to continue the discussion after class, but Siba was not deterred, and the result was a heated exchange between the two. Apparently, Siba's maternal great, great, grandfather had some Native American heritage.

Siba shared the situation with her mother later that afternoon, and the following morning, Mrs. Baum went to the school to voice her outrage over the events and tape-recorded the discussion. Several individuals were involved in this conversation, including the principal, the assistant principal, the Baums, and Ms. Duarte. Ms. Duarte tried to explain her comments and apologized to Siba and her mother. She also agreed to apologize to the whole class for the incident. Still not satisfied, Mrs. Baum announced that she was removing Siba from school.

On June 11, 1975, Baum removed her daughter from school and contacted the Human Rights Commission, providing transcribed notes from the taped conversation. She also sent copies of the transcription to the school principal, school board members, the Parent-Teachers Association, and the teachers' union. Baum made a series of demands as conditions for her

daughter's return to school. These demands included a school district policy statement banning all forms of racism, that Ms. Duarte's remarks be declared as racist and that she be brought up on charges of nonprofessional conduct, and that a school steering committee be created to prevent such situations from occurring.

Baum wrote a letter to the New York State Commissioner of Education, complaining that the school refused to provide corrective action to racist events. In response to her letter, she was urged to return her daughter to school. Subsequently, Baum was charged with neglect under subdivision (f) of section 102 FCT of the Family Court Act for failing to cause her daughter to attend school.

Issue(s): Did the respondent have justification in refusing to allow her child to attend school?

Holding(s): The Suffolk County Family Court, New York, held that the respondent's claim of racism did not constitute justification for keeping her daughter out of school.

Reasoning: From the testimony, it did not appear that Siba had been receiving instruction elsewhere. As such, the respondent did not meet the burden of showing compliance to the state's compulsory school attendance law.

As to the complaint of racism, the teacher's remarks, whether overt or covert, were not established by the testimony and evidence provided. As such, there could not be "condemnation of that which did not occur."

Disposition: The Suffolk County Family Court ruled that the allegations of the neglect petition were established in that the respondent withheld her child from school without just cause or valid reason.

Citation: *Abella v. Riverside Unified School District*, 65 Cal. App. 3d. 157 (1976).

Key Facts: This case was an appeal from a judgment holding that the defendant, Riverside Unified School District, legally exempted the plaintiff, Cherie Abella, from school attendance under Education Code section 12152.

Prior to middle school, Cherie Abella had been a model student, even receiving the “Student of the Year” award her sixth-grade year. However, her grades began to decline in middle school, as did her behavior in class. She became defiant to teachers, created disturbances, and was truant. As her behaviors continued to escalate in the eighth grade, school administrators elected to move Cherie into a “special opportunity class,” one that was established for students at risk of becoming habitually truant or insubordinate. Cherie took offense to this arrangement, alleging that she was bored with the class and disliked being labeled “mentally retarded and stupid” by other students. A couple weeks into the new class, she was involved in a fight with another student. The fight became a turning point for the “exemption” in question.

Several conferences were convened with Cherie’s mother to determine solutions to the problem. On October 3, 1973, the school district agreed that Cheri should be exempted from school under Education Code 12152 because of her inability to cooperate in the special opportunity class, that psychological counseling and evaluation were needed, and that Cherie could return upon the advice of a professional counselor. Cherie’s exemption lasted over five months and was recorded in her cumulative school record. Cherie was readmitted to eighth grade on March 4, 1974 and graduated from the school on June 20, 1974.

Prior to Cherie’s exemption from school, she had received no counseling from the school counselor or school psychologist, no attempt was made to correct her behaviors through short-term suspension, and she was not considered for placement in the educationally handicapped program. Furthermore, no suggestion was made that she receive psychological evaluations or

treatment while attending school. While Mrs. Thomas, Cherie's mother, signed the exemption card, she did so reluctantly after being advised that Cherie could be exempted without her consent.

On December 27, 1973, Cherie Abella, the plaintiff, called a class action against the defendant, Riverside Unified School District, seeking declaratory relief and a permanent injunction to prevent the district from exempting her or other students in similar circumstances. She also asked the court to require the district to provide tutoring to students who were exempted.

The trial court held that the plaintiff's action was not a proper class action and denied all relief requested. The court further declared that the school district did not deny the plaintiff and those she represented equal protection and due process of law under the provisions of the United States Constitution and the California Constitution. An appeal followed.

Issue(s): (1) Did Education Code section 12152 authorize the school district to initiate the exemption over the parent's objection? (2) Did the actions of the school district in relation to the exemption violate the plaintiff's constitutional right to due process?

Holding(s): The California Court of Appeal, Fourth District, held that (1) the Education Code section 12152 did not establish grounds for involuntary removal of a child from public school attendance; and (2) the procedure followed by the school district in excluding children from school attendance under this code denied those children due process of law.

Reasoning: The authority of the governing board to remove a child from public school, over a parent's objection, on grounds of the child's physical or mental disability is limited only to those cases where the child's attendance would be threatening to the welfare of other students. The school district's action of excluding the plaintiff was "fatally defective" in that there was no

consideration to satisfy this requirement. While there was evidence that Cherie was truant and exhibiting behavior that might preclude disciplinary action, there was no evidence relating to her current mental or physical condition. Furthermore, the word “inadvisable,” as used in the Education Code authorizing the exemption of children whose physical and mental condition was such to prevent or render inadvisable attendance at school, was unconstitutionally vague when used as the main standard for involuntary exclusion.

While the school district did have the authority to maintain discipline, which could include enforcement of suspension or expulsion, such authority must be exercised in a manner “that will satisfy the statutory and constitutional standards for disciplinary proceedings.” Denial of education at public expense, a fundamental right, required a due process hearing.

Disposition: The California Court of Appeal reversed the judgments, and the cause was remanded to the superior court for proceedings consistent with that opinion.

## **1977**

Citation: *People v. Serna*, 71 Cal. App. 3d 229 (1977).

Key Facts: In consolidated cases, defendant parents were convicted before the Municipal Court, Los Angeles Judicial District, of willful and unlawful refusal to send their children to public schools, a violation of section 12101 of the Education Code. They appealed to the Superior Court, who reversed the convictions. The Court of Appeals of California ordered the cases transferred to them for hearing and decision.

The parents withdrew their children from school because they alleged that it was segregated. They relied on *Wisconsin v. Yoder* to demonstrate their fundamental interest in guiding their children’s education. However, the California court felt *Yoder* was inapplicable for

two reasons: (1) no issue of religious freedom was involved and (2) there was no showing or contention that the defendants provided their children with any alternative education program.

Issue(s): (1) Were the defendants subject to an unjust prosecution? (2) Was the elementary school “segregated,” thus giving the parents the constitutional right to keep their children out of that school?

Holding(s): The California Court of Appeal, Second District, Division 4 held that (1) the Court concluded that procedural errors occurred in connection with the defendants’ attempt to support their defense of unjust law enforcement; and (2) the fact that the elementary school involved was “segregated” within meaning of decisional law did not give parents the constitutional right to keep their children out of public school.

Reasoning: The defendants offered proof that they had been active in protests against the school district’s segregation policies, particularly at the elementary school involved, and that they had been subject to police harassment at the school’s prompting for exercising their First Amendment rights of free speech. The trial court should not have summarily rejected this proof. To deny further discovery of an invidious prosecution was an abuse of the court’s discretion.

Although many desegregation cases have characterized segregated education as negative or harmful, no case had attempted to order all segregated schools immediately closed. In light of previous segregation cases, the Court could not agree that the parental beliefs in the perils of segregated education justified the denial of their children’s educational experience.

Disposition: The Court of Appeals of California reversed the convictions.

**1978**

Citation: *State v. Vietto*, 38 N.C. App. 99 (N.C. Ct. App. 1978).

Key Facts: The defendant was charged for violating the “General Compulsory Attendance Law,” under N.C.G.S. 115-66, after removing her 12-year-old daughter from public schools and placing her in “Learning Foundations.” The defendant contended that she removed her daughter from public school because of concerns over the quality of education and her daughter’s emotional state. She also believed that her child needed private tutoring to better prepare for future academic studies.

The jury found the defendant guilty, and she received a suspended sentence and was fined \$50. She appealed the conviction. In her appeal, she asserted that she acted in good faith and with just cause in her daughter’s best interest to withdraw her from public school.

Issue(s): (1) Did the trial court err in admitting evidence that “Learning Foundations” was an approved nonpublic school? (2) Should the defendant have been allowed to present evidence as to whether or not she willfully violated N.C.G.S. 115-116?

Holding(s): The Court of Appeals of North Carolina held that the trial court made no error in the admission of evidence to prove “Learning Foundations” as an approved nonpublic school, nor in excluding evidence that the defendant willfully violated N.C.G.S. 115-116.

Reasoning: All witnesses involved in the discussion about the “Learning Foundations” program were public school officials, competent to testify whether or not it was an approved nonpublic school under N.C.G.S. 115-166. The evidence was also sufficient to prove “Learning Foundations” failure to meet statutory requirements as an approved nonpublic school.

The record clearly showed that the defendant was fully aware of her actions in removing her child from public school to place her in “Learning Foundations” and that doing so might

place in her jeopardy of a criminal prosecution. She had several alternatives available to her. For example, public school officials offered a placement in another public school, she could have placed her daughter in an approved nonpublic school, or she could have secured additional tutoring outside of school hours. Instead, she placed her daughter in a nonpublic environment that did not meet the statute's requirements. At any rate, willfulness was not contained in N.C.G.S. 115-166 as an element of the offense, and the Court declined to set precedence in this case.

Disposition: The North Carolina Court of Appeals found no error and affirmed the conviction.

## **1980**

*State v. Chavis*, 45 N.C. App. 438 (N.C. Ct. App. 1980).

Key Facts: Defendants were tried and convicted in district court with violation of the compulsory attendance law, G.S. 115-116 and G.S. 115-169, for failing to cause their children to attend their assigned school. At trial, the Robeson County Board of Education's Superintendent testified that in 1970, the school board established school district zones under a plan developed by the U.S. Department of Health, Education and Welfare. Prior to the 1978-1979 school year, the defendants' children were attending Prospect School, a historically Indian school, in Robeson County; however, they should have been attending Oxendine School, according to the district's school assignments. The parents were notified in person and by certified letter that their children should attend the proper school assignment. The parents, in turn, informed the superintendent that as American Indians, they should have a constitutional right to send their children to the school of their choice. The superintendent inquired about an exemption for the children, and the

Department of Health, Education and Welfare denied an exemption, stating the schools could be at risk of losing federal funding if they did not comply with desegregation plans.

The children continued to attend Prospect School. The school board directed the principal not to provide textbooks to the children, but that they would remain in an assigned area on the school premises. The defendants testified that they did not object to the assigned school, Oxendine School, but felt that the Civil Rights Acts of 1964 was not applicable to American Indians, and as a result, their children should be able to attend the school of their choice.

Issue(s): Were the defendants exempt from compliance in sending their children to the assigned school because of their American Indian heritage?

Holding(s): The North Carolina Court of Appeals held that the defendants' good faith belief that they were exempt from compliance with the school assignment plan was not a defense to the offense charged.

Reasoning: G.S. 115-176 read in part that "[n]o child shall be enrolled in or permitted to attend any public school other than the public school to which the child has been assigned by the appropriate board of education." As such, unless a parent chose to have his children attend an approved nonpublic school, he must send him to the public school to which they were assigned. As a matter of law, there was no exemption for American Indians to evade this requirement. The desegregation plan and respective school assignments affected the defendants and the other Indians in Robeson County, as well as all county residents and, as such, they were equally subject to the plan's mandate.

Disposition: The North Carolina Court of Appeals found no error.

Citation: *State v. Shaver*, 294 N.W. 2d 885 (1980).

Key Facts: The defendants, Paul Shaver and Dennis Steinwand, were convicted in a Morton County Court for failure to comply with North Carolina's compulsory school attendance law, Chapter 15-34.1, N.D.C.C. Violation of this law was an infraction, with no fine or incarceration. They appealed the decision, challenging the constitutionality of the law.

Paul Shaver and Dennis Steinwand were members of the Bible Baptist Church, located in Bismarck, North Dakota. They and their families lived in Madan, North Dakota, within the Mandan Public School District. Per North Dakota's compulsory school attendance law, their children were required to attend a public school or approved private or parochial school in the state. In 1979-1980, none of their children were enrolled in such a school. Instead, they attended Bible Baptist School in Bismarck, a fundamental Baptist church that was not approved by the state. The pastor of the church, Pastor Bledsoe, maintained that the purpose of the church was to "evangelize the world and reach the lost" and "to teach the Christians after they have been saved and born again." Furthermore, the church believed that the Bible mandated and commanded parents to ensure their children's education was in accordance to Biblical teachings. As such, Shaver and Steinwand, along with their pastor, testified that the Bible mandated them to educate their children in a Christian school.

The school utilized the Accelerated Christian Education (ACE) program, a nationally recognized Christian curriculum, where students completed self-studies at their own pace. The Bible Baptist School did not have state-certified teachers to supervise the instruction. When asked about their qualifications, Pastor Bledsoe testified that the main requirement to teach at this school was to be "saved and born again." He also added that the curriculum did not

necessitate a certificated teacher and made the argument that the same teachers taught Sunday School with no need for additional credentials.

Bible Baptist School never sought, or planned to seek, state approval by the county's superintendent of schools, nor the Superintendent of Public Instruction. Pastor Bledsoe stated that they would not seek approval because they did not want to operate under the state's control. He also added, "The head of the Church is Jesus Christ, and if I let the State become head of the Church, then I will be removing the Lord from His position."

Issue(s): Did the North Dakota's compulsory school attendance law violate the defendants' religious liberties, as provided by the First and Fourteenth Amendments to the United States Constitution?

Holding(s): The Supreme Court of North Dakota held that the right of the parents to "direct the upbringing and education of their children was subject to reasonable state regulation pursuant to the state's police powers." The laws, pertaining to this case, were not unreasonable. The Court held that the burden of the parents' free exercise of religion was minimal and was greatly outweighed by the State's compelling interest to provide an education to children.

Reasoning: The Court applied the three-pronged constitutional analysis and approach utilized in *Yoder* to make their decision. The State conceded that the parents met the first prong, in that their beliefs were sincerely held. The second prong, which asked if the law seriously burdened those beliefs, was not met. The third prong was the state's compelling interest to justify the burden imposed on the free exercise of religion. The record showed that the minimum standards a school must be meet in order to obtain state approval would not violate the religious convictions held by the Bible Baptist Church. The state's interest in ensuring these standards were met warranted the school's requirements to receive state approval. If there were no

requirements, the state could not assure that children attending non-public schools were receiving a quality education in a safe, healthy environment. For that reason, there was no doubt that the state had “the power to impose reasonable regulations for the control and duration of a basic education.”

Disposition: The Supreme Court of North Dakota affirmed the judgments of conviction.

Citation: *State Ex Rel. Nagle v. Olin*, 64 Ohio St. 2d 341 (1980).

Key Facts: James Olin, father of seven-year-old Jennifer Nolin, was convicted of violating Ohio’s compulsory school attendance laws. He appealed the conviction to the Supreme Court of Ohio.

In 1977, Jennifer Nolin attended a one-room Amish school, referred to as “Koppert’s Korner” in Knox County. Mr. Olin relocated his family to be near the school, where his home stood within 1000 feet of it. Although Jennifer was not Amish herself, the school accepted her on a trial basis at the request of her father. She was the only non-Amish student in the class. The school, which was not state-approved, was led by a teacher who had only finished eighth grade himself. Koppert’s Korner did not charge tuition for Jennifer education, although Mr. Olin did contribute money to the school in accordance with those attending from the Amish community.

Mr. Olin, a “born-again” Christian, testified that the public school environment and instruction conflicted with his family’s deeply held religious beliefs. He stated that Koppert’s Korner School was the only school in accordance to his religious convictions within reasonable distance of his home. He added that when Jennifer graduated from the school at the end of eighth grade, she would be educated at home. Beyond high school, he and his wife would make every effort to help her attend a faith-based college, if that was indeed her desire.

Mr. Olin contended that Ohio's minimum education standards mandated the instruction of humanistic values, contrary to his religious beliefs, and that a Christian was a sinner for allowing his or her children to attend public schools.

Issue(s): (1) Should Mr. Olin's conviction be reversed on procedural grounds? (2) Did Mr. Olin's conviction constitute "unconstitutional discriminatory prosecution in violation of the Fourteenth Amendment to the United State Constitution?" (3) Should the state allow him to send his daughter to the Amish school, based on his right to freely exercise his religion, as protected by the First Amendment, as well as his right to direct the upbringing and education of his child, as provided by the Ninth and Fourteenth Amendments?

Holding(s): The Supreme Court of Ohio held that (1) in regard to Mr. Olin's procedural objections, the Court found no merit in his argument; (2) he did not satisfy the burden of proving that he was intentionally discriminated against; and (3) the Ohio State Board of Education should adopt minimum standards "which go no further than necessary to assure the state's legitimate interests in the education of children in private elementary schools, the balance is weighted, *ab initio*, in favor of a First Amendment claim to religious freedom."

Reasoning: The Court applied the three-part test, as utilized in *Yoder*, to decide this case. First, it asked if the religious beliefs were "truly held." Mr. Olin adequately demonstrated that his religious convictions were sincere, and as such, was entitled to the protection of both the First and Fourteenth Amendments to the United States Constitution.

Second, the Court considered how the state's minimum education standards might have infringed upon Mr. Olin's right to his free exercise of religion. The Court concluded that if Mr. Olin did send his daughter to a school which complied with the 1970 Ohio minimum standards,

he would by subjecting himself to sin, as he saw it. As a result, the compulsory school attendance law required him “to perform acts undeniably at odds with fundamental tenets of [his] beliefs.”

The third prong of the test sought an overriding, compelling state interest to necessitate the statute. While the Court recognized the importance of the State in assuring a quality education for all children, it could not prove that the regulations of that interest could not be better served. To that end, the Court believed a set of less-restrictive standards should be adopted.

Disposition: The Ohio Supreme Court reversed Mr. Olin’s conviction.

## **1981**

Citation: *State v. Moorhead*, 308 N.W.2d 60 (1981).

Key Facts: Defendants, Norman and Linda Moorhead, appealed their simple misdemeanor convictions for violating the Iowa’s compulsory education requirements of section 299.1. In October 1979, the Moorheads were charged with failing to send their two children, Janese and Kirk, to school in the Southeast Warren Community School District. A jury trial was held in January 1980, and the jury returned a verdict of guilty. The defendants appealed to the district court, which affirmed the verdict. The Supreme Court of Iowa granted a discretionary review.

The State’s evidence did not show that defendants’ children received equivalent instruction from a certified teacher. The superintendent testified that he had been advised that the defendants’ children were taking a home correspondence course and looked over a couple of the course’s texts.

Issue(s): (1) Was the document charging them defective because it was incorrectly labeled “information,” rather than “complaint?” (2) Did the trial court make a mistake in

overruling their motion for a directed verdict and in denying their requested instruction of the burden of proof? (3) Was section 299.1 unconstitutionally vague in the language “equivalent instruction by a certified teacher elsewhere?” (4) Was Chapter 299 unconstitutional because it violated the defendants’ right to free exercise of religion?

Holding(s): The Supreme Court of Iowa held that (1) the defendants were not prejudiced by being charged with a document entitled “information” instead of “complaint”; (2) there was insufficient evidence to show that defense of equivalent instruction by a certified teacher was applicable; (3) the terms “equivalent instruction” and “certified teacher” in the compulsory education statute did not make it unconstitutionally vague; and (4) Chapter 299 did not violate the defendants’ right to free exercise of religion.

Reasoning: While the charging document was mislabeled, the court had a history of not reversing rulings on the ground of technical mistakes unless it appeared to have prejudiced the complaining party or deprived him or her of full opportunity to defend the charge. The burden of going forward with evidence rested on the defendant to show how it was an application of a defense. There was no evidence of who the teacher was or his or her qualifications, nor evidence concerning equivalence of instruction. Furthermore, the defendants failed to present evidence of their religious beliefs or how chapter 299 interfered with the exercise of those beliefs.

Disposition: The Supreme Court of Iowa found the defendants’ assignments of error to be without merit and affirmed the district’s court judgment.

Citation: *Matter of Falk*, 110 Misc.2d 104 (N.Y. Misc. 1981).

Key Facts: The respondents, Edwin and Pamela Falk, were charged with educational neglect of their son, Raymond, because they did not provide him with an education in accordance to the provisions of the Education law.

The Falk family lived in Lewis County, New York, and their son would have attended first grade in 1980-1981 in the nearby elementary school within the South Lewis Central School District. He quit attending the school on January 5, 1981, when his parents withdrew him so that he could have instruction at home. Neither parent was a certified teacher. The parents believed in a natural, self-sufficient lifestyle and voiced concerns about the changes they noticed in their son's attitudes and experiences while in kindergarten. They were philosophically opposed to public education's group concepts, routines, and regulations. Furthermore, the parents had experienced conflicts with the school lunch program and their son's vegetarian diet, as well as adverse reactions to the pasteurized milk that was provided. Finally, they felt that after the afternoon bus ride home, it took considerable time for their son to "unwind," making it a challenge to enjoy optimal family time.

Upon deciding on home instruction, the parents reviewed the home instruction requirements in the Education Law, consulted with counsel, and discussed concerns with South Lewis Central School Board of Education representatives. In their home instruction, they procured many elementary school books (mostly cast-off or obsolete), as well as textbooks and workbooks the school system was currently using. They also gained access to film instructional aids.

The petitioning school authority contended that the respondents were not within the Education Law because there was failure to show that they had a "consistent systematic approach" to the grade-level required subject matter, as well as inadequate lesson plans and curriculum. They also questioned the lack of testing in determining if the child was progressing at the same rate of other children in school.

Issue(s): (1) Did the right of parents to provide their children with an education in a privately operated system extend to that of home instruction? (2) Did the parents furnish “substantially equivalent” instruction in the required subject areas to that offered in the public schools?

Holding(s): The Lewis County Family Court held that (1) the right of parents to provide their children with education in a privately operated system extended to home instruction, as provided by *Wisconsin v. Yoder* and *Pierce v. Society of Sisters*; and (2) it was the parents’ responsibility to show that the home instruction was substantially equivalent to that in a public school, and in this case, this parents met the burden of proof that they were providing substantially equivalent instruction to that given to children of the same age at the local public school.

Reasoning: The object of compulsory education law is to ensure that children are not “left in ignorance.” As long as the instruction provided is adequate, and the sole purpose of nonattendance at school is not to evade the statute, instruction provided to children at home by their parents (those that are competent, not necessarily certified) should satisfy the Education Law’s requirements.

The Court concluded that the son received the minimal education by law. The parents made sure he studied for periods of time required by law and covered the same subject matter and emphasis on the “three R’s” provided to first graders in the South Lewis School System. The Court did add that while the parents may have a firm grip of the subject matter for first grade, their plan for home instruction in advanced grades was “doomed for failure.”

Disposition: The Lewis County Family Court ruled that the respondents met the burden of proof that they were providing substantially equivalent instruction to their son and dismissed the school district's petition.

Citation: *Hill v. State*, 410 So. 2d. 431 (Ala. Crim. App. 1981).

Key Facts: The appellants, Jason Hill and Kenneth Dowling, were charged and convicted of failing to send their children between the ages of 7 and 16 to school or to have the children instructed by a private tutor, as required by the State of Alabama's Compulsory School Attendance Law. According to the school records, the children were not enrolled in or attending school from September 14, 1979 to January 31, 1980. School officials had not granted permission for the children not to be enrolled in or be absent from school.

The District Attorney filed two complaints against each appellant, and the cases were consolidated. The jury found both men guilty as charged. The trial judge sentenced both men to 30 days of hard labor in the Elmore County Jail, plus a \$1.00 fine for the first conviction. For the second conviction, they were sentenced to 90 days of hard labor in the Elmore County Jail and a \$1.00 fine. Hill and Dowling gave notice of appeal for each conviction.

Issue(s): (1) Did the Alabama Compulsory School Attendance Law violate the appellants' religious freedom rights? (2) Did the second conviction violate their protection from double jeopardy?

Holding(s): The Court of Criminal Appeals of Alabama held that (1) there must be merit in one's claim of religious freedom, and that could not be demonstrated in this case; and (2) the proper method of "raising issue of former jeopardy was by special plea, and in the absence of such a plea," the issue was not to be decided upon before the Court of Criminal Appeals.

Reasoning: There was no merit established in the appellants' claim for freedom of religion. The State provided more than sufficient evidence to prove beyond a reasonable doubt that the appellants unlawfully violated the state's compulsory school attendance law.

Disposition: The Court of Criminal Appeals of Alabama affirmed the circuit court's ruling.

Citation: *State v. Riddle*, 285 S.E.2d 359 (1981).

Key Facts: Bobby and Ester Riddle, the defendants, were found guilty of violating the West Virginia school attendance law and fined \$10.00. They appealed this conviction to the circuit court, resulting in another conviction. The Riddles appealed again, claiming that the compulsory attendance law was not constitutional and violated their First and Fourteenth Amendment rights under the United States Constitution.

The defendants belonged to a Methodist sect, the Wesley, and considered themselves "Biblical Christians." They dressed modestly and did not wear jewelry or makeup. They believed that one who sins after being saved loses his or her eternal salvation. Their children had attended a private Christian school, but the parents withdrew them after discovering the school upheld and disseminated the doctrine that a sinner may be saved, even if he or she sinned again. Because public school was not an option for them, they began teaching their children at home. The Riddles reportedly did an excellent job in educating their children, as achievement on standardized assessments indicated.

The W. Va. Code, 18-8-1[1851] stated that compulsory school attendance began with the 7th birthday and continued to the 16th birthday. Exemption B allowed for instruction in the home or other approved location for a time equal to the school term of the county. The instruction was

to be conducted by a person or persons who were qualified to provide it, as determined by the county superintendent and board of education. The Riddles did not claim this exemption.

Leaning on *Wisconsin v. Yoder*, the Riddles appealed the court's decision based on their religious convictions that they believed would be infringed by sending their children to a public school. One distinguishable difference in the two cases was that *Yoder* demonstrated how the Amish community had its own vocational and technical training designed to prepare youth for a self-contained, pastoral society.

Issue(s): What was the legitimacy of the First Amendment, Free Exercise, objection to education in a public school, and what was the manner in which that Free Exercise claim was asserted?

Holding(s): The Supreme Court of Appeals of West Virginia held that the parents could not disregard the compulsory school attendance law and then claim the First Amendment free exercise of religion defense for a criminal prosecution of that law. Furthermore, one's religious convictions could not be a defense for a total disregard of compulsory school attendance statutes.

Reasoning: While there were similarities between this case and *Yoder*, it was not appropriate to compare the two for the defense's argument. In the case of *Yoder*, the court was confronted by members of a community "with a long history of successful preparation of its children outside of public school for a life in contemporary society." As such, one could not totally disregard compulsory education laws because of religious convictions, no matter how tightly held.

There were many reasons why children between the ages of 7 and 16 were within the supervision of boards of education. In addition to teaching, the schools were also charged for

supervising the health needs of children, such as eye and hearing tests, immunization records, and providing at least one balanced meal per day.

The Court found it inconceivable that in modern society, the Free Exercise clause of the First Amendment implied that children could “lawfully be sequestered on a rural homestead during all of their formative years to be released upon the work only after their opportunities to acquire basic skills have been foreclosed.”

Finally, the Riddles never requested Exemption B to the compulsory school attendance of their children.

Disposition: The Supreme Court of Appeals affirmed the judgment of the Circuit Court of Harrison County.

## **1982**

Citation: *State v. White*, 109 Wis. 2d 64 (1982).

Key Facts: Parents, Timothy and Kathy White, appealed judgment of the Circuit Court which convicted them of failing to send their six-year-old son, Matthew, to attend public or private school, as required by section 118.15(1) (a). Failure to comply was punishable by fine or imprisonment.

The Whites withdrew their son from the local public school because of religion convictions and began to instruct him at a private school within their home. The court ruled that the Whites were not operating a private school. The Whites subsequently pled guilty, leading to a conviction and fine.

Issue(s): (1) Did the trial court lack personal jurisdiction over the appellants, err in denying their motion for a bill of particulars, and err in its allocation of the burden of proof on

what was allegedly an element of the crime in which they were charged? (2) Was section 118.15(1) (a) unconstitutionally vague, as well violate their rights to free exercise of religion?

Holding(s): The Court of Appeals of Wisconsin held that the appeal was insufficient to “confer appellate jurisdiction over issues waived by the Whites’ guilty plea.” The impact of the statute on the parents’ right to free exercise of religion was waived by the guilty plea. The Whites were not operating a private school as provided by section 118.15(1) (a).

The statute was not unconstitutionally vague in providing a precise “private school” definition. Such a school should have been an institution that aligned to established curriculum and organizational requirements, as well as had academic grades comparable to those in standard public school grade levels.

Reasoning: Because the Court concluded that section 118.15(1) (a) was facially constitutional, the trial court correctly denied the parents motion to dismiss the case.

Disposition. The Court of Appeals affirmed the lower court’s decision.

Citation: *People v. Berger*, 109 Ill.App.3d 1054 (1982).

Key Facts: Delores and Lawrence Berger were charged and convicted for allowing their daughter, Christine, to be truant from school, thereby violating Illinois’s compulsory attendance law. Christine was absent from her high school for 339 days during the 1979 and 1980 school years. The school attempted to inform the parents of their daughter’s absences several times, both by telephone and registered mail, some of which were ignored. Christine’s doctors acknowledged that she did have certain allergies, but not so severe as to warrant these absences. The parents were tried and found guilty and sentenced to one year of probation, to which they appealed.

While the parents acknowledged their daughter's frequent absences, they claimed she was not truant under the state's definition of truancy. Under Illinois law, a child was considered truant if absent from school without a valid cause, which was defined as illness, death in the immediate family, family emergency, or other situations that raised concern for the child's safety or health.

Issue(s): (1) Were the parents proven guilty beyond a reasonable doubt? (2) Did the absences constitute truancy?

Holding(s): The Appellate Court of Illinois, Second District, held that (1) the parents who claimed their child's absence was a result of illness had to show medical documentation of the said illness; and (2) if they did not, they were guilty of violating the compulsory attendance law.

Reasoning: Because there was no proof of illness to justify noncompliance of the compulsory education law, the lower court's ruling was upheld. Citing *Morton v. Board of Education* (1966), the court stressed the main objective of compulsory attendance laws was that all children be educated.

Disposition: The Appellate Court of Illinois, Second District, ruled that the daughter's habitual truancy was proven beyond a reasonable doubt, and as a result, the parents' conviction was upheld.

Citation: *State v. Bowman*, 653 P.2d 254 (1982).

Key Facts: Defendant, Kay Bowman, was convicted for failing to send her child to school. In 1978, while residing in the Roseburg school district, the defendant became unhappy with the education of her two children in the public school system. She obtained permission of the school superintendent to remove her children from public school and teach them herself at home.

The following year, Bowman returned her children to school, where they were given school credit for the studies at home and placed in their regular grade level. Later that year, she withdrew the younger child from the eighth grade to resume teaching her at home with the approval of the superintendent. She maintained contact with the school district, as well as allowed her child to participate in standardized achievement assessments.

In October 1980, Bowman and her children moved to Josephine County, where she soon contacted the school district superintendent about her home schooling arrangements. She was asked to submit a written request, and she complied, believing that doing so was sufficient documentation to continue home schooling. In November 1980, she received a letter from the superintendent stating among other things, that she register her son to North Valley High and allow for testing to determine the correct placement appropriate to his academic level. A program would be provided for her use and may “be examined in the work covered” as held by the compulsory attendance statute. If it was determined that the child was not being taught properly, Bowman would be ordered to return him to school. The superintendent also cautioned Bowman that her son could not be granted a high school diploma, but instead, would have to seek a Certificate of Equivalency from the state.

The defendant complied and when having her son tested at the school, she was informed that the school would not grant credit for home studies. If the child returned, he would be placed at the beginning of ninth grade. She objected, stating that the former school did not place such restrictions on her. When she did not bring her son for testing in January 1981, the superintendent revoked his permission for home schooling and ordered her to enroll her son at the public school. He warned her that failure to comply would place her in violation of the

compulsory school attendance law. When the defendant did not comply, a criminal prosecution followed.

Issue(s): Were the state's "private or parochial school" and the "parent or private teacher" exemptions under compulsory school attendance unconstitutionally vague?

Holding(s): While the Oregon Court of Appeals agreed with the defendant that children taught in private schools and those taught by a private teacher or parent were treated differently, the difference in treatment was not improper. The defendant could appeal to the school board to return her child to home instruction. The superintendent's decision to order the child back to school was a matter for the school board and as such, not an issue in this case.

Reasoning: The compulsory school attendance statute and rules simply required children who are taught by a parent or private teacher be assessed on the same standard as children of similar age or grade within the district and not be held to a different standard of achievement. It was clear that the defendant intentionally failed to send her child to school after the superintendent's order to do so, thus violating the compulsory school attendance statutes and policies. By establishing an intentional violation, the lesser culpable mental state of criminal negligence was satisfied.

The state did not negate equal protection when it distinguished between children taught in private schools and those taught in home instruction by parents or a private teacher. As provided above, the state may have a rational basis for such distinctions to serve in the best interest of students.

Disposition: Oregon Court of Appeals affirmed the conviction.

Citation: *Livingston Parish School Board v. Lofton*, 422 So.2d 1357 (1982).

Key Facts: The Livingston Parish School Board filed a suit against Nicholas and Wanda Lofton, parents of Davina Lofton, for violating Louisiana's compulsory school attendance law. The court dismissed the suit, and the school board subsequently appealed the case.

The Louisiana compulsory school attendance statute, LSA-R.S. 17:221, stated that children between the ages of 7 and 15 should attend a public or private school. Every parent was to assure the attendance of their child(ren) in "regular assigned school hours established by the school board." Whoever violated the requirements of the law would be fined no more than \$15.00, with each day of violation constituting a separate offense.

The defendants admitted that they kept their daughter out of school during the entire 1980-1981 school year and could not return her because of their religious beliefs. They had not claimed an exemption from compulsory attendance and had not enrolled their daughter in an approved home study program, as allowed under the state's law.

Issue(s): Was the "propriety of the procedure employed" in this case?

Holding: The Louisiana Court of Appeal, First Circuit, held that the plaintiff had "pursued the wrong remedy."

Reasoning: While the defendant had clearly violated the state's compulsory school attendance statute, the judge felt the suit was brought about in the wrong way. The compulsory school attendance statute contained two methods of enforcement: criminal proceedings and civil proceedings. The first was clearly penal in nature and should be conducted by the district attorney.

Disposition: The Louisiana Court of Appeal, First Circuit, dismissed the appeal at the appellant's costs.

Citation: *Grigg v. Commonwealth of Virginia*, 297 S.E.2d 799 (1982).

Key Facts: The attendance officer for the City of Chesapeake school system filed petitions against Robert and Vickie Grigg and their daughters, Stephanie and Nicole, for violating Virginia's compulsory school attendance law. The petitions against the parents alleged that there was "no valid reason" for the children not to be enrolled in public schools. The petitions against the children alleged that they were in need of services, requesting that the court serve the purpose of the "Juvenile and Domestic Relations District Court Law."

After adverse decisions by the juvenile court on all four petitions, the Griggs appealed the decisions. The circuit court then merged the petitions against the parents and children. The court found the children were indeed in need of services and placed them on unsupervised probation for a year on the condition that they attend school, whether public, private, or home instruction by an approved teacher, as provided by the state statute. The parents were ordered to comply with this condition.

The parents withdrew their children, then ages 14 and 11, from school on January 2, 1980 to be "taught at home" by the mother. The superintendent sent a notice to the parents to re-enroll the children within three days. The parents responded that they had created a private school within their home named Ark II. They were utilizing the Calvert School curriculum, which included instruction manuals and student materials. Classes met from 8:00 A.M. to 4:00 or 5:00 P.M. daily.

Teachers in private or parochial schools in Virginia were not required to meet the state board of education's qualifications for tutors or teachers. Mrs. Grigg had received her high school diploma from a correspondence school, and Mr. Grigg was a high school graduate with two years of college coursework in Industrial Technology. The parents maintained that they withdrew their children from public school because they believed they were not receiving a

quality education. In addition, they were unhappy with the constant exposure to bad language, violence, and immorality within the public school.

Issue(s): (1) Did the defendants establish a private school, as opposed to “home instruction?” (2) Was the school attendance law penal in nature, with reasonable doubt as to its interpretation in the defendants’ favor?

Holding(s): The Supreme Court of Virginia held that (1) it was unnecessary to define the term “private school” because the Griggs would not qualify for the private school exemption “even under the broad definition of the term”; and (2) the proceeding was a civil matter.

Reasoning: Private schools and home instruction represent two categories of exemption from public school attendance, as provided by Code § 22-275.1. It was obvious that the legislative’s intent for these categories was that one “should operate in one set of circumstances and the other in a different set.” Otherwise, there would have been no reason to create and enforce both exemptions. In this case, the Griggs’ Arc II school would not qualify for the private school exemption, even under the broadest interpretation.

The court did not agree with the Griggs’ argument that Code § 22-275.1 was “void for vagueness.” This argument around the specificity of the statute “miss(ed) its mark and only tend(ed) to divert attention from what should be the true focus of this inquiry,” which was home schooling. There was no doubt that the Griggs were engaged in home instruction. By requiring a qualified tutor or teacher for home instruction, the compulsory school attendance statute had “declared that such instruction by an unapproved person shall be impermissible.”

The court disagreed with the parents about the case being a criminal proceeding. They were not charged with any criminal offense and were petitioned to court asking only for “civil

relief in the form of an order compelling them to enroll their children in public school or make ‘other proper arrangements’ for their education.”

Disposition: The Supreme Court of Virginia affirmed the judgment of the trial court.

### **1983**

Citation: *Com. v. Hall*, 309 Pa. Superior Ct. 407 (1983).

Key Facts: John and Sherrie Hall appealed their convictions of four counts of violating Pennsylvania’s Compulsory School Attendance Law. During the 1979-1980 school year, their four school-age children had accumulated three unexcused absences from the Cumberland Valley School District as a result of an extended Christmas vacation in the Caribbean and a trip to New England in February. The parents were notified that further excuses could result in criminal proceedings against them. In March of the same school year, the parents received permission for their children to attend an “educational trip” to Washington, D.C., in accordance with the school district’s attendance protocol. Their children’s absences were excused. A few weeks later, Mr. and Mrs. Hall again requested permission for their children’s absence for another “educational trip” to Europe. The school district’s policy only allowed for “one educational trip per school year, not to exceed five school days.” Consequently, permission was not granted for this trip. The family took the trip anyway, and the parents were subsequently charged for violating the school attendance code.

The appellants were convicted in a summary proceeding. They took an appeal to the Court of Common Pleas of Cumberland County, to which they were found guilty again. Mr. and Mrs. Hall were sentenced to pay four fines of \$2.00 each, plus costs. An appeal followed. The parents requested the testimony of two defense witnesses to discuss the educational value of the unexcused trip. This request was denied.

Issue(s): Were the parents failing to comply with the attendance policy established by the Cumberland Valley School District in taking their children on “educational trips?”

Holding(s): The Pennsylvania Superior Court held that the parents removing their children from school without authorization, including “educational trips,” could be grounds for conviction under school attendance laws.

Reasoning: The court disagreed with the parents’ assertion that they should have the unconditional right to remove their children from school in order to participate in multiple trips, even those considered educational. The testimony of their defense witnesses was not relevant because the issue was not one of trips being educational, but instead, a violation of the attendance statute. Regular school attendance was a “matter of paramount importance to which the views of the individual parent must yield.”

Disposition: The Pennsylvania Superior Court affirmed the judgments of the sentence by the lower court, concluding that such issues should rest with the local school board.

## **1985**

Citation: *State v. Newstrom*, 371 N.W.2d 525 (1985).

Key Facts: In 1981, Jeannie Newstrom and her husband removed their two daughters, both under nine years old, from afternoon classes at their public school to teach them at home during those hours. The school in which their children attended was located in the Coleraine Independent School District. Ronald Maertens, the school district superintendent, was contacted by the parents to explain their plans of homeschooling their children at their Newstrom Family School. He provided textbooks to Mrs. Newstrom, as was required under Minnesota law for students attending private schools.

In August 1981, Maertens sent a letter to Mrs. Newstrom, informing her that the Newstrom Family School could not be recognized as a private school and that she must send her children to public school full time. He also made inquiries about Mrs. Newstrom's qualifications as a teacher.

In October 1982, Maertens filed a complaint against Mrs. Newstrom, charging her with a misdemeanor for violating Minnesota's compulsory attendance law. He alleged that the Newstrom Family School did not comply with the law because she did not possess the formal education training required of teachers, as stipulated in Minn.Stat. § 120.10 subd. 2. According to this section, a school was to provide "common branches" taught in the English language, using textbooks written in English, and taught by teachers "whose qualifications are essentially equivalent to the minimum standards for public school teachers of the same grades or subjects. . . ."

At the trial, Mrs. Newstrom admitted that she did not possess a teaching certificate, but argued that her educational background was "essentially equivalent" to a public school teacher. In turn, the State argued that her lack of formal teacher training clearly demonstrated that her qualifications were not essentially equivalent. Mrs. Newstrom outlined the structure and curriculum of her school and endeavored to demonstrate her children's success on standardized assessments. The trial court refused this evidence. She then described her college coursework at Hamline University, her wide range of knowledge in literature, and her other experiences to which she contended were essentially equivalent to public school teachers. Nevertheless, Jeanne Newstrom was found guilty, and the court sentenced her to serve 30 days in jail or pay a \$300 fine, as well as a \$30 surcharge. A three-judge district court panel on appeal affirmed the conviction.

Issue(s): Was section 120.10, subdivision 2, unconstitutionally vague for imposing criminal liability for failure to comply with the state’s compulsory school attendance laws?

Holding(s): The Supreme Court of Minnesota held that the state’s compulsory attendance law was unconstitutionally vague for imposing criminal liability for noncompliance.

Reasoning: The Minnesota compulsory attendance law required that children between the ages of 7 and 16 attend a public or private school for the entire school year. Subdivision 2 of section 120.10 provided the definition of a school, which met the requirements of compulsory school attendance. The school had to be taught by teachers whose qualifications were “essentially equivalent to the minimum standards for public school teachers of the same grades of subjects.” As the term “essentially equivalent” was unconstitutionally vague, Mrs. Newstrom’s conviction should be reversed.

The Court was more concerned with the ability of teachers to teach than with their formal education. Mrs. Newstrom’s child had by all indications been well taught in the core subject areas as required by Minnesota law.

Disposition: The Supreme Court of Minnesota reversed Mrs. Newstrom’s conviction.

## **1986**

Citation: *In Interest of C.S.*, 382 N.W.2d 381 (N.D. 1986).

Key Facts: C.S. and A.S, as well as their parents, appealed a juvenile court order finding the children to be “unruly” as a result of habitual truancy. C.S. was nine years old in the fourth grade, and A.S. was 10 years old in the fifth grade. Both children attended Mapleton Elementary School until January 14, 1985 when they were removed to be educated at home by their parents, neither of which were certified teachers. The parents claimed the children were not receiving an

adequate education in public school to meet their abilities and that they preferred the children be instructed with Christian-based materials.

While the State conceded that the children were removed from schools as a result of their parents' actions, separate petitions were filed by the Assistant State's Attorney alleging that C.S. and A.S. were "unruly" as a result of habitual truancy. The cases were consolidated for the juvenile court hearing. The court found the children to be "unruly" and ordered that they be placed on supervised probation for one year, as well as return to Mapleton Elementary School.

Issues(s): Could the children be found unruly because their parents did not send them to school?

Holding(s): The Supreme Court of North Dakota held that the intentional noncompliance with compulsory school attendance laws was a violation by the parent, not the child. However, a child who was habitually absent from school in defiance of the parent(s) could be considered an "unruly child." In this case, the children were removed from public school by their parents and could not be considered unruly.

Reasoning: Section 27-20-02(10), N.D.C.C., defined "unruly child" as one who was "habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and was ungovernable. . . ." The State made no effort to show that the children were in any sense "unmanageable" or that they needed supervision for reasons other than truancy. It was clear that the children did not attend school because of their parents' actions, not their own.

Disposition: The Dakota Supreme Court reversed the lower court's order.

Citation: *Howell v. State*, 723 S.W.2d 755 (1986).

Key Facts: Jack and Dianna Howell were convicted for violating the compulsory school attendance law. Mrs. Howell's two children from a previous marriage, ages 7 and 16, were

enrolled in public schools within the Gilmer Independent School District in Texas during the 1984-1985 school year. The following year, they did not return to school. The Howells were subsequently charged and convicted for violating the compulsory school attendance law.

Issue(s): Should the Howells be exempted from compliance to the compulsory school attendance law under the Texas and United States Constitutions because of their First Amendment and Fourteenth Amendment free-exercise of religion rights, the “word of God,” and the state’s failure to prove they were not exempt?

Holding(s): The Texas Court of Appeals held that the parents failed to prove that the compulsory attendance law “substantially burdened the exercise of their religious beliefs to qualify for exemption from compulsory attendance law.” Their conviction for violating the law was supported by the evidence.

Reasoning: The Howells failed to prove that the violation of the compulsory attendance law was “based on anything except their subjective views.” Because little of their religious beliefs were shown at the trial, it was impossible to determine if the law significantly burdened their religious practices. That said, religious beliefs have not generally succeeded as a First Amendment free-exercise defense around noncompliance to compulsory school attendance laws.

If the parents had shown that the exercise of their religious beliefs were greatly burdened by compulsory school attendance laws, the State would have been required to show “a compelling State interest behind the regulation and the lack of a less restrictive, alternative means of meeting that State interest, such as an approved course of home study.” Doing so was unnecessary in this case.

The Howells argued that the word of God as law exempted them from compliance. However, the courts in Texas only enforced the laws of the state and those of the United States.

The First Amendment to the United States Constitution disallowed the civil courts from “exercising any jurisdiction over purely ecclesiastical matters.”

As for the question of burden of proof, Tex.Penal Code Ann. § 2.01 (Vernon 1974) stated, “All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt.” The State did prove that the children were required to enroll in public schools, and the parents did not comply, facts to which the Howells did not deny.

Disposition: The Texas Court of Appeals affirmed the trial court’s conviction.

## **1987**

Citation: *In re Jeannette L.*, 71 Md. App. 70 (1987).

Key Facts: The appellants, Jeannette L. and Shirley P., requested that the judgments against them for violations of the state’s compulsory attendance laws be reversed. Each had insisted on and received a jury trial in the Prince George’s County juvenile court, and each was convicted by the jury. They received suspended fines and sentences, and both were placed on probation.

The two mothers from Maryland, each with two children, allowed their children to miss 70 days or more of school. The mothers provided many reasons why the children were absent, such as sick relatives, various sicknesses and colds, limited transportation, a cut finger, and rumors being spread at school.

The State sought a conviction of the mothers for failure to send their children to school, thus violating the state’s compulsory attendance laws. The women claimed their constitutional rights of due process were violated because the law imposed “strict liability” by prosecuting parents for their children’s actions.

Issue(s): The appellants raised numerous issues in their appeal. The main issue centered around the constitutionality of the state's compulsory attendance law, Md.Educ.Code Ann § 7-301(e)(2): Was the compulsory school attendance law unconstitutionally vague in assigning culpability for violations and for imposing "strict" liability on parents for the actions of their children?

Holding(s): The Maryland Court of Special Appeals held that the compulsory attendance statute was not void for vagueness.

Reasoning: The statute obviously applied to the appellants, as it specifically identified a person of parental or custodial control over a child. The compulsory school attendance statute did not prosecute parents for their children's failures, but instead, prosecuted the parents for their own failure in causing their children to attend school. Before individuals could be found guilty of violating § 7-301(e)(2), the court had to find that they had control over the child and that they failed to ensure the child attended school regularly. Both indicators were satisfied in this case.

Disposition: The Maryland Court of Special Appeals affirmed both convictions.

Citation: *State v. Trucke*, 410 N.W.2d 242 (1987).

Key Facts: Defendants, Greg and Karen Trucke, were charged and convicted on two counts of the misdemeanor offense of failing to send their children to public school or obtain equivalent alternative instruction by a certified teacher.

In the 1984-1985 school year, the defendants' two children attended a public school in Iowa. The following year, Mrs. Trucke began teaching her children at home with the aid of a certified teacher, Susan Goodenow, who taught the children approximately four hours each week. The school superintendent contacted the Trucks, notifying them that they had failed to satisfy the school district in their compliance to the "equivalent instruction" exception to section

299.1 in Iowa's compulsory education law. This section stated that an exception to compulsory school attendance allowed for a child to attend "equivalent instruction by a certified teacher elsewhere." This section required the parent to send their children, ages 7 to 16, to a public school for "at least one hundred twenty days in each year, commencing with the first week of school after the first day of September."

A criminal prosecution followed. A trial by the magistrate resulted in convictions. The convictions were upheld on appeal to the district court. The district court did concede that the term "equivalent instruction" was unconstitutionally vague. However, it premised the defendants' convictions on their failure to have their children attend a school which provided "instruction by a certified teacher for at least one hundred twenty days during the school year."

Issue(s): What was the constitutionality of semantics regarding the requirement of school attendance for 120 days?

Holding(s): The Iowa Supreme Court held that the complaints led to convictions of crimes that had not yet been committed.

Reasoning: The compulsory school attendance statute did not require parents to send their children to a school that provided 120 days of acceptable instruction. Instead, it required parents to send their children to a public school for at least 120 days each school year, beginning on the first day of September, or comply with a legally acceptable alternative. No parent could be in compliance with this requirement by September 30 of any school year because only 30 days of the school had passed. Therefore, the Trucks still had as many as 220 days remaining to comply with the statute, not counting weekends and school holidays.

Disposition: The Iowa Supreme Court remanded the case to the district court for entry to dismiss the prosecutions.

**1988**

Citation: *State v. Lunde*. 424 N.W.2d 645 (N.D. 1988).

Key Facts: Defendants, Gerald and Sheryl Lund and Richard and Kathy Reimche, were convicted of violating the North Dakota Compulsory School Attendance Statute, Section 15-34.1-01, N.D.C.C, which required parents living within a school district to send their children to the school. The defendants appealed this decision.

The Lunds did not send their daughter, Naleah, to public school in Bottineau County from September 1985 to March 20, 1986. The Reimches did not send their son and daughter, Joshua and Rachel, to the same school system from March 1 to March 20, 1986. Both sets of parents were charged for violating the compulsory school attendance statute. These charges were joined for trial in a district court. Each defendant was convicted of a Class B Misdemeanor because of repeat offences.

The residency of the defendants was questioned, and the State introduced a school district census, completed on May 31, 1985, which listed the defendants' addresses as "R.R. 1 Bottineau." The defense objected to this evidence.

Issue(s): Did the State fail to prove the defendants' residency in the Bottineau County School District?

Holding(s): The North Dakota Supreme Court held that the trial court abused its discretion in admitting the school district census. Furthermore, the State failed to provide substantial evidence to prove the residency of the defendants.

Reasoning: The State admitted that the census exhibit was not given to defense council until immediately before the State introduced it into evidence. Therefore, the Court concluded that the trial court abused discretion over the defense council's objection. In doing so, the State

failed to give defense counsel adequate notice of the exhibit, which prevented the defendants from having a “fair opportunity” to prepare for it.

Moreover, the census was completed on May 31, 1985, but the charges covered the time between September 1985 and March 1986. The State must prove beyond a reasonable doubt the offenses to which the defendants were charged. As such, this evidence could not unequivocally prove the residency of the defendants prior to September 1985. Neither the testimony nor the census exhibit was adequate in establishing residency of the defendants in the school district during the time in question. When the State cannot prove beyond “a reasonable doubt an essential element of the crime charged,” the conviction must be reversed.

Disposition: The North Dakota Supreme Court reversed the conviction judgments.

## **1989**

Citation: *State v. Wood*, 63 Ohio App.3d 855 (Ohio Ct. App. 1989).

Key Facts: Parents, James and Kathleen Wood, were convicted of violating R.C 2919.2, contributing to the unruliness and delinquency of a minor, when their school-age son did not attend school in the Lucas County School District.

In 1986, a representative of the Lucas County Children’s Services Board (LCCSB) made a visit to the home of James and Kathleen Wood to discuss their son’s lack of attendance in school. When the representative did not receive the desirable response from the parents, LCCSB sent a letter requesting information about the child’s school attendance. Mr. Wood responded that he would not cooperate with the agency, due to his “superior parental rights in the education of [his] children.” The matter was then handed over to Lucas County Office of Education’s Attendance Supervisor, who followed up with information about Ohio’s compulsory school attendance law to the appellants in January 1986. Continued attempts were made over the course

of a year to assist the parents in procuring an exemption from the law. Mr. Wood finally completed the exemption application, but made changes to the form so as not to violate his religious beliefs. Instead of asking permission from the state, the form was altered so that the state would recognize his right to excuse his child from public school attendance. The school district's superintendent did not accept this edited version of the form, and as a result, no exemption was granted for the period of September 1, 1986 to April 1, 1987 in which the student was absent from school.

A complaint was filed against the appellants on April 4, 1987 for violating the R.C. 2919.24, the portion of the Ohio code dealing with contributing to the unruliness and delinquency of a minor.

The appellants were convicted at trial. The court suspended the sentence of imprisonments and fines, after the appellants agreed to seek an exemption. The appellants asked for a new trial, acquittal, and arrest of judgment, and the trial court denied all. They then sought appeal to the Court of Appeals.

Issue(s): (1) Was the compulsory school attendance law depriving the appellants of their First and Fourteenth Amendment rights? (2) Did the court abuse its discretion by excluding the appellants' evidence regarding the unconstitutionality of the law or their inability to receive an exemption from the superintendent?

Holding(s): The Court of Appeals of Ohio, Sixth District, held that (1) the State could prosecute parents under the delinquency statute, R.C. 2919.24, for failing to send their children to school; and (2) the appellants were not prevented from having a fair trial as the evidence regarding the parents' inability to receive a compulsory school exemption was properly excluded.

Reasoning: The appellants' arguments were without merit because they were not charged with violating the state's compulsory school attendance law. R.C. 2919.24(A) (2) states that no person shall behave in a way "tending to cause a child or ward of the juvenile court to become an unruly child." "Unruly child" was defined as a child who was habitually truant from home or school, as provided by R.C. 2151.022. The court determined the appellants could be prosecuted under this statute, as they failed to send their child to school.

Under this statute, the state must prove that a child is deliberately missing school with the knowledge of the parents. The reasons for causing the absences are irrelevant. Therefore, the trial court properly excluded the appellants' evidence regarding their inability to obtain an exemption.

Disposition: The Court of Appeals of Ohio affirmed the judgment.

## **1991**

Citation: *People v. DeJonge*, 188 Mich. App. 447 (1991).

Key Facts: On remand from Michigan's Supreme Court, the Court of Appeals was asked to reconsider its earlier opinion in which parents, Mark and Chris DeJonge, were convicted for violating the Michigan Compulsory Attendance Law. The DeJonges kept their children home from school where their mother taught them. The parents claimed that their home school provided an exemption from the law under § 1561(3)(a), which allowed children not attending a public school to attend a "state approved nonpublic school." The state showed that the defendants were not using certified teachers as required by law. On appeal, the DeJonges raised constitutional challenges to the compulsory school attendance law as it applied to home schooling.

The DeJonge children had been taught at home through a program sponsored by the Church of Christian Liberty and Academy of Arlington Heights, Illinois. At the jury trial, their

pastor testified that their church believed it was the responsibility of parents to direct the education of their children, although it was permitted to delegate that responsibility. The church-administered program did not require state licensure of its teachers, as certificated teachers had to take courses based upon secular humanism. Such training conflicted with the church's religious beliefs. Mark DeJonge testified he believed that by allowing the state to authenticate his children's teachers, they would be usurping God's authority.

On appeal, the DeJonges contended that the certification requirement violated their First Amendment right to free exercise of their religious beliefs and their Fourteenth Amendment right to direct the education of their children. They also argued that their due process rights were violated when the superintendent was given the authority to determine where their home school complied with state requirements.

Issue(s): Did the state requirement for nonpublic schools to use certified teachers violate the parents' Fourteenth Amendment right to direct their children's education, as well as their First Amendment right to free exercise of religion?

Holding(s): The Michigan Court of Appeals held that the evidence supported the convictions even though the state requirement that nonpublic schools use state certificated teachers was challenged as a violation of one set of parents' rights to free exercise of religion and a violation of the second set of parents' rights to direct the education of their children. The court also held that the state's compelling interest in the education of the state's children justified the burden imposed on defendants' religious beliefs.

Reasoning: In the earlier ruling, the court of appeals concluded that the burden imposed of Mrs. DeJonge's religious beliefs was minimal. She did not believe that her religious convictions prevented her from hiring state-certified teachers, and she could not show that it was

impossible to hire such a teacher who could accommodate her qualifications. Furthermore, the state had a compelling interest in the quality of children's education, which justified the burden imposed on the DeJonges' religious beliefs.

Disposition: The Michigan Court of Appeals once again affirmed the defendants' convictions of violating the state compulsory school attendance law.

## **1992**

Citation: *Maas v. State*, 601 So. 2d 209 (1992).

Key Facts: The appellant was convicted for "contributing to the CHINS [child in need of supervision] of a minor," which was a violation of § 12-15-13, Code of Alabama 1975. He failed to enroll his children in a school, as required by the Alabama Compulsory School Attendance Act, codified at § 16-28-1 et seq., Code of Alabama.

The Collinsville High School principal and Dekalb County Board of Education Supervisor of Attendance visited the appellant's home in September 1991 to investigate a report that the appellant had children of school age in his home who were not enrolled in school. The appellant admitted that he did have school-age children, but that his wife and he were home schooling them. The attendance officer informed the appellant that he was not in compliance with the state's requirements for home instruction. The appellant responded that he had complied with the appropriate statutes and that his family was moving to Georgia. The attendance officer then proceeded to orally give the appellant notice of the Alabama Compulsory School Attendance Act's requirements. The appellant never received written notice, but was arrested the same day. Within a few days of his arrest, the appellant and his family moved to Georgia. His wife applied to provide home instruction to her children, in compliance with Georgia's home study program statutes.

Issue(s): Should the court dismiss the charge against the appellant because the school attendance officer failed to give him written notice under § 16-28-16 before initiating a criminal prosecution?

Holding(s): The Alabama Court of Criminal Appeals held that the school officer's failure to give the defendant written notice before instituting criminal prosecution warranted the charges being dismissed.

Reasoning: The record revealed that the district court knew of the notice requirement in § 16-28-16 and of the appellant's holding. Because the attendance officer failed to give written notice in compliance with the "strict and literal requirement of the statute," the court held that "an essential element of the State's case against [the appellant] was missing.

Disposition: The Alabama Court of Criminal Appeals ruled that the appellant's conviction be reversed and a judgment rendered in his favor.

Citation: *State v. Skeel*, 486 N.W.2d 43 (1992).

Key Facts: Paula Skeel, the defendant, placed her three children of school age in private instruction. In doing so, she failed to file a report to the local school district, as required by Iowa Code § 299.4 (1989). This statute required parents to provide reports to the State when placing their children in private instruction. The reports included information such as courses of study, name of texts, and the instructor's contact information.

Skeel was subsequently charged with violating section 299.4, a simple misdemeanor. As a consequence, the court could order the defendant to perform not more than 40 hours of unpaid community service. The matter was heard at a bench trial, and then an associate district judge found Skeel guilty. She appealed, and the district judge reversed the conviction because of the lack of substantial evidence.

The Supreme Court of Iowa granted the State's application for discretionary review of the district judge's ruling. Skeel represented her herself in the appeal.

Issue(s): Could the evidence presented support Skeel's conviction?

Holding(s): The Iowa Supreme Court held that the evidence did support Skeel's conviction under section 299.4.

Reasoning: Under Iowa Rule of Criminal Procedure 54(3), a district court's appellate review in simple misdemeanor charges was determined by the standard of substantial evidence. If the review of the original action was supported by substantial evidence, the district court was bound to them on appeal. The Supreme Court's review of the record convinced them that there was indeed substantial evidence to support the associate district judge's ruling of guilt. At the trial, this judge heard the school district's attendance officer's testimony, in which she testified about two attempts to assist Skeel into compliance with the compulsory education statute. Both attempts failed. No testimony conflicted with this evidence.

Disposition: The Iowa Supreme Court reversed the judgment of the district court and remanded with instructions to reinstate Skeel's conviction of violating section 299.4.

### **1993**

Citation: *People v. Bennett*, 442 Mich. 316 (1993).

Key Facts: The defendants, John and Sandra Bennett, were charged with four counts of failing to send their four children to school during the 1985-1986 school year. The defendants withdrew their children from public school because they were unhappy with the quality of instruction and contended that they could provide a better education at home. Neither parent was a certified teacher.

The defendants enrolled their children in the Home-Based Education Program (HBEP), sponsored by Clonlara, Inc. of Ann Arbor, Michigan. The program provided a curriculum and lessons, as well as gave parents access to the services of certified teachers and classrooms on the Ann Arbor campus. The defendants stated that they took their children to this campus often, where they were taught by certified teachers four to six hours each month. In addition, the certified teachers maintained contact with the children through conference telephone calls at the defendants' home.

The defendants maintained that they held classes five hours per day, five days a week, for the entire school year. The children studied the core subjects, as well as art. The defendants provided monthly attendance reports to Clonlara, and they submitted four individualized curricula proposals to the superintendent of the Plymouth-Canton School District. Standardized achievement tests given at the end of the school year indicated that three of the four children were either at or above their respective grade levels.

Despite these steps to instruct their children at home, the defendants were charged and convicted for failing to send their children to school, a violation of Michigan's compulsory education laws. They were initially found guilty after a district court trial and fined \$50 for each count. The court ruled that the children were not being taught properly at home because the parents did not comply with the Michigan Department of Education guidelines for home instruction. More specifically, the parents failed to provide the children access to a certified teacher for a substantial part of the school day, there was no proof that the HBEP curricula was comparable to public school curricula, and finally, there was no evidence, including attendance records, that they children were taught at least 180 days or 900 hours.

The Wayne Circuit Court affirmed the defendants' convictions. The defendants appealed to the Court of Appeals, and their application was denied. Instead of granting leave to appeal, the Michigan Supreme Court remanded the case to the Court of Appeals for consideration, to which the Court of Appeals affirmed the convictions. The defendants moved again for leave to appeal to the Supreme Court, and it remanded the case again to the Court of Appeals. The Court of Appeals once again affirmed the defendants' convictions.

Issue(s): (1) Did the teacher certification requirement for home instruction violate the parents' right to direct a child's education under the Fourteenth Amendment, with no challenge to religious freedom? (2) Were the parents entitled to a hearing before being prosecuted under compulsory attendance laws?

Holding(s): The Supreme Court of Michigan held that (1) the parents did not have fundamental rights under the Fourteenth Amendment to direct their children's secular education without any reasonable regulation, although as administrators of a private home school, the defendants were entitled to the hearing provided by the Private and Parochial Schools Act before they could be prosecuted as parents who violated compulsory education laws; and (2) the defendants' convictions were vacated, and the state superintendent was ordered to conduct a hearing to decide if the defendant's home school complied with Michigan law.

Reasoning: Before parents who homeschooled their children could be prosecuted under compulsory school attendance laws for failing to enroll or send their children to school, it must be first determined that their homeschool does not meet the Private and Parochial Schools Act requirements.

In response to the argument that the teacher certification requirements violated the defendants' right to direct their children's education under the Fourteenth Amendment, the Court

determined that it was the defendants' responsibility to show this requirement was unreasonable. The court felt that the defendants failed to accomplish this, stating, "We have not found, any case holding that a state's teacher certification requirement is unreasonable in its relationship to the state's legitimate interest. We are convinced, therefore, that the requirement is not unreasonable."

Disposition: The Supreme Court of Michigan ruled that while the defendants failed in their Fourteenth Amendment arguments, the Private and Parochial Schools Act should have provided them a hearing before being prosecuted for violating the state's compulsory education laws. For that reason, the convictions were vacated.

Citation: *State v. White*, 180 Wis. 2d 203 (1993).

Key Facts: The defendant, Pamela White, was convicted by jury for failing to send her daughter to school regularly, thus violating section 118.15, Stats. (1989-90). Her child was absent without an excuse eight times between September 14, 1990 and December 6, 1990. The school allegedly sent White repeated notices to meet and resolve the problem, but they were not acknowledged by White. During the jury trial, the state produced evidence supporting this claim. White's major defense was that she was unable to comply because of her child's disobedience, which was recognized by sec. 118.15(5)(a).

Issue(s): Was sec. 118.15 unconstitutionally vague in that the phrase "attend school regularly" did not give a person with ordinary intelligence fair notice of the required or prohibited conduct?

Holding(s): The Wisconsin Court of Appeals held that the statute making it a misdemeanor to fail to cause a child to attend school regularly was not unconstitutionally vague.

Reasoning: The statute making it a misdemeanor for a person having control of a child between 6 and 18 years of age to fail, with certain exceptions, to “cause the child the attend school regularly” was not unconstitutionally vague in failing to define the term “regularly.” By reading the statute and others like it, a person of ordinary intelligence would understand that attendance is compulsory absent statutorily defined or through school board policy exceptions, that a person in control of school-age children must ensure that the children attend school, with the exception of a statutory excuse. Before such a person could be prosecuted, there must be notice and opportunities for resolution.

Disposition: The Wisconsin Court of Appeals affirmed the trial court’s decision.

## **1994**

Citation: *State ex rel. Estes v. Egnor*, 443 S.E.2d 193 (W.Va 1994).

Key Facts: Robert Estes, an 18-year-old student, sought a writ of prohibition for being prosecuted for violating the compulsory attendance law, W. Va. Code, 18-8-2 (1988). Estes believed he should not be prosecuted because the state statute only applied to the person(s) having legal guardianship of a school-age student, not the student himself.

Estes was a senior at Milton High School in Cabell County. In September 1993, he missed five nonconsecutive of school without legal excuses. A Cabell County Board of Education employee notified him that if he continued to have unexcused absences, he could be criminally prosecuted. Nonetheless, he continued to miss school without valid excuses, and on September 29, 1993, the school official filed a complaint against him in the circuit court, alleging that he was in violation of W. Va. Code, 18-8-2. Counsel was appointed for Estes, who moved that the circuit court dismiss the charge, as the statute did not apply to him as a student. The circuit court denied this motion, and the case was appealed to the Supreme Court of Appeals.

Issue(s): Did the West Virginia Code 18-8-2 apply to the student himself for failure to attend school?

Holding(s): The West Virginia Supreme Court of Appeals held that the statute providing for criminal prosecution of parents or guardians for failing to send their children to school did not extend for prosecution of the student himself for failure to attend school, regardless of student's age.

Reasoning: W. Va. Code, 18-8-2 stated that any person who had legal or actual charge of a child, ages 6 to 16, and failed to send the child to school was guilty of a misdemeanor. The statute did not make mention of criminal action for a student who failed to attend school. For that reason, the misdemeanor charge against Estes under W. Va. Code, 18-8-2, was void. That said, school officials could discipline students who violated school attendance policies. For example, a student could be suspended for such violations under W. Va. Code 18-8-8 (1951) "because of improper conduct or refusal of such child to comply with requirements of the school." Furthermore, the Court determined that Estes could not be charged under the statute anyway because he was beyond the age of enforcement.

Disposition: The Supreme Court of Appeals granted the writ to prevent the prosecution of Estes.

## **1998**

Citation: *Hamilton v. State*, 694 N.E.2d 1171 (Ind.App. 1998).

Key Facts: Tyonia Hamilton appealed her convictions for two counts of Neglect of a Dependent (class D felonies) and two counts of Failed to Ensure that Her Child Attends Schools (class B misdemeanors).

Hamilton's two children were enrolled at Brookview Elementary during the 1996-1997 school year. The attendance officer for Brookview testified that during a six-month period, one child had 10 unexcused absences and another had four unexcused absences. According to the attendance officer, an unexcused absence was one in which the school did not receive a note or phone call from a parent to explain the nature of the absence.

Issue(s): Was the evidence insufficient to support the mother's convictions?

Holding(s): The Indiana Court of Appeals held that there was insufficient evidence to support the mother's convictions for felony educational neglect of a dependent. To support the conviction, the State was required to prove beyond a reasonable doubt that Hamilton knowingly failed to ensure that her children attended school as required under state compulsory attendance law.

Reasoning: In reviewing a claim of insufficient evidence, the Court did not reweigh the evidence or judge the witnesses' credibility. Instead, the Court looked to the evidence and the reasonable inferences that could support the previous verdict.

In reviewing Hamilton's two convictions for "Failure to Ensure," the State failed to meet its burden of proof, as the record did not establish that she had received proper notice of her children's absences. The testimony of the school attendance officer that Hamilton was notified by mail of her children's multiple unexcused school absences was insufficient to support mother's convictions, as applicable statute, IC 20-8.1-3-33(b), required that notice be sent by certified mail.

For the two counts of Neglect of a Dependent, the State seemed to have assumed that a violation under the compulsory attendance law would also indicate educational Neglect of a Dependent. The Neglect of a Dependent statute stated that the State was required to prove more

than an individual's compulsory school law violation for a conviction of felony neglect, such as the children failed to acquire knowledge and training provided at school. The State did not make an effort to make this required showing.

Disposition: The Indiana Court of Appeals reversed the trial court's decision.

## **1999**

Citation: *Brown v. District of Columbia*, 727 A.2d 865 (1999).

Key Facts: Joyce Brown was convicted of nine counts for violating the Compulsory School Attendance Act, D.C.Code § 31-402 (1995). On appeal, she argued that the statute was unconstitutional under the "void for vagueness" doctrine. She also argued that the trial court abused its discretion by refusing to allow the defense counsel to secure an expert child psychologist at the government's expense.

Joyce Brown was charged on December 1, 1995, with 12 counts of violating the Compulsory School Attendance Act. Her daughter, Lakia Jackson, missed the entire 1994-1995 school year with the exception of one day at her elementary school. The next school year, Lakia missed all but 9 or 10 days before December 1, 1995. Before the trial began, Brown filed a request for an order to authorize a psychological exam on herself and Lakia at the government's expense to determine a possible defense. The request outlined several traumatic family events, such as a marital separation, a serious illness that befell Brown, and the older daughter's teenage pregnancy. This motion was denied by the Family Division judge and later denied reconsideration by the trial judge.

Prior to the trial, Brown filed a motion to dismiss her charges on the grounds that the school statute was unconstitutional on its face as it applied to her case. The motion was also denied.

Issue(s): (1) Was the statute, D.C. Code § 31-402, unconstitutional as void for vagueness (state failed to state the standard of liability to which a person is held; statute did not give proper notice of the prohibited behavior; and statute was vague in giving authorities an inappropriate amount of discretion)? (2) Should the court have denied Brown's requests for a psychologist to examine her daughter and herself for "school phobia?"

Holding(s): The District of Columbia Court of Appeals held that (1) the statute provided reasonable notice as to what conduct was proscribed, negating the defendant's vagueness challenge; and (2) the trial court erred in the denial of the expert for a compulsory school attendance prosecution.

Reasoning: As applied to this case, the statute's requirements were clear in that Brown was to place her child, of whom she had custody and control, in regular school attendance. She did not do so and offered no acceptable excuses for this behavior. The statute gave sufficient warning that this conduct could result in Brown's criminal liability.

As for the issue of the court disallowing the psychological expert to examine the mother and daughter for school phobia, the court had to assess whether an insanity defense was warranted. The case was more complicated than a simple insanity defense. Instead, it dealt with a child who could be suffering from school phobia and further complicated in determining if Brown employed "reasonable efforts" to cause her daughter to attend school.

Disposition: The District of Columbia Court of Appeals remanded the case with instructions that the trial court allow Brown's counsel to secure a child psychologist to examine both Brown and her daughter. If the results of this examination merited the establishing of a defense, the trial court should reopen the case and conduct further proceedings as warranted, per

Brown's request. If the psychologist's findings did not merit the establishment of a defense, the trial court's denial of such services would have been shown to be a "harmless error."

Citation: *Clyburn v. District of Columbia*, 741 A.2d 395 (D.C. 1999).

Key Facts: Sarah Clyburn, the appellant, was convicted of 13 counts of failing to send her child to school regularly, a violation of the Compulsory School Attendance Act, D.C. Code § 31-402(a) (1993). On appeal, she argued that the evidence submitted against her was insufficient to support a conviction. She contended that there was no proof that she had custody or control of the child during which time the violations occurred.

During the 1995-1996 school year, the appellant's daughter, T.C., accumulated many unexcused absences from school. Per school policy, the classroom teacher completed Form 565A, Absence Investigation Request, and submitted it to the principal. The teacher listed the same address for both T.C. and her mother on the form. The principal made several attempts to contact Clyburn, but never received any response in writing to explain the absences. A parent-teacher conference was convened in which Clyburn introduced herself as T.C.'s mother. When T.C. was questioned about her absences, her response was, "My mom kept me at home."

Issue(s): Was the evidence insufficient in proving Clyburn's custody or control of the child?

Holding(s): The District of Columbia Court of Appeals held that Form 565A was not admissible under business records hearsay exemption for a Compulsory School Attendance Act prosecution. Although the school form was admissible as a business record to show the child's unexcused absences, it could not be used as proof of their common residence.

Reasoning: Under the business record hearsay exception, a document is admissible if it was created in the regular course of business and if the business was to make the record at the

time of such act or occurrence, or within a reasonable time soon after. In this case, the Form 565A met these criteria. However, before the hearsay information on the appellant and child's common address could be admitted under the business record exception, the government must also show a personal knowledge of the school record's information. While the principal testified that the teacher had personal knowledge of T.C.'s absences, the principal did not testify that the teacher had personal knowledge of where T.C. and her mother lived or had recorded address information after receiving it from someone with personal knowledge of the fact during the regular course of business.

Disposition: Because the trial court's decision relied on inadmissible evidence, the District of Columbia Court of Appeals remanded the case for further proceedings.

## **2000**

Citation: *Eukers v. State*, 728 N.E.2d 219 (Ind.App. 2000).

Key Facts: Georgene Eukers was found guilty of violating Indiana Code section 20-8.1-3-34, regarding compulsory school attendance, a Class B misdemeanor. She appealed this conviction.

Eukers was the custodial parents of M.E., a student at Darrough Chapel Elementary School in Kokomo, Indiana. The school system in which it belonged had an attendance policy which provided that after a student missed 10 days of school, he or she must obtain a doctor's excuse for further absences. After twenty unexcused absences, the school attendance officer notified the county prosecutor, who could bring formal charges against the student's parent. Eukers signed a school document prior to her child's enrollment that indicated she understood this policy.

Between September 2007 and January 1998, M.E. had 23 absences. As a result, the State charged Eukers with violating Indiana Code 20-8.1-3-34. Eukers was found guilty and sentenced to 180 days in jail, suspended, and one year of probation.

Issue(s): Was the delegation of authority by the legislature to local school systems to establish and implement attendance policies, a criminal offense if violated, an unconstitutional delegation of the legislative function?

Holding(s): The Indiana Court of Appeals held that the delegation of authority to school districts to establish attendance policies was not unconstitutional.

Reasoning: The delegation of authority by the legislature to school districts in establishing attendance policies was not an unconstitutional delegation of legislative function because the prosecutor had sole discretion in deciding whether to prosecute the parent under compulsory attendance laws. This discretion operated independently of school's attendance policy.

Disposition: The Indiana Court of Appeals affirmed the appellant's conviction.

Citation: *In re C.C.J.*, 799 A.2d 116 (Pa. Super. Ct. 2002).

Key Facts: This appeal was entered in the Court of Common Pleas of York County following C.C.J.'s adjudication of delinquency on charges of conspiracy to possess marijuana with intent to deliver. On November 4, 2000, York City Police officers, acting as a street crime reduction unit, were patrolling a high drug area and found a group of four individuals on the sidewalk. The officers recognized one of the individuals who had been recently arrested on drug charges. It appeared that two of the four were under 18 years old, and they were promptly approached for suspicion of truancy. C.C.J. was one of those two underage individuals. When questioned, he admitted that he was supposed to be in school, but could not attend that day for

lack of clean clothes. He was the searched, and the officers discovered a Ziploc bag containing other empty bags.

Issue(s): (1) Was the evidence sufficient to support an adjudication of delinquency and to justify the stop, detention, and arrest of C.C.J.? (2) Were the Public School Code provisions, specifically 24 P.S. § 13-1341 and §13-1327 overly broad and vague, and thus unconstitutional?

Holding(s): The Superior Court of Pennsylvania held that the evidence was sufficient to show that the juvenile was engaged in a conspiracy to possess marijuana with intent to deliver. Therefore, the trial court had sufficient evidence to adjudicate C.C.J. as delinquent. The municipal police involved in this case had full power without warrant and could arrest or apprehend any child who failed to comply with state school attendance statutes.

The court found no ambiguity or vagueness in the Public School Code provisions. Thus, the statute was not unconstitutionally vague as applied to C.C.J.'s case.

Reasoning: The provision of the Public School Code clearly required that every child of compulsory school age attend school in accordance with state policies. It provided precise sanctions for violations, and it granted the police express authority to arrest any student for those violations.

The disclosure of C.C.J. that he should be in school, along with his obvious age, and the fact that the incident occurred during school hours, was sufficient to warrant C.C.J.'s arrest.

Disposition: The Superior Court of Pennsylvania affirmed the trial court's order.

## **2003**

Citation: *Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277 (2003).

Key Facts: On behalf of themselves and all foster children in two counties, as well as a subclass of African American foster children, nine foster children in custody of the State

Department of Human Resources sued the governor, department and its commissioner, and counties in state court. They alleged systemic deficiencies in Fulton and DeKalb counties' foster care, such as violations of their constitutional rights to substantive and procedural due process, liberty, and privacy under the Adoption Act, Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) of Medicaid Act. The defendants removed action to federal court, and the children then moved to amend the complaint and for certification of class. Subsequently, the defendants moved for dismissal and for a protective order.

In relation to school attendance, the plaintiffs asserted a claim under O.C.G.A. § 20-2-690.1, which arose from the State defendants', alleged failure to enroll and send foster children to a school or facilitate home schooling to meet statutory requirements.

Issue(s): Is the claim under O.C.G.A. § 20-2-690.1 a criminal statute, not allowing for a private civil cause of action?

Holding(s): The United States District Court, N.D. Georgia, Atlanta Division, held that a civil cause of action should have been implied.

Reasoning: Georgia Code § 20-2-690.1 required that “[e]very parent, guardian, or other person . . . having control of charge of” a child must enroll him or her in school or provide suitable home instruction. Violation of this code was a misdemeanor punishable by a fine or imprisonment, or both. A violation of a criminal statute did not also infer civil liability. However, civil liability could be authorized when the legislature has a strong policy for “imposing a civil as well as criminal penalty for violation of a penal statute.”

In this case, school-age children were clearly meant to benefit from Code § 20-2-690.1. Public policy consideration supported the conclusion that such children could sue to compel compliance with the law. By mandating that “every” guardian enroll and send his or her child to

school, the law clearly intended that the state, if appointed as a child's guardian, should comply with this statute.

Disposition: The United States District Court, N.D. Georgia, Atlanta Division, granted in part and denied in part the defendants' motions to dismiss, denied the motion for protective order, and granted the plaintiff's motions for class certification and for leave to amend their complaint.

Citation: *State v. Hensley*, 2003-Ohio-5585 (Ohio Ct. App. 2003).

Key Facts: Appellant, Teresa Hensley, appealed her Crawford County Court of Common Pleas conviction for failure to send her child to school. In March 2003, Hensley was charged with causing two of her three children to be habitually truant. When counsel was appointed for her, she was found to be indigent.

At the trial held in May 2003, testimony was provided that Hensley's 13-year-old daughter, Cassandra, had 19 unexcused absences and her 15-year-old son, Aaron, had 29 unexcused absences. The oldest daughter did not routinely miss school. Hensley testified that she woke her children up and made sure they were dressed and fed before sending them on their way to school. Hensley shared how she drove Cassandra to school and had to physically drag her in the building on at least one occasion. Sometime after, Hensley lost possession of her car, and the children had to walk to school. She did not own a working phone and was unable to verify with the school that the children made it to classes.

The assistant principal testified that he could not be sure of how many of the students' absences were due to "skipping" school or Hensley's failure to send them. He also added that if the children were indeed missing school without their mother's knowledge, they should be at fault, not Hensley.

The trial court found Hensley guilty and sentenced her to a \$250 fine and 70 hours of community service. Both punishments were suspended, along with the court costs.

Issue(s): Did the evidence support the conviction for the parent's failure to send her children to school?

Holding(s): The Ohio Court of Appeals, Third District, held that the trial court "abused its discretion and committed reversible error" in their conviction of Hensley. The evidence did not support the conviction under compulsory attendance law.

Reasoning: The testimony indicated that the mother was not aware of her children missing school, and that, in fact, she sent them to school, only to later discover that the younger two children skipped school, while the older child attended school. Because the State failed to file a brief, Hensley's testimony could be accepted as true, thereby sustaining a judgment of reversal.

Disposition: The Ohio Court of Appeals, Third District, reversed the judgment of the Court of Common Pleas, and the cause was remanded for further proceedings.

## **2005**

Citation: *State v. Self*, 155 S.W.3d 756 (Mo.banc. 2005).

Key Facts: Brenda Self was convicted for failure to cause her daughter, Jennifer, to attend school "regularly," a violation of Missouri's compulsory school attendance law. She appealed, arguing that the phrase "attend school regularly" was unconstitutionally vague, as presented in section 167.031.1. In support, she contended that various school systems had interpreted the phrase differently, which meant what was acceptable school attendance to one school system may be altogether unacceptable in another.

Between August 22, 2002 and February 6, 2003, Jennifer, who was 15 years old at the time, missed approximately 40 days of school at her public school. Many of the days were noted on her record for illness or doctor appointments. Jennifer's attendance record stated, "Pregnant. Mr. McBride delivered a homebound application. It has not been returned." Jennifer later attended summer school to advance to the next grade.

Issue(s): (1) Was section 167.031.1 of Missouri's compulsory school attendance law unconstitutionally vague, specifically related to the phrase "cause the child to attend regularly?" (2) Did the state fail to prove the violation occurred knowingly or purposely?

Holding(s): The Supreme Court of Missouri held that (1) section 167.031.1 was not unconstitutionally vague; and (2) in absence of proof, the Court could not merely infer that Self purposefully or knowingly failed to cause her daughter to attend school.

Reasoning: A statute is unconstitutionally vague if it does not provide a person with ordinary intelligence sufficient warning of the proscribed behavior. Self was not charged with failing to send her daughter to school for a small number of days. Rather, she was charged with failing to send her child to school for 40 days over a six-month period. No evidence was offered that Self did not understand the statute or its consequences if violated.

In relation to section 178.031, to "cause" a child to behave in a certain way implied an affirmative act on the part of the parent and required that criminal responsibility for the statute's violation be grounded in the failure to cause the child to attend, not necessarily the poor attendance itself. The burden was on the State to prove that Self acted knowingly or purposely in causing her daughter to miss school. There was sufficient evidence to show that Jennifer was physically unable to attend school due to her health and pregnancy. No contrary evidence

showed that Self knew that her daughter's absences as a result of her pregnancy could place her in violation of the compulsory attendance laws, or that she had caused the excessive absences.

Disposition: The Supreme Court of Missouri reversed the conviction, and the cause was remanded for entry of a judgment of acquittal.

Citation: *State v. McGee*, 281 Wis.2d 756 (2005).

Key Facts: In December 2002, the State filed a complaint against Gwendolyn McGee, alleging that she had purposefully kept her son, Jeremy, from school during the 2001-2002 school year, a violation of WIS. 760 STAT. §§ 118.15(1), (5), and 118.16(5). The complaint reported the Jeremy had been absent 95 of the 168 school days, and only 10.5 of those absences were accompanied by excuses. The complaint stated that six interventions were conducted or attempted, including letters to McGee about her son's truancy, educational counseling for Jeremy, evaluating whether truancy was a result of learning problems, a home visit, and numerous phone calls to McGee. McGee contended that she was unable to comply with the compulsory attendance law because of her son's disobedience.

In March 2004, McGee filed a motion to request a preliminary hearing pursuant to WIS. STAT. § 118.15(5)(b)2. The trial court denied the motion, believing it was premature in nature because the application of the disobedience defense could not apply unless there had already been a conviction. McGee then filed a motion for reconsideration, and it, too, was denied. In April 2004, she filed a motion to stay the proceedings to allow her time for an interlocutory appeal. The motion was granted. Several days later, McGee filed a petition with the Wisconsin Court of Appeals to seek leave to appeal a non-final order, and it was granted as well.

Issue(s): Did the compulsory attendance statute require a conviction before the disobedience defense could be applied?

Holding(s): The Wisconsin Court of Appeals held that the trial court's interpretation of the statute, regarding how and when the disobedience defense could be applied, was erred. The Court agreed with the State that the disobedience defense was an affirmative defense to be presented at trial and given to the jury for decision. The Court did not agree with McGee that the statute is to be utilized before going to trial and decided upon by the trial court.

Reasoning: Section 118.15(5) provided that if a defendant could prove that he or she was unable to comply to the law as a result of the child's disobedience, the action would be dismissed, and the child would be referred to juvenile court. The legislative history of this statute supported the disobedience exception in providing an affirmative defense to the allegation of failing to cause the child to attend school regularly.

Disposition: The Wisconsin Court of Appeals reversed and remanded the matter to the trial court for proceedings consistent with its reasoning. McGee was permitted to present the disobedience exception for her defense.

## **2009**

Citation: *State v. Frady*, 195 N.C. 766 (N.C. Ct. App. 2009).

Key Facts: The defendant, Mary Jean Handy Frady, had an eighth-grade son, M.P., at Clyde A. Erwin Middle School. By February 2007, M.P. missed 63 days of the school year, 32 of which were unexcused.

In October 2006, the school system's dropout prevention specialist sent the defendant a letter informing her of her son's absences and notifying her of North Carolina's Compulsory Attendance Law. In November 2006, the dropout prevention specialist followed up with a second letter, providing the same information and adding a request that the defendant contact the school to discuss possible solutions. There was no response to either letter.

In December 2006, the dropout prevention specialist sent a third letter informing the defendant that she was in violation of the state's compulsory attendance law, that charges could be brought against her, and to attend a "ten-day conference," in accordance to N.C. Gen. Stat. § 115-378. The specialist spoke with the defendant on the phone the following week, and the conference with scheduled to convene two days later. The defendant did not show for the ten-day conference, but it was conducted anyway and attended by the school's principal, alternative school representatives, and the dropout prevention specialist. As a result of the conference, a warrant was issued on February 22, 2007, for Frady's violation of the compulsory attendance law.

In November 2007, the district court found the defendant guilty. Upon appeal to the Superior Court, she was found guilty by a jury in February 2008 and sentenced to 45 days in the county jail. The sentence was suspended, and she was placed on supervised probation for 12 months. Consequently, the defendant appealed, arguing that the trial court lacked subject matter jurisdiction because administrative procedures had not be properly followed prior to the warrant's issuance.

Issue(s): Was the State required to establish that the school principal personally made the decision to request a warrant for the defendant's violation of school attendance law?

Holding(s): The North Carolina Court of Appeals held that the school and trial court complied with all required procedures. The State was not required to establish that the school principal personally acted in the issuance of the warrant for the defendant's violation. The trial court had subject matter jurisdiction over Frady.

Reasoning: The discretion of the school principal to seek a warrant for Frady's compulsory school attendance violation was not jurisdictional, nor was it an element of the offense.

Disposition: The North Carolina Court of Appeals ruled that there was no error, and the trial court had jurisdiction to hear the matter.

Citation: *In re Gloria H.*, 410 Md. 562 (2009).

Key Facts: Appellant, Gloria H., was charged in an Adult Truancy Petition for failing to cause her child to attend school. Her daughter, Monica, a student at Suitland High School, was absent 74 of the 180 days in the 2005-2006 school year. The appellant was contacted by a school official at least five times over the course of the absences.

In the circuit court proceedings, the appellant and her daughter testified that the daughter arrived at school on a regular basis, but that she rarely attended her assigned classes. Instead, she would "hang out" in the hallways. The appellant contended that she did not know her daughter was skipping classes because she arrived home at the regular time. When she was informed of the absences by the school, she testified that she never questioned her daughter about the reason for skipping classes. Because the mother did not speak to her daughter about this issue, the circuit court, sitting as a juvenile court, found her in violation of the state's compulsory school attendance law set forth in § 7-301 of the Education Article, a criminal misdemeanor. The mother then appealed the judgment, contending that the evidence was legally insufficient to support a violation of compulsory school attendance law. In her appeal, she also argued that while it was her obligation to ensure that Monica attended school, it was the school system's obligation to ensure that she attend classes once there.

Issue(s): Can the parent be in violation of compulsory school attendance laws if the child physically entered the building in the mornings, but “cut” classes afterward?

Holding(s): The Maryland Court of Appeals held that the compulsory school attendance law did not impose criminal liability upon parents whose children entered the school but later skipped class. More evidence was needed to determine if the parent condoned such behavior. The appellant was entitled to a new trial.

Reasoning: The record showed that the circuit court’s verdict was based in part in its finding that because the appellant’s “incomprehensible” testimony lacked credibility, she must be guilty. The court erred in drawing this conclusion.

A student who “attends school” is “committed to the control of state and local authorities”; while evidence may be sufficient to establish a student’s absence from homeroom, a finding that the child’s parent violated the compulsory school attendance law required proof beyond a reasonable doubt that the child was absent from school, rather than merely skipping classes.

Disposition: The Maryland Court of Appeals ruled that the appellant was entitled to a new trial to determine whether or not she was “involved” in a violation of the statute. The judgment of the circuit court was vacated, and the case was remanded for further proceedings.

## **2011**

Citing: *State v. Jones*, 213 N.C. 59 (N.C. Ct. App. 2011).

Key Facts: Jerry Lee and Tina Jones, parents of P.J., were convicted for failing to cause their daughter, P.J., to attend school, in violation of North Carolina’s Compulsory Attendance Law (“CAL”). At the beginning of the 2008-2009 school year, P.J. was in the ninth grade at

North Buncombe High School in the Buncombe County School System. In September 2008, the family moved, and P.J. transferred to T.C. Roberson High School in the same school system.

In November 2008, the principal at T.C. Roberson High School, sent the defendants a letter, notifying them of their daughter's three or more unexcused absences ("three-day letter"), and advising them that they could be "prosecuted in a criminal action if [their] child's unlawful absences continue[d]." The letter also requested that the parents contact the school's counselor or administrator to discuss the issue. The principal sent an identical letter in February 2009 when the student accumulated six or more absences ("six-day letter").

On February 3, 2009, Mrs. Jones took P.J. to a community support agency for a clinical assessment. P.J. was diagnosed with "[c]onduct disorder with adolescent onset and intermittent explosive disorder." A caseworker and mental health counselor were assigned to both P.J. and the parents. The caseworker accompanied P.J. to school on several occasions to observe her actions, as well as to help her better work through her anger and anxiety. The mental health counselor met with a school administrator to implement a plan of action in helping P.J. "cope" in the school setting.

On February 25, 2009, after P.J. had reached 10 unexcused absences, the principal sent the defendants a third letter informing them that they were in violation of CAL, a prosecution could ensue, and a conference had been scheduled for March 10, 2009 to address the poor attendance. The conference convened as planned, with the parents' participation. During this conference, several interventions and accommodations to help P.J. were presented, such as a new schedule and "time-out" plan.

Despite these efforts to help P.J., she accumulated 21 unexcused absences. The parents were charged with violating CAL. They were tried and convicted in the county's district court.

On appeal to Buncombe County Superior Court, the parents' moved to dismiss their charges, to which the court denied. The jury found the parents guilty, sentencing them to forty-five days in the county jail. The sentences were suspended, and an 18-month supervised probation was imposed, along with a \$500 fine. Both defendants appealed to the North Carolina Court of Appeals.

Issue(s): Did the trial court err in denying the defendants' motions to dismiss the charge for insufficient evidence?

Holding(s): The North Carolina Court of Appeals held that the State presented substantial evidence for the offense and was therefore sufficient to support the parents' convictions for failure to cause school attendance.

Reasoning: The school notified the defendants by letter after their daughter had reached three unexcused absences that they may be in violation of the Compulsory Attendance Law. The school sent another letter after another three unexcused absences, requesting that the defendants contact the daughter's counselor. School administrators also called the defendants to discuss concerns and possible solutions. They met with the parents to problem solve the issue, and they welcomed the community support agency professionals into the school to help P.J.

Disposition: The North Carolina Court of Appeals found no error in the defendants' convictions for violation of North Carolina's Compulsory Attendance Law.

Citing: *Rivera v. Lebanon School District*, 825 F. Supp. 2d 561 (M.D. Penn 2011)

Key Facts: Parents, who had been fined for their children's truancy, filed a complaint against the defendant, the Lebanon School District, in January 2011. In March 2011, the defendant filed a motion to dismiss. The court referred the matter to Magistrate Judge Mildred E. Methvin, who issued a Report and Recommendation on the defendant's motion. The defendant

objected to the judge's actions and argued that the school system was not a proper defendant, nor should the parents, the plaintiffs, claim relief under the Fourteenth Amendment for violations of Equal Protection and Due Process.

Between the 2004-2005 school year and the time in which this complaint was filed, the Lebanon School District had filed more than 1,200 citations each year for violations of the state compulsory school attendance law, 24. P.S. § 13-1327. It filed at least 1,489 citations against more than 700 parents and students in the 2008-2009 school year. The citations were filed in the Pennsylvania Magisterial District Courts, in which a judge could legally impose a fine up to \$300 for parents in violation of the compulsory school attendance law. These fines were paid to the school district.

The plaintiffs alleged that the defendants sought fines that exceeded the statutory maximum of \$300. Between July 1, 2004 and June 30, 2009, the Magisterial District Judges awarded the school district 935 fines exceeding \$300, with at least 178 of them exceeding \$1000. The school district accepted these excessive fines on at least 323 occasions, totaling at least \$107,000 in funding accrued from these fines. However, in 2010, the school district requested and obtained a "downward adjustment" of at least 340 fines that exceeded \$300. The plaintiffs contended that there were at least 273 excessive fines with outstanding balances that were not included in the downward adjustment. Fines that had already been paid were not affected, and the defendant did not offer restitution for the excessive amounts incurred. Moreover, the defendant did not notify parents about seeking adjustments.

The defendant claimed that the plaintiffs sued the wrong party, as the magistrate judges assigned the excessive fines, not the school district. Conversely, the plaintiffs alleged violations of the Equal Protection and Due Process Clauses under the Fourteenth Amendment of the United

States Constitution. By selectively allowing reductions of some excessive fines, the plaintiffs argued that the defendant intentionally deprived them of equal protection of the law as held in the Fourteenth Amendment. Furthermore, because the defendant did not disclose the criteria in determining which fines would be downward adjusted, it denied due process to the plaintiffs, which was also guaranteed by the Fourteenth Amendment.

Issue(s): (1) Did the plaintiffs, the parents, sue the wrong party? (2) Did the school district's actions, in regard to the downward adjustment of fines, deny the plaintiffs Equal Protection and Due Process?

Holding(s): The United States District Court, M.D. Pennsylvania, held that (1) the defendant's arguments that the plaintiffs sued the wrong party focused on claims not present in this case; as such, the arguments were in vain; and (2) Magistrate Judge Methvin's recommendation that the defendant's motion to dismiss the claims be denied.

Reasoning: The defendant failed to understand the plaintiffs' complaint. It did not challenge the issuance of the fines, but instead, challenged the school district's actions in "selectively seeking reduction of excessive fines."

The plaintiffs provided sufficient facts to support the argument that some fines were adjusted inequitably with no rational basis for the disparities. The defendant's arguments as to why the Equal Protection and Due Process claims should be dismissed were "without merit."

Disposition: Because the defendant did not put forth any valid argument to the contrary, the United States District Court, M.D. Pennsylvania, denied the defendant's motion to dismiss.

## 2013

Citation: *Pitts v. State*, 748 S.E.2d 426 (2013).

Key Facts: In January 2012, Chanell Pitts was charged with nine counts of violating OCGA § 20-2-690.1, Georgia's "mandatory education statute," in regard to her son's unexcused absences from school in August 2011. In May 2012, she filed a motion to declare the statute constitutional because it violated her due process and equal protection rights that were protected under State and Federal Constitutions. After a bench trial in October 2012, Pitts was found guilty of three of the charges and acquitted for the others. She was sentenced to 90 days probation and fined \$200. Pitts appealed the conviction and misdemeanor sentences to the Supreme Court of Georgia.

Pitts contended that the statute violated due process because it was vague in adequately and fairly giving notice of what conduct was prohibited by not clearly defining the terms "excused" and "unexcused." Moreover, she asserted that OCGA § 20-2-690.1 violated her equal protection rights because it treated similarly-situated individuals differently based on criteria completely unrelated to the statute's objective. More specifically, she took issue with the statute allowing local school boards to establish their own definitions of "excused" and "unexcused" absences. Finally, she claimed that the statute was unconstitutional because it improperly delegated legislative power in determining what acts constituted a crime to executive and local school boards, thus violating the doctrine of separation of powers.

Issue(s): (1) Was the mandatory education statute unconstitutionally vague, thereby violating due process and equal protection rights guaranteed by State and Federal Constitutions? (2) Was the statute unconstitutional for improperly delegating legislative power?

Holding(s): The Supreme Court of Georgia held that (1) the state’s mandatory education statute that required a school system to provide notice to parents or guardians that their children had five unexcused school absences was not unconstitutionally vague in violation of due process or equal protection; and (2) there was also no violation of the Georgia separation-of-powers doctrine.

Reasoning: The statute clearly criminalized unexcused absences. The statute governing exemption from mandatory attendance confirmed that excused absences were exempt and that violation constituted absences without acceptable excuses.

The statute itself clearly defined the crime by stating that it was unlawful for one in control or charge of a child within school age to fail to ensure that the child attends school. Guidelines such as those presented in OCGA § 20-2-690.1 must be flexible in order to be effective in the varying and unique circumstances that might occur in a school setting, related to attendance.

Disposition: The Supreme Court of Georgia affirmed the judgments of the lower court.

## **2014**

Citation: *In re Interest of Laticia S.*, 21 Neb. App. 921 (2014).

Key Facts: Stacy and Michael S., parents of six-year-old Laticia, appealed the decision of the Douglas County Juvenile Court that found that neglectful of their daughter’s education. In September 2012, the State filed a petition with the juvenile court, alleging that Laticia was being neglected, as provided by Neb. Rev. Stat. § 43-247(3)(2). The statute held that the juvenile court in each county had the “jurisdiction of any juvenile whose parent neglected or refused to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile.”

The State alleged that (1) Laticia missed 22.2 out of 117 possible days while enrolled at Edward Babe Gomez Hermitage Elementary School between August 2011 and February 2012, (2) the parents failed to ensure Laticia's attendance or work with school authorities, and (3) as a result, Laticia was at risk for harm.

The school district's record keeper for attendance, Anne MacFarland, testified that on several occasions, the school secretary was able to contact the parents about an absence, to which the parents provided a reason for the absence. In January 2012, the school system learned of a fire at Laticia's home when notified by the child's grandmother. The grandmother stated that Laticia and her parents would live with her, as a result of the fire. McFarland worked with the grandmother to ensure the children had transportation to school. Neither parent had communications with the school about this issue. Ultimately, the transportation was not utilized, resulting in further absences.

McFarland contacted the grandmother, who informed her that transportation was no longer needed, as the child would soon attend school in another district. Again, neither parent contacted the school about the move. McFarland testified that a student must continue to attend school until his or her records had been requested by the new school district. The new district did not contact the school, and Laticia accrued more unexcused absences.

School and district personnel attempted to reach the parents several times, including at least one home visit and multiple phone calls, both before and after the house fire. Eventually, McFarland filed a report with the county attorney in regard to Laticia's absences. She testified that Laticia was at risk of harm as a result of the school days missed and the pattern of frequent, unexcused absences over a two-year period.

In April 2013, the juvenile court found the allegations in the petition “to be true and adjudicated Laticia to be within the meaning of § 43-247(3)(a) due to the faults or habits” of her parents. Laticia was placed in the temporary custody of the Nebraska Department of Health and Human Services for care and placement, which could have included a parental home. Stacy appealed, and Michael cross-appealed.

Issue(s): Did the juvenile court err in finding that the parents had neglected Laticia, as well as that that reasonable efforts were provided by the school prevent the alleged neglect?

Holding(s): The Court of Appeals of Nebraska held that the juvenile court did not err in its findings, as both parents failed to provide proper or necessary subsistence, educator, or other care necessary for their daughter’s health, morals, or well-being.

Reasoning: The parents never contacted the school about their house fire or Laticia’s numerous absences. After learning of the fire, the school arranged for transportation for Laticia through communications with the grandmother, although it was never utilized. Stacy and Michael had a “parental, and legal, duty to make sure that Laticia attended school each day that school was open, as stipulated in § 79-201, the state’s compulsory attendance statute. The State proved by a preponderance of the evidence that the parents neglected or refused to facilitate the necessary education for the health, morals, and well-being of Laticia. The parents were not prosecuted for violating compulsory attendance laws, and as such, the school had no duty to provide reasonable efforts for adjudication under § 43-247(3)(a) of the juvenile code.

Disposition: The Nebraska Court of Appeals found that the parents neglected Laticia’s education and, thus, affirmed the decision of the juvenile court.

Citing: *Blake v. Com.*, 764 S.E.2d 105 (Va. 2014).

Key Facts: Maureen Anne Blake was convicted of three counts of a Class 3 misdemeanor under Virginia's compulsory attendance law for failing to cause her children to arrive at school on time. Blake was a single mother, who shared joint custody with her ex-husband of their three children, ages 8, 10, and 11. She had custody of the children on Wednesday nights and was responsible for taking them to school on Thursdays. The children were repeatedly tardy on Thursdays, usually ranging from five to twenty minutes late. These tardies were recorded as unexcused; the children did not have recorded unexcused absences on other days of the week.

In a meeting with the attendance officer, Blake indicated that she and one of her children had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and that one of her other children was being tested. She believed that the tardiness was partly due to ADHD, either because of her children's behavior problems or her own ADHD challenges. The school, however, determined that none of those reasons were sufficient to render the tardies excused.

After being convicted in the Loudoun County Juvenile and Domestic Relations Court, Blake appealed to the circuit court. She was convicted of three Class 3 misdemeanors, one for each child. Blake appealed to the Court of Appeals of Virginia and sought a review as to whether the compulsory school attendance statute, Code § 22.1-254(A) could allow for a prosecution related strictly to school tardiness. The Court of Appeals affirmed her convictions. Blake then appealed to the Supreme Court of Virginia.

Issue(s): Could the compulsory school attendance statute be applied to prosecute tardiness if the child was regularly attending school otherwise?

Holding(s): The Virginia Supreme Court held that the compulsory school attendance statute did not authorize criminal prosecution for tardiness.

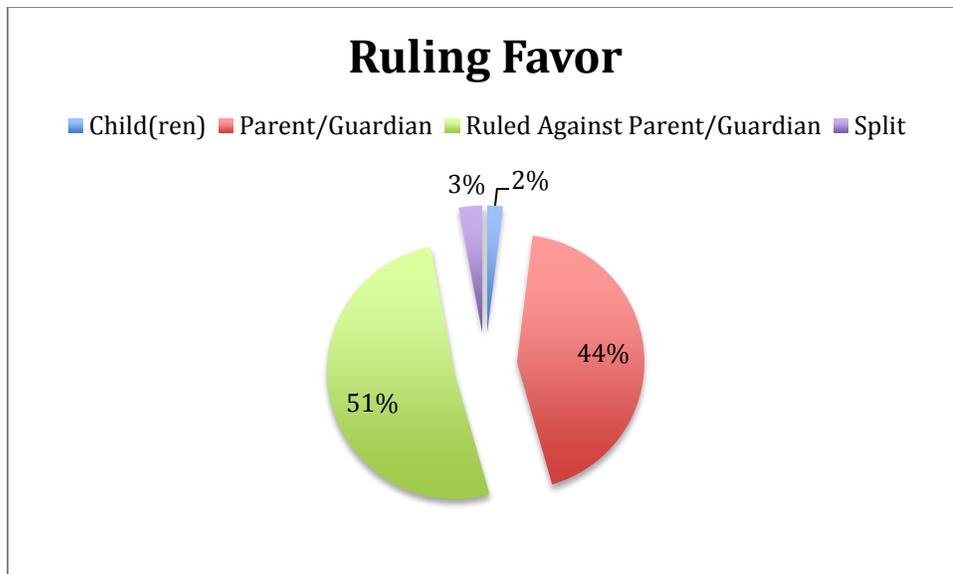
Reasoning: The term “send” in the compulsory attendance statute was ambiguous. The Court reasoned that by interpreting “send” to include tardiness, the door would be open for prosecution of parents for even minimal unexcused tardies or absences.

Disposition: The Supreme Court of Virginia reversed the judgment of the Court of Appeals and entered final judgment vacating the defendant’s convictions.

### **Analysis**

The purpose behind this research was to examine court cases related to parent or guardian liability of compulsory school attendance violations. The data for this study were obtained through an analysis of compulsory attendance court cases involving parent or guardian liability with respect to compulsory school attendance from 1918 through 2014. To better track trends that may occur over the expansive year span of the study, the court cases were categorized in many ways, such as instructional setting, case issues, prosecuting claims, and defensive claims. The cases were then carefully charted and analyzed to establish trends and any other important information pertinent to this study.

There were constitutional challenges to the compulsory attendance laws, particularly those rights promised in the First and Fourteenth Amendments. There were many other challenges as well, including those related to attendance policies, exemptions, vaccinations, residency, flag salutes, neglect, and equivalent instruction. The cases reviewed in this study involved students who were enrolled in public schools, private schools, parochial schools, or home schools, or received instruction via a private tutor. Of the 101 cases, 52 (51%) ruled against the parents or guardians, 44 (44%) ruled in favor of the parent(s), 2 (2%) ruled in favor of the child(ren), and 3 (3%) rulings resulted in split decisions (see Figure 4).



*Figure 4. Ruling favor.*

### **Instructional Setting**

The cases involved in this study concerned various instructional settings: public school, home instruction, private school, private instructors, and parochial school. As noted in Figure 5, most of the cases (59%) involved students enrolled in public schools. Of the cases studied, 30% involved students receiving home instruction, followed by 6% involving private schools, 2% involving private instructors, and 1% involving parochial schools. In two cases, the instructional setting was not applicable to the case presented.

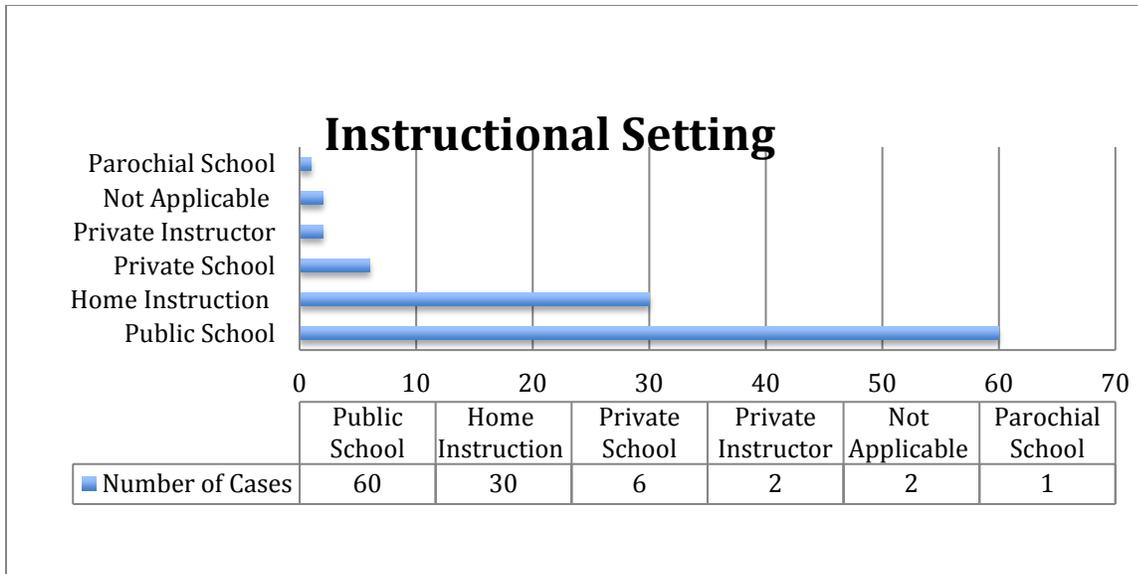


Figure 5. Number of cases per instructional setting.

In Figure 6, provided below, a breakdown of the instructional settings and case outcomes is provided. With the exception of the “not applicable” group of cases, the decisions for favorable outcomes for the parents and guardians ranged between 33-50%. Private school cases had the lowest success rate for parents at 33%, followed by home instruction cases at 37%. The highest percentage of favorable rulings (47%) for parents were those related to public schools. There were three split decisions; one related to private schools and two related to public schools.

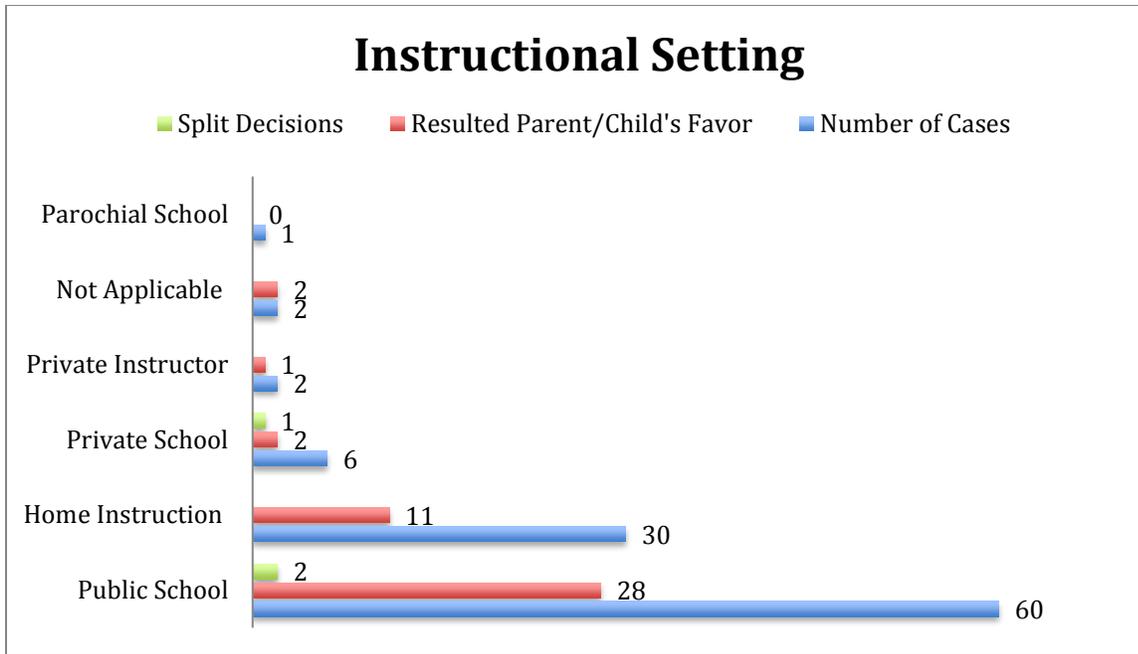


Figure 6. Ruling favor by instructional setting.

**Public school instruction.** Of the 60 cases related to public schools, most involved parents who were threatened, charged, or convicted with compulsory school (CSA) violations. See Figure 7 for analysis of other charges against parents whose children were enrolled in public schools.

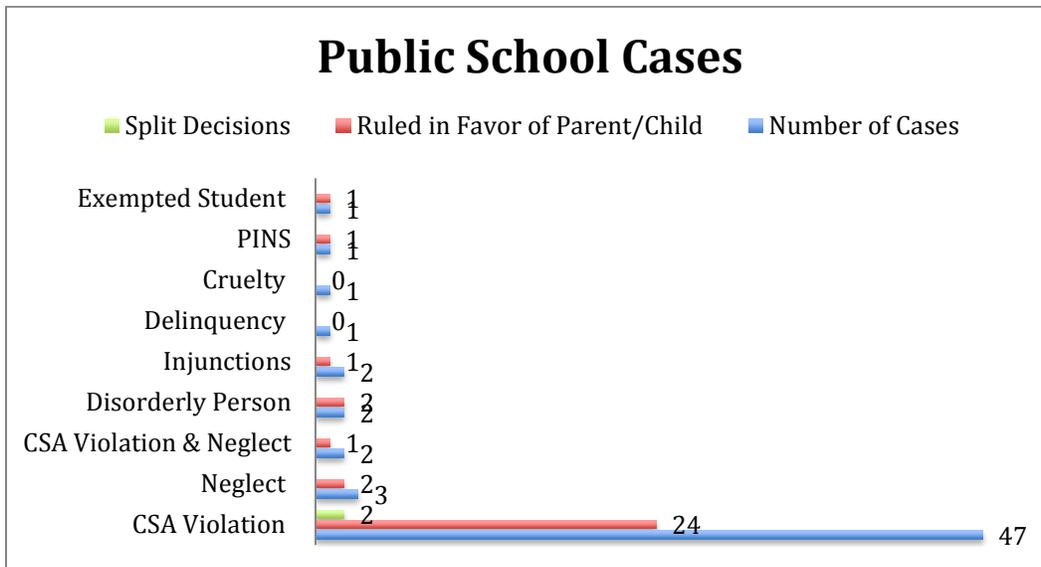


Figure 7. Public school cases by prosecuting claim and ruling favor.

Two cases involved injunctions: *Bishop v. Houston Independent School District* (1930) and *Palmer v. District Trustees of District Number 21*. In the *Bishop* case, the appellant, P.W. Bishop, sought a mandatory injunction against appellee, Houston Independent School District, to require the admission of his 13-year-old daughter to the school in which she had been suspended for violating the school rule that prohibited her from taking lunch during the noon recess except from the school cafeteria and food from her home. A lower court had held that the compulsory education statute's method of suspension or expulsion was mandatory, adding that the suspension in question was unauthorized and void; however, the Supreme Court of Texas reversed the judgment for the defendant, stating that the statute was created to supplement the board of trustees' power so that they could work with the juvenile courts for further action when necessary.

In the *Palmer* case, a school district sought injunctions against parents from picking up and transporting out-of-district students to another school. The school district also sought an injunction to restrain the school in question from accepting or teaching those students. The Court of Civil Appeals of Texas held that where the school voluntarily taught the students in question, even though they were out of district and had not been lawfully transferred, their attendance was not unlawful. Furthermore, the district of the students' residence could not prevent private individuals from transporting the students to school.

The case involving parental cruelty was a unique case as well. In *Kerr v. State Public Welfare Commission* (1970), John Kerr challenged an order that declared him liable for \$420 welfare aid over an 18-month period given to his father, James Kerr. He alleged his father was "cruel" to his siblings and himself by failing to send them to school when they were school aged. Bus transportation was often not available to them because of their remote residences and, as a

result, the father was not compelled by law to send his children to school. The father also had his children working with him during school hours and/or vacations, without financial compensation. The Court of Appeals of Oregon held that the evidence supported John Kerr's liability of \$420. Even if the parent running a small logging company employed his children without compensation at an age below that permitted by child labor laws, it would not constitute an exemption under the Oregon statute, ORS ch. 416.

The only PINS (Persons in Need of Supervision) complaint in this study also involved a student enrolled in a public school: *Ossant v. Millard* (1972). In this case, three petitions, submitted by the school district's attendance officer charged three school-age children as "person in need of supervision" for sustained school absences, following discontinuation of bus services in front of their homes. The county family court dismissed the petition against the children, voicing its disgust that the children "be branded as willful violators of the Compulsory Education Law," adding that it was clear that the respondent children were "caught up as pawns between the control of their parents and the authority of the school." The court also ordered that temporary transportation be provided to the children until the board of education completed its investigation about possible solutions.

**Home instruction.** Of the 30 cases involving home instruction, 6 involved scenarios in which the parents alleged that their home schools should be considered private schools under the eyes of compulsory education law: *People v. Turner* (1953), *in re Shinn* (1961), *State v. Lowry* (1963), *Grigg v. Com* (1982), *State v. White* (1982), and *State v. Newstrom* (1985). The only case resulting in a favorable outcome for the parent was the *Newstrom* case in 1985. *Turner*, *Lowry*, *Grigg*, and *White* affirmed lower courts' compulsory school attendance convictions of the

parents or guardians. *Shinn* resulted in an affirmed conviction of parental neglect for failure to cause children to attend school.

While the Supreme Court of Minnesota reversed the conviction in the *Newstrom* case, it did not rule on the issue of the homeschool being recognized as a private school. In this case, Mrs. Newstrom and her husband had removed their two daughters so that they could attend their home school, which they called the Newstrom Family School. Mrs. Newstrom had argued that, although she did not possess a teaching certificate, she still provided an education that was “essentially equivalent” to that of a public school. The Supreme Court agreed with Mrs. Newstrom that by all indications, her children had been well taught in the core subject areas as required by Minnesota law.

Other homeschooling parents argued that they provided essentially equivalent instruction for their children: *State v. Massa* (1967), *State v. Moorhead* (1981), *Matter of Falk* (1981), and *State v. Trucke* (1987). All but the *Moorhead* case resulted in the parents’ favor. Much like the *Newstrom* case, the courts were satisfied that the parents provided an education substantially equal to or exceeding that of public school instruction. In the *Falk* case, however, the court did note that while the parents seemed to have a firm grip of the subject matter for first grade, their plan for home instruction in advanced grades was “doomed for failure.” Unlike the other cases in which the parents argued that they provided an essentially equivalent education for their children, the parents involved in the *Moorhead* case did not provide any evidence of the teacher qualifications, nor did they provide evidence to substantiate an equivalence of instruction.

Parents were charged or convicted for compulsory school attendance violations in 25 of the 30 home school cases. Three cases involved charges of neglect, one charged CHINS

(Children in Need of Support), and one deemed the involved children as “unruly.” Of the 30 home school cases, 11 resulted in favorable outcomes for the parents or guardians (see Figure 8).

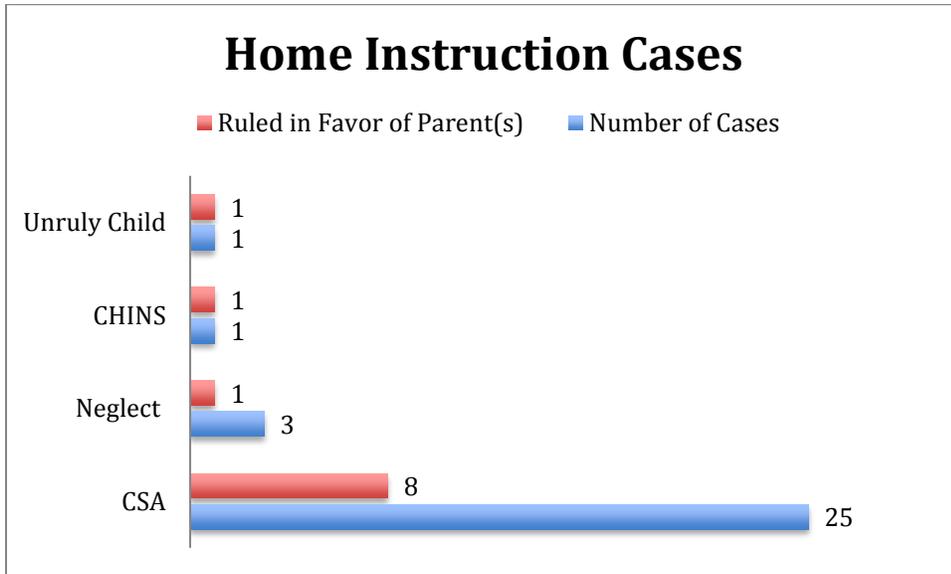


Figure 8. Home instruction cases by prosecuting claims and ruling favor.

**Private schools.** In the six private school cases, all involved compulsory school attendance violations. Of the six, two resulted in favorable outcomes for the parents, and one was a split decision (see Figure 9). It should be noted that in several cases in this study, the parents argued that their home schools should be considered private schools. For the purpose of analysis, those cases were grouped in the home instruction setting.

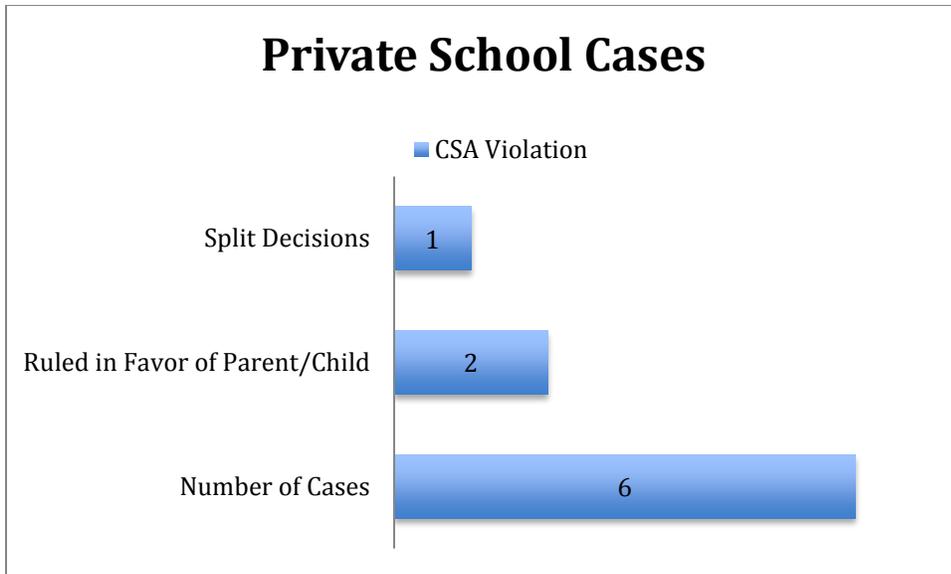


Figure 9. Private school cases by ruling favor.

Three of the cases included counter charges of religious freedom infringements: *People v. Harrell* (1962), *State v. Shaver* (1980), and *State ex rel. Nagle v. Olin* (1980). Only the *Nagle* case ruled in favor of the parents. In this case, a father enrolled his daughter in an Amish School and was later charged and convicted of violating Ohio’s compulsory school attendance laws. Although not Amish herself, the school accepted his daughter on a trial basis at the request of her father. Mr. Olin, a “born-again” Christian, testified that the public school environment and instruction conflicted with his family’s deeply held religious beliefs. The Ohio Supreme Court reversed Mr. Olin’s conviction.

Several cases involved private schools that had not been approved by the state: *State v. Hershberger* (1955), *People v. Harrell* (1962), and *State v. Vietto* (1978), *State v. Shaver* (1980), and *State ex rel. Nagle v. Olin* (1980). Of those, *Nagle* was the only case that ruled in favor of the parents. There was a split decision in the *Hershberger* case. In this case, the defendant was charged with failure to send his children to school as required by Ohio’s compulsory education laws. He was found guilty and sentenced to pay a \$20 fine and prosecution costs. The court also

ordered the defendant to furnish bond in the sum of \$250 to “keep the peace” for a period of two years. The defendant appealed. While the defendant was a member of the Old Order of the Amish Mennonite Church and had both established an Amish school and enrolled his children in it, no question of religious freedom was presented in this case. Instead, the defendant argued that his school provided an equivalent education to public school. He also contended that he was given excessive fines. The Court of Appeals of Ohio held that the Amish school did not provide an equivalent education to that provided at the public school, but agreed with the defendant that the fine ordered by the court was contrary to law.

**Private instructor.** A private tutor, or private instruction, is another exception to compulsory attendance laws. There were only two cases that relied solely on private instructors or tutors: *in re Davis* (1974) and *State v. Skeel* (1992). The *Davis* case resulted in the parents’ favor, while the *Skeel* case did not. In the *Davis* case, a complaint was filed against Harold and Judith Davis, alleging they were neglecting their children because they failed to send them to school and instead, had the children taught by private tutors. The complaint in this case was not brought under the state’s compulsory education law, but instead charged neglect. Neglect could not be proven, especially given the fact that the parents had provided tutors for their children and that the entire issue with the school came about because of the parents’ concerns about the education of their children. The Supreme Court of New Hampshire dismissed the complaint of parental neglect.

In the *Skeel* case, Paula Skeel, the defendant, placed her three children of school age in private instruction. In doing so, she failed to file a report to the local school district, as required by state law in Iowa, and was charged with violating the compulsory education statute. Her appeal was not successful.

**Parochial schools.** Compulsory education laws across the country include attendance at parochial (church) schools as exemptions to public school attendance. For example, the Code of Alabama defines parochial/church schools as those serving Grades K-12, or some variation thereof, and operated by a church or churches that do not receive state or federal funding for their institution.

There was only one case specifically involving parochial schools: *Everson v. Board of Education of Ewing TWP* (1945). A New Jersey law allowed reimbursements of money to parents who sent their children to school on buses operated by the public transportation system. Children who attended parochial schools also qualified for this transportation subsidy. A Ewing resident believed that the board of education had violated the Fourteenth Amendment's due process clause and the First Amendment's Establishment Clause in employing public tax funding to reimburse transportation costs to parents whose children attended parochial schools. The court held that state law did not violate the State or United States Constitutions. The questioned use of public monies supported the state's interest in compulsory education for all students and did not serve the parochial schools in which the students attended.

**Other cases.** There were two cases noted as "Not Applicable" in terms of their instructional settings: *Gardner v. Domestic Relations Court of City of New York* (1945) and *Kenny A. ex rel. Winn v. Perdue* (2003). Both resulted in positive outcomes for the petitioners. In the *Gardner* case, petitioners were served with summonses which stated that a petition had been filed alleging a violation of the Compulsory Education Law failing to return employment certificates of minors after their employment was terminated at the bowling facility. The Supreme Court, Kings County, New York, held that the Children's Court branch of the Domestic Relations Court had no jurisdiction to enforce penal statutes for failing to return employment

certificates of minors whose employment was terminated, except as the violation charged may be incident to specific delinquency or neglect. The Court felt that to allow such courts to proceed against and punish an adult or employer regardless of whether it had been shown their conduct contributed to delinquency, neglect, or dependency, would be a violation of the restriction imposed by constitutional language.

In the *Perdue* case, foster children in two counties sued the governor, department and its commissioner, and counties in state court. They alleged systemic foster care deficiencies, such as failure to enroll and send foster children to school. The United States District Court, N.D. Georgia, Atlanta Divisions, stated that by mandating that every guardian enroll and send his or her child to school, the state's compulsory education law clearly meant for the state, if serving as a child's guardian, should comply with this statute.

### **School Levels**

An analysis of the school levels was also conducted. Cases were grouped by Elementary, Secondary, Both, Not Provided, and Not Applicable (see Figure 10). Elementary school cases included students in Grades K-6 and accounted for 30% of the cases in the study. Secondary school cases were those involving students in Grades 7-12; 21% of the cases fell into this category. If cases included multiple students in both elementary and secondary grades, they were grouped in the "Both" category, which made up 12% of the total cases. Finally, 37% of the cases reviewed did not specify the grade level and were categorized as "Not Provided."

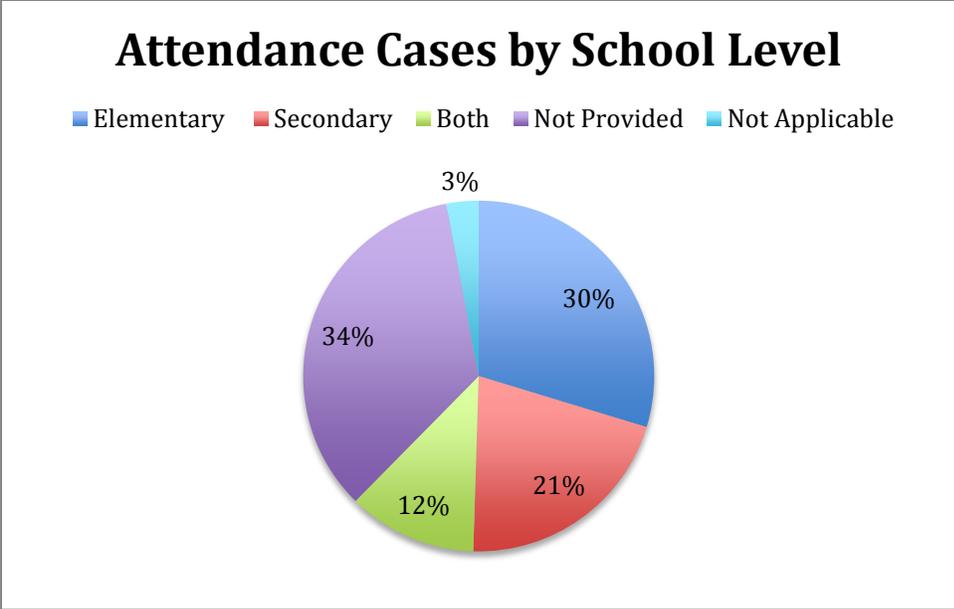


Figure 10. Cases by school level.

As Figure 11 illustrates, most of the elementary and secondary school cases involved public schools. However, those cases involving elementary-age children had more than twice as many home school scenarios as secondary-age children. There were also more private and parochial school cases for elementary-age children. For those cases involving children of both elementary and secondary school ages, the public school and home scenarios were evenly split with six cases in each.

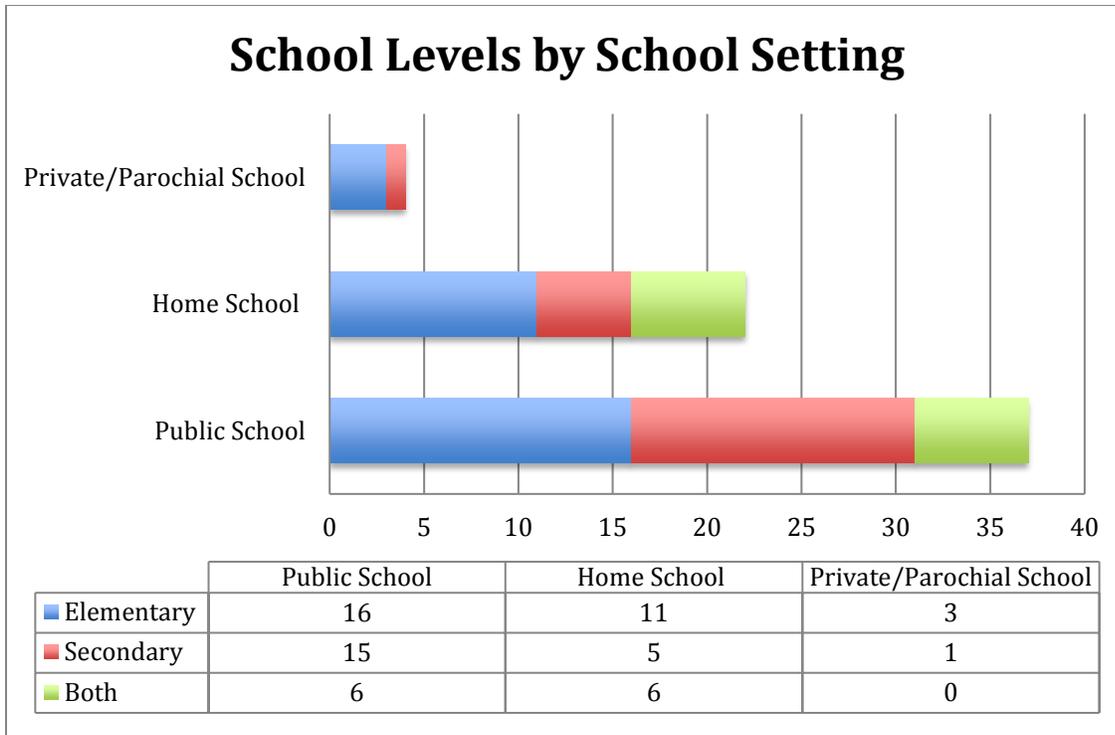


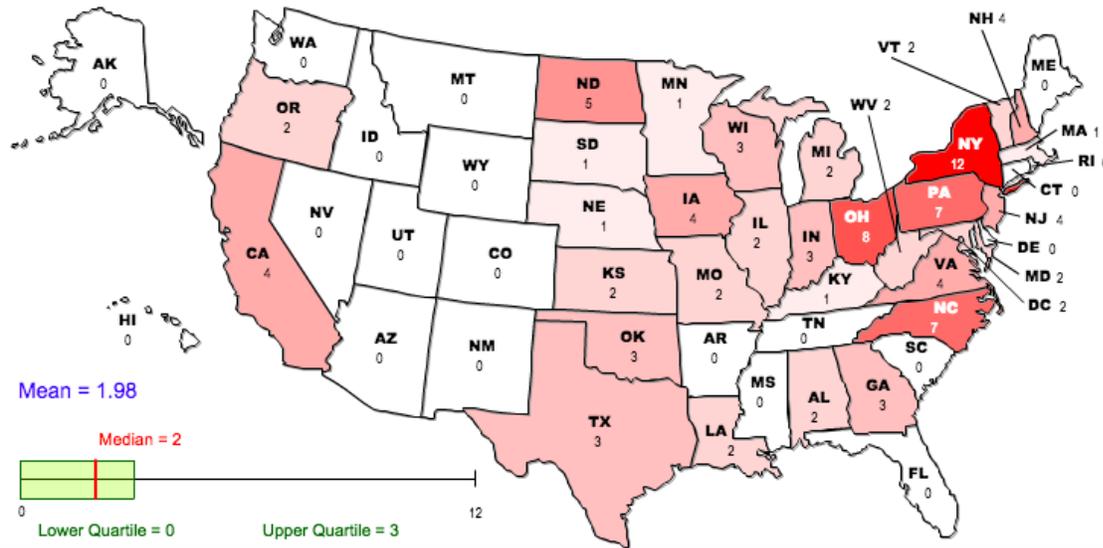
Figure 11. School levels by school setting.

The courts ruled in favor of the parents in 57% of the elementary level cases and 43% of the secondary level cases. However, those cases involving both levels resulted in 25% rulings for parents.

### State Analysis

An analysis of the cases by state provided an interesting perspective. There were 20 states in which no cases occurred: Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Maine, Mississippi, Montana, Nevada, New Mexico, Rhode Island, South Carolina, Tennessee, Utah, Washington, and Wyoming. It should be noted that while all existing 48 states had enacted compulsory attendance laws by 1918, two states had yet to join the United States of America. Alaska enacted its compulsory education statute in 1929, but did not become an American state until January 1959. Likewise, Hawaii enacted its compulsory attendance law in 1896, but did not become America's 50th state until August 1959.

Of those cases discussed in this study, all corners of the United States are represented, as well as the midland states. However, as Figure 12 demonstrates, most of the cases occurred in the middle to eastern states. Of the 101 cases, only six occurred in western states.



<https://illuminations.nctm.org/Activity.aspx?id=3580>

Figure 12. Number of cases per state.

By a large margin, more cases were tried in New York than any other state, with 12 cases ranging from 1919-1981. There were a wide variety of issues within those cases, including two related to attendance zones (*People v. Saddlemire*, 1919, and *Ossant v. Millard*, 1972), two related to poor roads (*People v. Himmanen*, 1919, and *in re Richards*, 1938), and two that involved charges of racism (*in re Skipworth*, 1958, and *Matter of Baum*, 1976).

Of particular interest in New York are the three cases involving protests, which are the only cases in the entire study involving protests. All took place in the 1960s, a tumultuous decade known for anti-establishments rallies and protests. In *People on Complaint of Belfon v. Anonymous* (1964), an individual, referred to as “Anonymous,” was charged with violating the state’s Education Law by inducing several students who were attending a public school in

Manhattan to be absent so that they could picket with other adults to demand better facilities. He was also charged with harboring them in a basement in another location, as well as interfering with the duties of New York City Board of Education attendance officers. There was no familial or custodial relationship between the individual and the children involved.

The second case, *Cavanagh v. Galamison*, occurred in 1968. Appellants Milton Galamison and Thelma Johnson were convicted of violating compulsory attendance laws by organizing boycotts against existing school facilities. These boycotts disrupted highway and subway traffic to the New York World's Fair in order to publicize grievances over equal protection of the laws to African Americans. The appellants appealed the decision invoking their "civil rights," but the New York Supreme Court affirmed the convictions of the lower court. It did, however, reverse a ten-day jail commitment and \$10 fine.

The third case involving a protest occurred in 1969, *Maynard v. Shanker*. Petitioners alleged that educators and their organization, the United Federation of Teachers, deprived children of educational opportunities and facilities during a school strike in New York City. Much like the *Belfon* case, the respondents were charged under the Education Law for inducing minor children to be absent from school, as well interfering with the duties of attendance officers. The petitions also alleged that the respondents neglected the children under the Family Court Act. The New York County Family Court, however, held that the facts and evidence could not support violations of the Education Law or the Family Court Act. The petitions failed to state a criminal cause of action, and none of the respondents could be characterized as legally responsible for the petitioners' children.

One strong regional commonality among cases was those involving Amish families. Of the five cases involving parents or children of the Amish faith, four of them occurred in

connected northeastern states: Indiana (*Gingerich v. State* in 1948); Ohio (*State v. Hershberger* in 1966 and *State ex rel. Nagle v. Olin* in 1980); and Pennsylvania (*Com v. Smoker* in 1955). A fifth case occurred in Kansas (*State v. Garber* in 1966). Moreover, Ohio and Pennsylvania also had the highest numbers of cases involving religion, with four and three cases respectively. Conversely, there were no cases involving religion in any of the northwestern or southwestern states beyond Texas.

Cases involving students saluting to the American flag were also predominantly found in one area of the country. There were six cases included in this study in which children or their parents argued against mandatory flag exercises at school. Of those six, five occurred in northeastern states: Ohio (*Troyer v. State* in 1918); New Jersey (*In re Latrecchia* in 1942); New York (*People ex rel. Fish v. Sandstrom* in 1939); and Pennsylvania (*Com. v. Conte* in 1944 and *Com v. Crawley* in 1944). Another case occurred in South Dakota (*State v. Davis* in 1943).

### **Case Issues**

While there were many issues presented in these cases, the most common were those involving religion, American flag exercises, race, attendance zones and residencies, health of students, and vaccinations.

**Religion.** Religion was cited significantly more than any other issue. There were 29 cases in this study that involved religion, spanning from the years 1918 to 1991. Ten of the cases occurred in the 1980s, and 7 in the 1940s. Less than 1/3 of the 29 cases involving religion ruled in favor of the parents or guardians.

The first case in this study involving a religion claim outside of flag salute complaints was *Wright v. State* (1922). J. E.D. Wright, the plaintiff, was convicted in a county court for violating the state's compulsory school attendance law for failing to send his eight-year-old

daughter, Felicia, to school. His wife, who had graduated from a teacher-training program, testified that she had been providing instruction in the required public school courses for approximately five hours each day, as well as additional courses such as art and religious instruction. Mr. Wright was an experienced teacher, having taught in the public schools for a number of years. The Wright family were members of the Seventh Day Adventists and testified that they wanted to train their children to become missionaries and ministers. The Oklahoma Court of Criminal Appeals held that the proof was not at all convincing that the child's education was in any way neglected. It seemed to them that the State had misconstrued "the scope and spirit of the statute upon which this prosecution was based." The Court felt that the parents had the right to manage and supervise their daughter's education, as long as it was done in an appropriate and effective manner.

However, other similar pursuits were not as successful. For example, in *Com. v. Smoker* (1955), *State. v. Garber* (1966), and *State v. Shaver* (1980), parents claimed religious infringements within the compulsory education laws. In each case, the courts held that the burden of the parents' free exercise of religion was minimal, if existent, and was greatly outweighed by the State's compelling interest to provide an education to children. It should be noted that in these cases, the parents and/or other instructors did not have teaching credentials.

For those cases that occurred after *Wisconsin v. Yoder* (1972), the courts were very consistent in defense of *Yoder*, requiring all religious practices to be sincerely held and long standing before allowing the claim of *Yoder* to proceed. Furthermore, for the defendant parents who sought "Amish exemptions" for their home schools, the courts reminded them that the Amish communities are self-reliant and reject the ways of the modern world. The Amish live within their means, with little to no support from the outside world, which includes the education

of their children. The Amish children are expected to attend school until the tenth grade when they are “graduated” to begin their life trade apprenticeships.

**Flag salutes.** Six of the cases citing religion also involved flag salutes: *Troyer v. State* (1918), *People ex rel. Fish v. Sandstrom* (1939), *In re Latrecchia* (1942), *State v. Davis* (1943), *Com. v. Conte* (1944), and *Com v. Crowley* (1944). In the *Troyer* case, the family was of the Mennonite faith, and in the others, they were Jehovah Witnesses. In all cases, children refused to salute to the American flag as part of their regular school exercises, as doing so conflicted with their religious teachings. With the exception of the first case in 1918, all resulted in favorable rulings for the parents. That said, in the *Sandstrom* case, the court held that saluting the flag was in no sense an act of worship, nor did it constitute a religious observance. They stated that the State could take measures to ensure that the youth respected law and order, as well as valued the United States of America, to which the flag represented. However, the parents’ convictions were reversed because they continued to take their daughter to school every time she was sent home for failing to pledge to the American flag. In other words, they did not fail to send their daughter to school. The court felt the daughter, not her parents, should have been disciplined for failure to follow the school rules.

In the last four cases (*Latrecchia*, *Davis*, *Conte*, and *Crowley*), the courts held that because the children’s and parents’ deeply held religious belief that the flag salute was contrary to their faith and Biblical teachings, school authorities could not compel them to participate in the exercise.

**Race.** There were eight cases in which race played a role. Parents and guardians prevailed in three of those cases, and one case resulted in a split decision. Three cases involved Native Americans: *Hatch v. Goerke* (1974), *Matter of Baum* (1976), and *State v. Chavis* (1980).

The remaining cases involved African Americans. Each case was quite different from the others. For instance, in the *Goerke* case, a 10-year-old American Indian student was allegedly expelled without a hearing from the fifth grade for failure to cut his Indian braids. In the *Baum* case, a mother removed her seventh-grade daughter from school after alleging that her teacher made disparaging remarks about Native Americans. In the *Chavis* case, parents were charged for violating the state's compulsory attendance laws when they elected to keep their children in a historically Indian school instead of attending the school in their attendance zone. None of these cases resulted in favorable outcomes for the parents.

The other five race-related cases involved African Americans and segregated schools and/or inferior facilities: *Dobbins v. Com.* (1957), *in re Skipworth* (1958), *State v. Vaughn* (1965), *Cavanagh v. Galamison* (1968), and *People v. Serna* (1977). The *Vaughn* case culminated in a ruling against the parents, and the *Galamison* case resulted in a split decision. The others, all dealing with segregated schools, ruled in favor of the parents or guardians in support of their Fourteenth Amendment rights.

**Attendance zones and residency.** There were seven cases involving attendance zones and residency issues: *People v. Saddlemire* (1919), *State v. McDonald* (1926), *State v. Kessel* (1926), *Palmer v. District Trustees of District No. 21* (1956), *Kerr v. State Public Welfare Commission* (1970), *Ossant v. Millard* (1972), and *State v. Lund* (1988). Most of those dealt with transportation issues, either the lack thereof or parents transporting students to schools outside the attendance zone. Five of the seven cases resulted in favorable outcomes for the parents or children. In both the *Saddlemire* and *Lund* cases, the state could not prove beyond a reasonable doubt the defendant's residency. As a result, the courts had no jurisdictions in these cases, and the convictions were reversed.

**Health.** Another subset of the cases was grouped by those involving the health of students: *Parr v. State* (1927), *State v. Maguire* (1927), *Arps v. State* (1936), *Abella v. Riverside United School District* (1976), *People v. Berge* (1982), *State v. Self* (2005), and *Blake v. Com.* Of these seven cases, four resulted in reverse convictions for the parents, and one resulted in a split decision. The two cases that did not favor the parents were *Parr* and *Berger*. In both of those cases, there was insufficient evidence to support the students' ill health in preventing them from attending school.

The case resulting in a split decision was *Maguire*. After a trial by jury, W. G. Maguire was convicted of neglecting to send his son, Robert, to school as required by law. He petitioned for a new trial. His defense was that his son was too ill as a result of the "flu" to attend school during the days in question. Maguire presented several exceptions, including abuse of discretion. The Supreme Court of Vermont ruled that there was no error to the exceptions, but judgment and sentence was vacated, and the verdict was set aside. The respondent's petition for a new trial was granted, and the cause remanded for a new trial.

**Immunizations.** There were five cases involving required immunizations for school enrollment: *Com. v. Butler* (1921), *Barber v. School Board of Rochester* (1926), *State v. Drew* (1937), *Anderson v. State* (1951), and *State v. Miday* (1965). The first three cases, despite arguments of the vaccination requirement's constitutionality, ruled against the parents on grounds that the immunization requirements were reasonable measures for the protection of public health. In the *Anderson* and *Miday* cases, the families' religious convictions precluded them from having their children vaccinated.

The *Miday* case, and last vaccination case, was the only one that resulted in a favorable ruling for the parents. In 1963, the Robeson County Board of Education filed a complaint against

William Miday for failure to enroll his son in the public school. Mr. Miday immediately presented his son for enrollment, but his admission was denied because he had not complied with the immunization requirements. He was then tried and convicted for failing to send his son to school. On appeal, the Supreme Court of North Carolina held that the exclusion of oral testimony with respect to the defendant's religious convictions constituted prejudicial error, and so long that the defendant, in good faith, was asserting his rights as he perceived them under the statute, he was not subject to conviction under the compulsory school attendance law. Mr. Miday did everything within his power to keep his child in school, except to waive what he believed was his statutory right to refrain from vaccinating his child on religious grounds. As a result, he could not be convicted for failing to send his child to school, and his conviction was subsequently reversed.

### **Prosecuting Claims**

During the analysis of the cases included in this study, there were several significant prosecuting claims:

1. Compulsory School Attendance Violations
2. Neglect
3. Delinquency and Unruly Children
4. CHINS (Children in Need of Supervision) /PINS (Persons in Need of Supervision)
5. Disorderly Persons

A complete listing of the charges can be found in Appendix E.

*Compulsory school attendance violations.* During the analysis of the cases involved in this study, the most common prosecuting claim was a Compulsory School Attendance (CSA) violation. In 82 of the 101 cases discussed in this study, parents or guardians were accused or

convicted of violating their respective state's compulsory education statutes. Parents were charged with violating compulsory attendance laws as a result of various infractions, such as failure to enroll, failure to transport, failure to cause attendance, and failure to follow (or have children follow) school rules or norms. These CSA cases were found in conjunction with various school levels and settings and were evident across the time span discussed in this study, 1918-2014. In 43% of the cases (35 of 82 cases), the courts ruled in favor of the parents or guardians.

In *State v. Ghrist* (1936), the parent defendant was charged with the offense of failing to send his child to school because he refused to send his son, who suffered from infantile paralysis, to a specialized school for students with academic limitations. The father feared that his son would not want to attend a school the other children called the "dumb school." He also objected to the building in which the school was held, stating that it was inferior to other schools. The school board denied the father's request and stated that the specialized school was the only school in the district that the child could attend. Because the defendant refused to send his son to the special school, he was charged with violating the state's compulsory attendance law. The defendant appealed, alleging that the school board exhibited an unreasonable exercise of authority in assigning his son to the special school. The Iowa Supreme Court disagreed with the defendant, holding that the evidence did not show that the school board exceeded its authority in determining where students could attend school. It affirmed the father's conviction.

Another interesting case concerning a compulsory school attendance violation was *Com. v. Hall* (1983), the only case in the study involving excessive family trips and vacations. John and Sherrie Hall appealed their convictions of four counts of violating Pennsylvania's Compulsory School Attendance Law. During the 1979-1980 school year, their four school-age children had accumulated three unexcused absences from their respective schools as a result of

an extended Christmas vacation in the Caribbean and a trip to New England. The parents were notified that further excuses could result in criminal proceedings against them. Later in the school year, the parents received permission for their children to attend an “educational trip” to Washington, D.C., which was in accordance with the school district’s attendance protocol. A few weeks later, Mr. and Mrs. Hall again requested permission for their children’s absence for another “educational trip” to Europe. Permission was not granted for this trip, as the school district’s policy only allowed for one “educational trip.” The family took the trip anyway, and the parents were subsequently charged and convicted of violating the school attendance code. The parents appealed, but the Pennsylvania Superior Court held that the parents removing their children from school without authorization, including “educational trips,” could be grounds for conviction under school attendance laws. The court disagreed with the parents’ assertion that they should have the unconditional right to remove their children from school in order to participate in multiple trips, even those considered educational.

In *State v. Hensley* (2003), Teresa Hensley appealed her conviction for failure to send her child to school. When counsel was appointed for her, she was found to be indigent. Testimony showed that Hensley’s 13-year-old daughter had 19 unexcused absences, and her 15-year-old son had 29 unexcused absences. Hensley testified that she woke her children up and made sure they were dressed and fed before sending them to school. Hensley shared how she drove her daughter to school and had to physically drag her in the building on at least one occasion. When Hensley lost possession of her car, her children had to walk to school. She did not own a working phone and was unable to verify with the school that the children made it to classes. Because the mother was unaware her children missing school, the Ohio Court of Appeals reversed the conviction.

**Neglect.** A neglected child is one who parents or legal custodians are unfit to care for him or her because of cruelty, immorality, or incapacity or is one whose parents or legal guardians refuse to provide the necessary care for the child (Black, 2009). In nine cases, parents or guardians were charged with child neglect. Most involved children of elementary school age. Five cases involved students attending public schools, three involved home instruction, and one involved a private instructor. In five of the nine cases, the courts ruled in favor of the parent or guardian.

Two of the neglect cases involved combined charges of a CSA violation and neglect: *Maynard v. Shanker* (1969) and *Hamilton v. State* (1998). What is unique about the Shanker case is that the recipient of the charges was not a parent or legal guardian, but instead, teachers, who were absent themselves from school because they were participating in a teachers' strike. The New York City teacher's strike in 1968 took place over many months and resulted in public schools being shut down for a number of days. New York City children missed the first day of school for the second year in a row when "810 of the 900 public schools did not open as 53,000 of the 57,000 teachers failed to report to work" ("Union Stresses Rights," 1968). The strike began after a school board abruptly dismissed teachers and principals at a neighborhood school, in which the community was largely African American. Almost all the dismissed educators were White and Jewish (D'Amico, 2016). The leader of the United Federation of Teachers, Albert Shanker, led the strike, demanding the teachers' reinstatement. The petitions in the *Shanker* case alleged that the educators and the United Federation of Teachers deprived children of educational opportunities and facilities during the strike, thus neglecting children as well as violating compulsory attendance statutes. The court ruled that despite the fact that the teachers served, in some respects, as a guardian to the children during school hours, they could not be

characterized as legally responsible for the petitioners' children. As such, the petitions were dismissed.

In the *Hamilton* case, Tyonia Hamilton appealed her convictions for neglect and compulsory school attendance violations. The attendance officer testified that during a six-month period, one child had ten unexcused absences and another had four unexcused absences. According to the attendance officer, an unexcused absence was one in which the school did not receive a note or phone call from a parent to explain the nature of the absence. The Indiana Court of Appeals held that there was insufficient evidence to support the mother's convictions.

**Delinquency and unruly children.** There were two cases in which the children in question were deemed delinquent or unruly. The United States Department of Justice defines "juvenile delinquency" criminal behavior committed by a person prior to his or her 18th birthday which would have been a crime if committed by an adult. A person over the age of 18 but under 21 years old is also given juvenile treatment if the act of juvenile delinquency occurred before his or her eighteenth birthday (*18 U.S. Code § 5031*).

Child delinquents have commonly referred to juveniles between the ages of 7 and 12 who have committed a delinquent act according to criminal law, an act that would be considered a crime if committed by an adult. Child delinquents are not legally defined in the same way across the United States (Snyder & Sickmund, 1999). The minimum ages of criminal responsibility can vary from age 6 in one state to age 10 in another. Additionally, many states do not have a legally defined age of criminal responsibility (U.S. Department of Justice, 2003).

The delinquency case, *in re C.C.J.* (2002), was the only case in this study in which a student was charged with delinquency. An appeal had been entered in the Court of Common Pleas of York County following a young mans' (C.C.J.) adjudication of delinquency on charges

of conspiracy to possess marijuana with intent to deliver. He had been stopped and searched by police during school hours. The officers discovered a Ziploc bag containing other empty bags. The Superior Court of Pennsylvania held that the evidence was sufficient to show that the juvenile was engaged in a conspiracy to possess marijuana with intent to deliver. Therefore, the trial court had sufficient evidence to adjudicate C.C.J. as delinquent.

Some states use the term “unruly” in reference to child or juvenile delinquency. For example, Georgia Code (O.C.G.A.) 15-11-2 (12) defines “unruly child” as a child who is in need of supervision, treatment, or rehabilitation and meets one of the following conditions:

- Is habitually truant from school
- Is habitually disobedient to reasonable demands of the parents or guardians
- Has committed an offense applicable only to a child
- Has deserted home without cause or consent
- Wanders or loiters streets or public places between the hours of 12:00 midnight and 5:00 A.M.
- Disobeys the terms of supervision contained in a court order
- Patronized any bar where alcoholic beverages are being sold, unaccompanied by the parent/guardian, or possesses alcoholic beverages

Or

- Has committed a delinquent act and is need of supervision, but not treatment of rehabilitation.

*In interest of C.S.* (1986) was the only case in this study in which children were accused of being unruly. C.S. and A.S, as well as their parents, appealed a North Dakota juvenile court order finding the children to be unruly as a result of habitual truancy. C.S. was nine years old in

the fourth grade, and A.S. was 10 years old in the fifth grade. Both children were removed from public school to be educated at home by their parents, neither of which were certified teachers. The parents claimed the children were not receiving an adequate education in public school to meet their abilities and that they preferred the children be instructed with Christian-based materials. The Supreme Court of North Dakota held that the intentional noncompliance with compulsory school attendance laws was a violation by the parent, not the child. The State made no effort to show that the children were in any sense “unmanageable” or that they needed supervision for reasons other than truancy. It was clear that the children did not attend school because of their parents’ actions, not their own. As a result, the Dakota Supreme Court reversed the lower court’s order that found the children to be unruly.

**CHINS/PINS.** A “Child in Need of Support” (CHINS) is one who has committed an offense that only children can commit, such as disobedience, running away, truancy, and age restriction violations, such as possession of alcohol or tobacco. In some areas of the country, the term “Persons in Need of Support” (PINS) is used to describe such a child (Black, 2009). There were two cases involving such claims: *Ossant v. Millard* (1972)--PINS and *Mass v. State* (1992)--CHINS. In the latter case, the child in question was not identified as a CHINS. However, the parent was convicted for contributing to the CHINS of a minor. In both cases, the parent defendants prevailed.

**Disorderly persons.** A “disorderly person” is normally one who is guilty of disorderly conduct, but where statutes define a disorderly person and identifies acts that could constitute the offense of disorderly conduct, the relative provisions relative to the different offenses are followed. Such an offense is often a misdemeanor (Black, 2009).

There were two cases in which a parent was convicted as a disorderly person: *in re Latrecchia* (1942) and *State v. Vaughn* (1965). In both cases, the parents were accused of failing to send their children to school. In the first case, the court held that the evidence did not support such a charge, as the parents made every effort to send their daughter to school, despite the fact she was sent home for failing to participate in American flag exercises. In the latter, however, the court upheld the parents' convictions as disorderly parents because they could not provide evidence to rule otherwise.

### **Cases Citing *Yoder*, *Pierce*, and *Meyer***

*Meyer v. Nebraska* (1923), *Pierce v. Society of Sisters* (1925), and *Yoder v. Wisconsin* (1972) are the three seminal cases deliberated by the United States Supreme Court that considered compulsory school attendance as a parent's constitutional right to make decisions of educational matters for his or her child. All three decisions favored the parents instead of the State and set the tone for how far states could go in controlling and regulating education.

According to the documents the researcher reviewed for this study, 21% of the cases included citations of one or more of these historical cases. Eleven cases involved home instruction, five involved private schools, four involved public schools, and one involved parochial schools. *Pierce* represented the highest number of citation incidence with 16 citations, followed by *Yoder* with 11 citations, and *Meyers* with 7.

Thirty-three percent (seven cases) of the cases citing *Meyers*, *Pierce*, and/or *Yoder* resulted in favorable outcomes for the parent or guardian (see Figure 14). For example, in *State v. Lewis* (1927), a parent was convicted for failing to send his children to public school in the district in which his family resided, as required by the compulsory school attendance statute. In his appeal, the father argued that the compulsory school attendance statute was defective in its

language in requiring a child “to attend school continuously for a period equal to the time which the public school in the district in which the child resides shall be in session.” The Supreme Court of North Carolina held that no crime was charged in the warrant upon which the defendant had been tried and convicted. The statute did not make the failure to cause the attendance of a school-age child in the public school a crime. The offense was defined as the failure of the parent or custodian’s part to cause the child to attend school continuously for a period equal to the time the local district’s public school was in session. Citing *Pierce v. Society of Sisters* (1925), the Court felt it would be an infringement upon the rights of private schools to require that all school-age children attend one of the public schools of the district in which they live. Therefore, the Court agreed with the defendant and reversed the conviction.

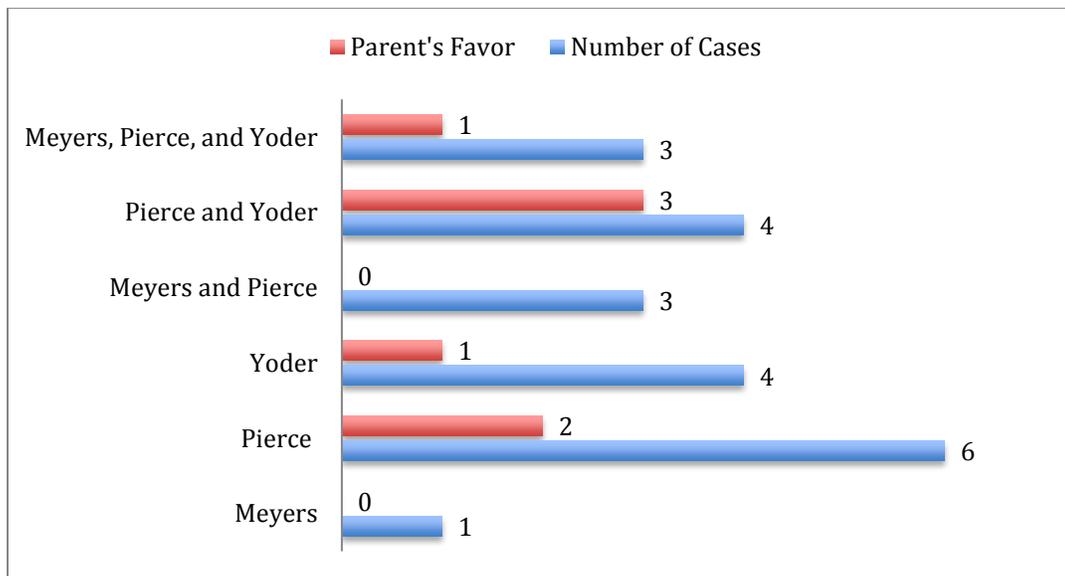


Figure 13. Cases citing *Meyers*, *Pierce*, and *Yoder* and ruling favors.

In many of the cases in which *Meyers*, *Pierce*, and/or *Yoder* was cited, the courts did not see just comparisons between them. For example, in *State v. Riddle* (1981), Bobby and Ester Riddle were found guilty of violating the West Virginia school attendance law. They appealed this conviction, claiming that the compulsory attendance law was not constitutional and violated

their First and Fourteenth Amendment rights under the United States Constitution. The parents considered themselves “Biblical Christians.” Their children had attended a private Christian school, but the parents withdrew them because they did not agree with its teachings. They began teaching their children at home, and their children’s achievement on standardized assessments indicated they were doing a good job. An exemption to the state’s compulsory education law allowed for instruction in the home. The instruction was to be conducted by a person or persons who were qualified to provide it, as determined by the county superintendent and board of education. The Riddles did not claim this exemption.

Leaning on *Wisconsin v. Yoder*, the Riddles appealed the court’s decision based on their religious convictions that they believed would be infringed by sending their children to a public school. While there were similarities between this case and *Yoder*, it was not appropriate to compare the two for the defense’s argument. In the case of *Yoder*, the court was confronted by members of a community “with a long history of successful preparation of its children outside of public school for a life in contemporary society.” As such, one could not totally disregard compulsory education laws because of religious convictions, no matter how tightly held. Furthermore, the Riddles never requested an exemption to the compulsory school attendance of their children. Therefore, the Court affirmed the parents’ convictions.

In *Howell v. State* (1986), Jack and Dianna Howell were convicted for violating the compulsory school attendance law. They believed they should be exempted from compliance to the compulsory school attendance law under the Texas and United States Constitutions because of their First Amendment and Fourteenth Amendment free-exercise of religion rights, and the “word of God.” In response, the court employed the balancing test established by *Yoder* to determine when government could regulate conduct prompted by religious beliefs. First, the

person who is complaining of a violation of his rights under the Free Exercise Clause must show that the offending regulation imposes a substantial burden on the exercise of his religious beliefs. Then, only after the burden has been shown, the State must show a compelling State interest that is promoted by the regulation and that there is not a less restrictive alternative to the regulation in question. The Court ruled that Howells failed to show that the violation of the compulsory school attendance law was based on anything except their subjective views. Little of the Howells' religious beliefs or practices was shown at the trial, making it impossible to tell if the compulsory education law substantially burdened the exercise of their religious beliefs. The convictions were affirmed.

### **Defensive Claims**

It should be noted that in numerous cases, the parent defendants raised multiple defensive claims. For example, in *Hatch v. Goerke* (1974), the parents brought about a civil suit, asserting many claims against the local school officials and the local district attorney when their son was expelled from school for refusing to cut his Native American braided hair. The parents were allegedly threatened with prosecution under Oklahoma's compulsory attendance law. In their suit, they claimed racial discrimination and First, Fifth, and Fourteenth Amendment infringements. They also argued that the state statute was vague and invalid, as it applied to their son's case. *Meyers*, *Pierce*, and *Yoder* were all cited in the case. As a matter of fact, this was the first case in the study in which *Yoder* was cited.

Another example of multiple defensive claims is *State ex. rel. Nagle v. Olin* (1980). James Olin appealed his conviction for violating Ohio's compulsory education laws. Instead of public school, he had elected to send his children to an Amish school close to his home. In his defense, he argued that the state should allow him to send his daughter to the Amish school,

based on his First Amendment right of free exercise of religion, as well as his right to direct the upbringing and education of his child, as provided by the Ninth and Fourteenth Amendments. He further claimed that the court did not follow proper protocol, which should reverse his conviction. *Meyers*, *Pierce*, and *Yoder* were cited. In the end, Olin's conviction was indeed reversed.

**Constitutional amendment defenses.** Of the 101 cases reviewed in this study, there were 45 cases in which the parents or guardians cited constitutional infringements in their defense. The most common of those were violations of their First Amendment and Fourteenth Amendment rights. For the sake of this study, no attempts were made to interpret the Constitution, particularly those rights expressed in the Bill of Rights. All constitutional interpretations presented were those expressed within the case documents themselves.

**First Amendment.** The First Amendment guarantees freedoms concerning religion, speech, assembly, and petitions. It prohibits Congress from promoting one religion over another, as well as restricting an individual's religious practices. It guarantees the freedom of expressions by barring Congress from restricting the press or individuals to speak freely. It also guarantees the right of citizens to peaceably assemble and petition the government (Cornell University).

There were 24 cases that included claims of First Amendment violations, ranging from the years 1939-1980. Twenty-two of those were free exercise of religion claims, and only two were freedom of speech claims. Of the 24 religious freedom claims, 6 resulted in a favorable outcome for the parents or guardians. One resulted in a split decision.

The first four cases with Free Exercise claims (*Sandstrom*, 1939; *Davis*, 1943; *Conte*, 1944; and *Crowley*, 1944) involved the requirement of school children to participate in the American flag exercises. All families claimed that the exercise infringed on their children's

religious liberties, and in all but the first case in 1939, the courts concurred, affirming the action of the school authorities to compel the flag salute and pledge transcended constitutional limitations of the power. All cases resulted in reverse convictions for the parents.

In most of the cases claiming religious infringements, the courts did not agree. For example, in the *Renfrew* case in 1955, J. Harvey Renfrew and his wife were charged with neglecting to send their minor child to attend school as required by law. Both were found guilty and appealed the decision to the Superior Court. The Renfrews were Buddhists and voiced their right to religious freedom in teaching their son at home, as well as concerns about their son being taught the Twenty-Third Psalm and the Lord's Prayer. The Supreme Judicial Court of Massachusetts held that it was proper of the jury to convict the parents for failure to cause their son to attend school. Mere reading of the Bible or reciting the Lord's Prayer in a public school classroom did not justify failure of the parents to send their son to school. No student was required to take any personal part in the scriptural reading if his parent or guardian informed the teacher in writing that there were objections. As a result, the Court affirmed the parents' convictions.

In reviewing the events and decisions regarding the claims of religious infringements, it was evident that the courts seem to agree that the right to religious freedom is not absolute. Many questions must be answered, particularly in the degree in which a religion or religious practice is impinged, as well as how the offending statute or policy may be in place for the greater good of the society.

*Galamison* (1968) and *Serna* (1977) were the only two cases involving freedom of speech claims. The *Galamison* case resulted in a split decision, citing that the claims of free speech and right to petition did not supersede the legal responsibility of a parent to cause his

child to attend school. The *Serna* case, however, had a different outcome. In consolidated cases, defendant parents were convicted of willful and unlawful refusal to send their children to public schools. The parents had withdrawn their children from school because they alleged that it was segregated. They relied on *Wisconsin v. Yoder* to demonstrate their fundamental interest in guiding their children's education. However, the California court felt *Yoder* was inapplicable because no issue of religious freedom was involved, and there was no contention that the parents provided their children with any alternative education program. The parents offered proof that they had been active in protests against the school district's segregation policies, particularly at the elementary school involved, and that they had been subject to police harassment at the school's prompting for exercising their First Amendment rights of free speech. The trial court rejected this proof and erred in doing so. As a result, the parents' convictions were reversed.

**Fifth Amendment.** Two cases invoked potential Fifth Amendment violations. The Fifth Amendment provides for a number of rights relevant to criminal and civil legal proceedings. In criminal cases, the Fifth Amendment guarantees the right to a grand jury, disallows double jeopardy, and protects individuals against self-incrimination. It requires the government to compensate citizens when it takes over private property for the use of the public. Like the Fourteenth Amendment, it also requires that the due process of law be part of any proceeding that could deny someone's "life, liberty, or property" (Cornell University).

In *Hatch v. Goerke* (1974), the parents claimed that their constitutional rights had been violated when the school required the cutting of their son's Indian-braided hair. They believed the rule to cut their son's hair infringed on their rights to raise their children according to their own religious, cultural, and moral values as protected by the First Amendment freedom of religion protection and the due process protections under the Fifth and Fourteenth Amendments

of the United States Constitution. The United States Court of Appeals, Tenth Circuit, held that their argument lacked constitutional substance. The federal constitution and statutes did not impose on the federal courts the duty and responsibility of supervising the length of a student's hair; instead it was an issue to be determined by the state and handled through state procedures.

In *Hill* (1981), the question of double jeopardy was posed. The double jeopardy clause in the Fifth Amendment prohibits an individual from being prosecuted twice for substantially the same crime (Cornell University). Jason Hill and Kenneth Dowling were charged and convicted of failing to send their children to school. The trial judge sentenced both men to 30 days of hard labor in jail, plus a \$1.00 fine for the first conviction. For the second conviction, they were sentenced to 90 days of hard labor in jail and a \$1.00 fine. The men appealed the decision, alleging the second conviction violated their protection from double jeopardy. The Court of Criminal Appeals of Alabama held that it could not decide on this claim because the men did not follow the proper method of presenting a special plea.

**Ninth Amendment.** The Ninth Amendment to the United States Constitution states that the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage the rights retained by other individuals. In recent years, some have interpreted this amendment as an affirmation of existence of rights that are not specifically addressed by the Bill of Rights (Cornell University).

The only case in this study that cites the Ninth Amendment is *State ex rel. Nagle v. Olin* (1980). James Olin, who was convicted for a compulsory school attendance violation, contended that the state should allow his child to attend an Amish school as an incident of his First Amendment free exercise of religion right, as well as his right to direct the upbringing and education of his child, as guaranteed by the Ninth and Fourteenth Amendments. He leaned on

*Wisconsin v. Yoder* in his argument. The Ohio Supreme Court applied the three-part test, as utilized in *Yoder*, to decide this case. First, it asked if the religious beliefs were “truly held.” The court then considered how the state’s minimum education standards might have infringed upon Mr. Olin’s right to his free exercise of religion. The third prong of the test sought an overriding, compelling state interest to necessitate the statute. Because all three prongs were answered in Mr. Olin’s favor, he was entitled to the protections guaranteed by United States Constitution. As a result, the Ohio Supreme Court reversed Mr. Olin’s conviction.

**Fourteenth Amendment.** The Fourteenth Amendment states, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” This amendment addresses many facets of citizen rights and citizenship. The most common reference in the amendment, particularly in regard to litigation, is “equal protection of the laws.” Many landmark cases, such as *Brown v. Board of Education* (racial discrimination), *Roe v. Wade* (reproductive rights), and *Reed v. Reed* (gender discrimination), relied heavily on the amendment’s promise of equal protection under the law (Cornell University).

Thirty-one cases in this study included Fourteenth Amendment arguments, ranking it as the highest in number for constitutional amendment challenges. The cases spanned the years 1922-2013. While a number of those cases were paired with arguments for other rights within the Bill of Rights, twenty cases only cited the Fourteenth Amendment as their constitutional challenges. Most of the cases that cited the Fourteenth Amendment dealt with arguments for due process, equal protection under the law, and personal liberties, particularly the right to direct the

education of one's children. Only 10 of those 20 cases resulted in favorable outcomes for the parent, guardian, or child.

An example of a case involving a sole Fourteenth Amendment argument is *State v. Hoyt* (1929). Complaints were issued against Oscar Hoyt, Richard Daniels, Lucius Covey, and Truman Covey for failure to cause their children to attend public school. The defendants claimed that private tutors were teaching their children at home. They argued that the compulsory school attendance statute was unconstitutional for denying them their federal guarantee of liberty. However, the Supreme Court of New Hampshire held that the statute did not infringe upon personal liberty, and as such, was constitutional. While decisions in *Yoder* and *Meyer* declared the existence of important restrictions upon state power to compel education, they did not indicate that the compulsory attendance statute's provisions impinged the federal guarantee of liberty. Attendance at a school could still be required, and the state could supervise the school in which a child attended. The compulsory education statute did not go beyond those parameters. The power to require attendance, good character of educators, and courses to be taught were reasonable regulations. Since the statute did not exceed those powers, it was held to be constitutional.

A case involving a Fourteenth Amendment due process claim was *in re Jeannette* (1987). Two mothers from Maryland, each with two children, allowed their children to miss 70 days or more of school and consequently were convicted for violations of the state's compulsory education laws. The mothers appealed, providing many reasons why the children were absent, such as sickness, bullying, and family illnesses. The women claimed their constitutional rights of due process were violated because the law was vague and imposed "strict liability" by prosecuting parents for their children's actions. The Maryland Court of Special Appeals held that

the compulsory school attendance statute did not prosecute parents for their children's failures, but instead, prosecuted the parents for their own failure in causing their children to attend school, adding that passive acceptance of the children's nonattendance of school was no defense. Both convictions were affirmed.

In *Rivera v. Lebanon School District* (2011), the plaintiff parents claimed relief under the Fourteenth Amendment for violations of their equal protection and due process rights. The plaintiffs alleged that the school district sought fines that exceeded the statutory maximum of \$300. By selectively allowing reductions of some excessive fines, the plaintiffs argued that the school district intentionally deprived them of equal protection of the law as held in the Fourteenth Amendment. Furthermore, because the school district did not disclose the criteria in determining which fines would be downward adjusted, it denied due process to the parents, which was also guaranteed by the Fourteenth Amendment. The United States District Court, M.D. Pennsylvania held that the parents provided sufficient facts to support the argument that some fines were adjusted inequitably with no rational basis for the disparities. As a result, the Court sided with the parents and denied the school district's motion to dismiss the complaint.

Eleven cases in the study included Fourteenth Amendment claims that were paired with First Amendment classes. Only two, *State ex rel. Nagle v. Olin* (1980) and *State v. Trucke* (1987), resulted in favorable outcomes for the parent or guardian. *Trucke* was also the only case of those with First and Fourteenth Amendment claims that did not involve religion in some way.

**Other defensive claims.** Aside from constitutional infringement defensive claims and those citing *Meyers*, *Pierce*, and *Yoder*, there were other groupings of defensive claims discovered in the study. The most common of those were arguments of abuse of power, vague statute language, and improper protocols. There were also a number of cases in which the parents

maintained that their children were provide an “equivalent education” at their respective private or home schools.

**Jurisdiction of power.** There were at least 20 cases in this study in which the use of authority was questioned by the parent or guardian. Most of these cases (15) involved public school settings. The improper use of authority claim was directed at multiple people or entities, such as principals, school board members, local courts, and state governments. Ten of those cases resulted in favorable outcomes for the parent or guardian, and one resulted in a split decision.

In *Rice v. Com* (1948), parents argued that the jury should not have the authority to determine their qualifications instructing their children. The Supreme Court of Virginia agreed, stating that parents’ qualifications should be determined by competent State agencies that have been given the responsibility of supervising the maintenance of proper educational standards. The Court felt that the State Board of Education and local superintendents were much better equipped to review a parent’s qualification as a teacher, as provided by state law, than the laymen who made up must juries. However, the defendants made no effort to have their qualifications as teachers approved by the state. Therefore, they were in no position to lean on their instructional efforts to defend their admitted violation of the compulsory education law. The convictions were affirmed.

In 1958, Stanley and Bernice Skipworth appealed their conviction for failing to send their children to school (*in re Skipworth*). In their defense, they claimed the local board of education should not have the right to ask the court to punish or deprive them of custody of their children, for refusing to accept the teaching staff discrimination that they felt existed in the schools. The Domestic Relations Court of New York City held that although the court had no power to

consider such a charge; the Board of Education had no moral or legal right to ask for the parents' punishment or custody deprivation of their children. It was the judge's impression that the parents were doing whatever was within their means to provide an education for their children, adding that their actions were committed for the sake of their children, as well as others who had been deprived of an "equal" education. Consequently, the petitions against the parents were dismissed.

In *Abella v. Riverside Unified School District* (1976), the parents argued that the school district should not have the authority to initiate a compulsory school attendance exemption over their objection. Three years earlier, the school district stated that their daughter should be exempted from the compulsory attendance laws because of her inability to cooperate in the special opportunity class to which she had been assigned. The child's mother had signed the exemption card, but did so reluctantly after being advised that her daughter could be exempted without her consent. The California Court of Appeals held that the authority of the governing board to remove a child from public school, over a parent's objection, on grounds of the child's physical or mental disability was limited only to those cases where the child's attendance would be threatening to the welfare of other students. While the school district did have the authority to maintain discipline, which could include enforcement of suspension or expulsion, such authority must be exercised in a manner that meets the statutory and constitutional standards for such proceedings, such as a due process hearing.

In *Eukers v. State* (2000), Georgene Eukers was found guilty of violating Indiana's compulsory school attendance law. In her appeal, she argued that the delegation of authority by the legislature to local school systems to establish and implement attendance policies, a criminal offense if violated, was an unconstitutional delegation of the legislature's authority. The Indiana Court of Appeals, however, held that the legislature allowing school districts to establish

attendance policies was not an unconstitutional delegation of legislative function; the prosecutor had sole discretion in deciding whether to prosecute the parent under compulsory attendance laws. This discretion operated independently of school's attendance policy. The conviction was affirmed. Three years later, in *State v. Hensley* (2003), an Ohio Court of Appeals held that the trial court abused its discretion in their conviction of a mother who had made every effort to send her children to school, yet one continued to “skip” school on a regular basis, unbeknownst to the mother.

**Vague language.** There were 20 cases involving claims of vague language in state statutes or local policies. Of those 20 cases, 13 involved public schools, 6 involved home schools, and 1 involved a private school. Only 9 of the 20 cases resulted in a positive outcome for the parents or guardians.

*Com v. Florence* (1921) was the first case in the study claiming a vague statute in the defense. W. E. Florence was indicted for failing to send his child to school. His demurrer was sustained on the assertion that the compulsory education law was invalid because it violated section 51 of the Kentucky's Constitution that stated, “No law enacted by the general assembly shall relate to more than one subject and that shall be expressed in the title.” The demurrer also asserted that section 2 of the compulsory school attendance statute was meaningless because it omitted essential words. The Court held that however unclear the statute's title may have been in its attempt to specify existing laws to be repealed, the purpose was clearly expressed. The act's title did profess to repeal specific inaccurately described sections of previous statutes and to enact “new provisions relating to the compulsory attendance of pupil children in the common schools” of the state. The Court added that no one reading the title of the act could possibly believe that that the legislative intent was to enact new compulsory school attendance provisions.

Furthermore, words inadvertently omitted from a statute should have been supplied within the context of the legislative intent and by referring to previous and latter sections. The Court believed it was the citizens' authority, as well as their duty, to supply omitted words that are plainly indicated elsewhere in the act. In reviewing the grounds upon which the act could be attacked and being unable to sustain any of them, the Court of Appeals of Kentucky held that the lower court erred in sustaining the demurrer and dismissing the indictment.

Similarly, in 1993, a mother who was convicted for failing to send her daughter to school argued the state's compulsory education statute was unconstitutionally vague because the phrase "attend school regularly" did not give a person with ordinary intelligence fair notice of the required or prohibited conduct (*State v. White*). The mother claimed she was unable to comply due to her child's disobedience. The Wisconsin Court of Appeals held that statute making it a misdemeanor for a person having control of a child between 6 and 18 years of age to fail, with certain exceptions, to "cause the child to attend school regularly" was not unconstitutionally vague in failing to define the term "regularly." By reading the statute and others like it, a person of ordinary intelligence should have understood that attendance is compulsory absent statutorily defined or through school board policy exceptions, that a person in control of school-age children must ensure that the children attend school, with the exception of a statutory excuse. Before such a person could be prosecuted, there must be notice and opportunities for resolution. The mother's conviction was affirmed. In *Pitts v. State* (2013), a mother made a similar claim that the terms "excused" and "unexcused" were not clearly defined in the state statute. The Supreme Court of Georgia disagreed and affirmed her conviction.

*Blake v. Com.* (2014) is the most recent case in this study questioning a term within the compulsory education statute. In this case, a single mother of three children shared joint custody

with her ex-husband. Her children were repeatedly late on the mornings for which she was responsible for taking them to school. These tardies were recorded as unexcused; the children did not have recorded unexcused absences on other days of the week. After a conviction and several failed appeals, she appealed to the Supreme Court of Virginia. She questioned whether the compulsory school attendance statute could allow for a prosecution related strictly to school tardiness. The court held that the term “send” in the compulsory attendance statute was ambiguous. The court reasoned that by interpreting “send” to include tardiness, the door would be open for prosecution of parents for even minimal unexcused tardies or absences. As a result, the mother’s conviction was reversed.

**Improper protocol.** There were 12 cases in this study that involved claims of improper procedure or protocol. Some of these claims were directed at the courts, while others were directed at school officials. Half of the cases resulted in positive outcomes for the parents or guardians.

In several cases, the parents claimed that the courts improperly introduced or withheld evidence, which led to their conviction. For example, in *State v. Pettifield* (1946), a father, George Pettifield, appealed his conviction under the compulsory attendance law. He asked for a review of the proceedings to assess their validity. Pettifield, a father of 13 children, was a man of limited education and financial means. The record showed that he sent all of his children between the ages of 7 and 15 to school, and they attended regularly, with the exception of one son, Charles, who was often absent. Charles had been deemed an incorrigible and delinquent child. Because of Pettifield’s work schedule, it was impossible for him to personally supervise Charles’s attendance. The Supreme Court of Louisiana felt that the State should have shown the prosecution was initiated through the visiting teacher, or proper authority, with the approval of

the parish superintendent of education as provided in the Section 5 and 10 of the compulsory school attendance statute. For an accusation to be valid, the State should have shown that the defendant unjustifiably failed to send his son to school. Pettifield's conviction and sentence were annulled and set aside.

**Equivalent education.** While the discussion of an "equivalent education" appeared in many non-public school related cases, it was used as a defense in five cases: *State v. Hershberger* (1955), *State v. Massa* (1967), *Matter of Falk* (1981), *State v. Newstrom* (1985), and *State v. Trucke* (1987). The *Hensley* case involved a private school, culminating in a split decision; the court did not agree that the Amish school provided an equivalent education to that of a public school, but did agree that the defendant received excessive fines for his conviction. The remaining cases involved home instruction, all of which resulted in the parent or guardian's favor.

A good representation of this issue is the *Massa* case, in which the main defense was the parents' ability to provide an equivalent education. Two parents were charged and convicted with failing to send their daughter regularly to the public school in her district and for failing to either send Barbara to an approved private school or provide an equivalent education elsewhere. In their appeal, the mother testified that she taught her daughter at home and introduced much evidence to support the quality of both her husband and her instruction, such as tests, instructional strategies, visual aids, books, and photographs. An independent testing service report indicated that her daughter was performing considerably higher than the national average in most subjects. The assistant superintendent of the local school system testified that the parents were not giving their daughter an equivalent education, leaning heavily on the mother's lack of teaching certificates and experience. With respect to her teaching credentials, the court found the

testimony to be inapplicable to the actual issue of equivalency under the New Jersey statute, which did not require a parent to be a certified teacher. From the mother's testimony and oral arguments, the court was satisfied that she was self-educated and well qualified to teach Barbara the basic subjects from grades one through eight. The evidence against the parents fell short of the required burden of proof that the child's education was not equivalent to that at public schools. The parents were found not guilty, and the municipal court's conviction was reversed.

CHAPTER V  
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

**Introduction**

The purpose of this research was to examine court cases involving litigation of parents and guardians in relation to compulsory attendance or compulsory education laws in the United States. The timeframe of relevant court cases ranged from 1918 to 2014, providing a sufficient number of court cases to allow for evaluation, comparison, and analysis of trends in court decisions. This final chapter includes a summary of the research as it pertains to the research questions and conclusions based upon the analysis of the decisions from the pertinent court cases, as well as recommendations for future studies.

**Summary**

The process of data collection and analysis was guided by using the following research questions:

1. What are the issues in court cases involving criminal liability of parents/guardians in relation to compulsory attendance?

Data gathered in this study indicated that the main issues were religion, American flag exercises, race, attendance zones and residencies, health of students, and immunizations. There were other miscellaneous issues revealed as well, although most were isolated in their frequency. As a result of the court decisions reviewed in this study, the researcher has determined 23 guidelines for schools and their respective districts to follow as they address and enforce compulsory school attendance.

Of the 101 cases reviewed in this study, there were 45 cases in which the parents or guardians cited constitutional infringements in their defense. The most common of those were violations of their First Amendment and Fourteenth Amendments rights, particularly religious liberties, due process, equal protection, and the right of a parent to direct the education of his or her child. Of the 24 religious freedom claims citing the First Amendment, six resulted in favorable outcomes for the parents or guardians. One resulted in a split decision. Only 10 cases which cited the Fourteenth Amendment resulted in favorable outcomes for the parent, guardian, or child.

2. What are the outcomes in court cases involving criminal liability of parents/guardians in relation to compulsory attendance?

In the court decisions that ranged from *Troyer v. State* (1918) to *Blake v. Com.* (2014), the courts have ruled in favor of parents/guardians and children 44% of the time (44 of 101 cases). The court decision was split in two cases.

Thirty percent of the cases involved students receiving home instruction, followed by 6% involving private schools, 2% involving private instructors, and 1% involving parochial schools. Private school cases had the lowest success rate for parents at 33%, followed by home instruction cases at 37%. The highest percentage of favorable rulings (47%) for parents were those related to public schools.

The 101 cases encompassed 21% at the secondary level (Grades 7-12), 30% at the elementary level (Grades K-6), and 12% at both levels. Information regarding the child's grade level was not provided in 34% of the cases, and in 3% of the cases, the grade level was not applicable to the case. The courts ruled in favor of the parents in 57% of the elementary level

cases and 43% of the secondary level cases. However, those cases involving both levels resulted in 25% rulings for parents.

Of those cases discussed in this study, all corners of the United States are represented, as well as the midland states. Most of the cases occurred in the middle to eastern states. Of the 101 cases, only 6 occurred in western states.

There were 29 cases in this study that involved religion, spanning from the years 1918 to 1991. Ten of the cases occurred in the 1980s, and seven in the 1940s. Less than 1/3 of the 29 cases involving religion ruled in favor of the parents or guardians. Six of the cases citing religion also involved flag salutes. With the exception of the first case in 1918 (*Troyer*), all resulted in favorable rulings for the parents. In all but one of the cases, the courts held that because the children's and parents' deeply held religious beliefs that the flag salute was contrary to their faith and Biblical teachings, school authorities could not compel them to participate in the exercise.

There were eight cases in which race played a role. Parents and guardians prevailed in three of those cases, and one case resulted in a split decision.

There were seven cases involving attendance zones and residency issues. Five of the seven cases resulted in favorable outcomes for the parents or children.

Another subset of the cases was grouped by those involving the health of students. Of these seven cases, four resulted in reverse convictions for the parents, and one resulted in a split decision. In the two cases in which the parents/guardians did not prevail, there was insufficient evidence to support the students' ill health in preventing them from attending school.

There were five cases involving required immunizations for school enrollment. In the first three cases, despite arguments of the vaccination requirement's constitutionality, the courts ruled against the parents on grounds that the immunization requirements were reasonable

measures for the protection of public health. The last two cases resulted in favorable outcomes for the parents.

During the analysis of the cases involved in this study, the most common prosecuting claim was a Compulsory School Attendance (CSA) violation. In 82 of the 101 cases discussed in this study, parents or guardians were accused or convicted of violating their respective state's compulsory education statutes. In 43% of the cases (35 of 82 cases), the courts ruled in favor of the parents or guardians.

In nine cases, parents or guardians were charged with child neglect. Most involved children of elementary school age. Five cases involved students attending public schools, three involved home instruction, and one involved a private instructor. In five of the nine cases, the courts ruled in favor of the parent or guardian.

There were two cases in which the children in question were deemed delinquent or unruly. The distinguishing feature between the two cases is that one involved a student who had committed an offense, and the other involved students being accused of unruliness due to their parents' unwillingness to send them to school. The courts ruled the children could only be considered delinquent if they themselves committed the offense, independent of their parents' actions.

Twenty-one percent of the cases included citations of one or more of the seminal United States Supreme Court cases related to compulsory school attendance: *Meyer v. Nebraska* (1923), *Pierce v. Society of Sisters* (1925), and *Yoder v. Wisconsin* (1972). Of those, 33% of the cases citing *Meyers*, *Pierce*, and/or *Yoder* resulted in favorable outcomes for the parent or guardians.

With the exception of paired *Pierce* and *Yoder* citations or claims, the citations of *Meyers*, *Pierce*, and/or *Yoder* did not appear to work favorably for the parents or guardians. In

fact, it seemed to have a negative effect in their arguments or appeals. In the majority of cases, the courts did not see justification to compare the arguments at hand with those of *Meyers*, *Pierce*, or *Yoder*.

Forty-five percent of the cases included constitutional infringement defense arguments. The most common of those were violations of their First Amendment and Fourteenth Amendments rights. Of the 24 First Amendment freedom of religion claims, 6 resulted in a favorable outcome for the parents or guardians, and 1 resulted in a split decision. Of the cases in this study, 31 included Fourteenth Amendment arguments. Most of the cases that cited the Fourteenth Amendment dealt with arguments for due process, equal protection under the law, and personal liberties, particularly the right to direct the education of one's children. Only 10 of those 20 cases resulted in favorable outcomes for the parent, guardian, or child.

Other defense arguments included arguments of abuse of power, vague statutory language, improper protocols, and unreasonable distances to school or road conditions, as well as parents claiming to provide an "equivalent education" for their children. Of the 20 cases that included claims of abuse of authority, ten resulted in favorable outcomes for the parent or guardian, and one resulted in a split decision. There were 20 cases involving claims of vague language in state statutes or local policies. Only 9 of the 20 cases resulted in a positive outcome for the parents or guardians. There were 12 cases in this study that involved claims of improper procedure or protocol; half of the cases resulted in positive outcomes for the parents or guardians.

3. What are the trends in court cases involving criminal liability of parents/guardians in relation to compulsory attendance?

The highest percentage of cases related to parent liability and compulsory education occurred in the 1980s, with 20% (see Figure 14). The second highest percentage occurred in the 1920 with 13%.

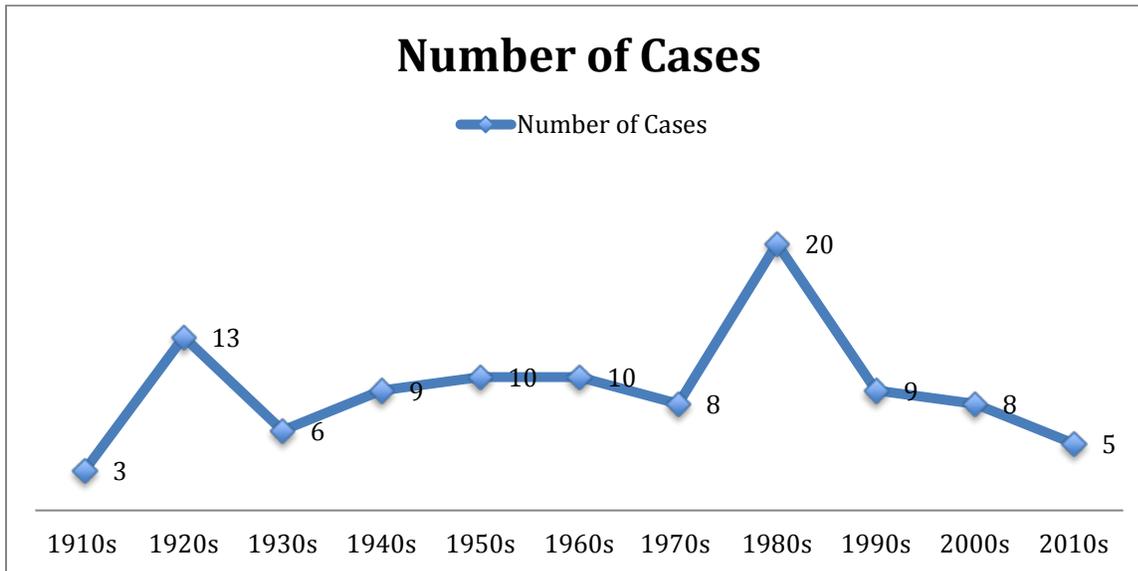


Figure 14. Percentage of cases related to parent liability and compulsory education.

Religion was cited significantly more than any other issue. It was interesting to note that 35% of those cases occurred in the 1980s, a significantly higher percentage than any other decade. This high frequency of cases involving religion in the 1980s also coincided with the highest incidence of *Yoder* and *Pierce* citations among any other decade, over twice as high as any other decade in the study (see Figure 15). Conversely, there was a significant absence of religion-related cases from 1992-2014. The reason for the decline in religion-related cases is likely due to the rise and accessibility of home school instruction in the last two decades. Rules and regulations regarding home schools have become less arduous in many states, and as such, many families are opting to teach their children at home. Furthermore, home school networks have increasingly joined forces, providing both synchronous and asynchronous online instruction, as well as shared resources and teachers.

Similarly, with the exception of the *Eukers* case in 2000, there were no citations of *Pierce*, *Meyers*, and/or *Yoder* within the 1994 to 2014 timespan.

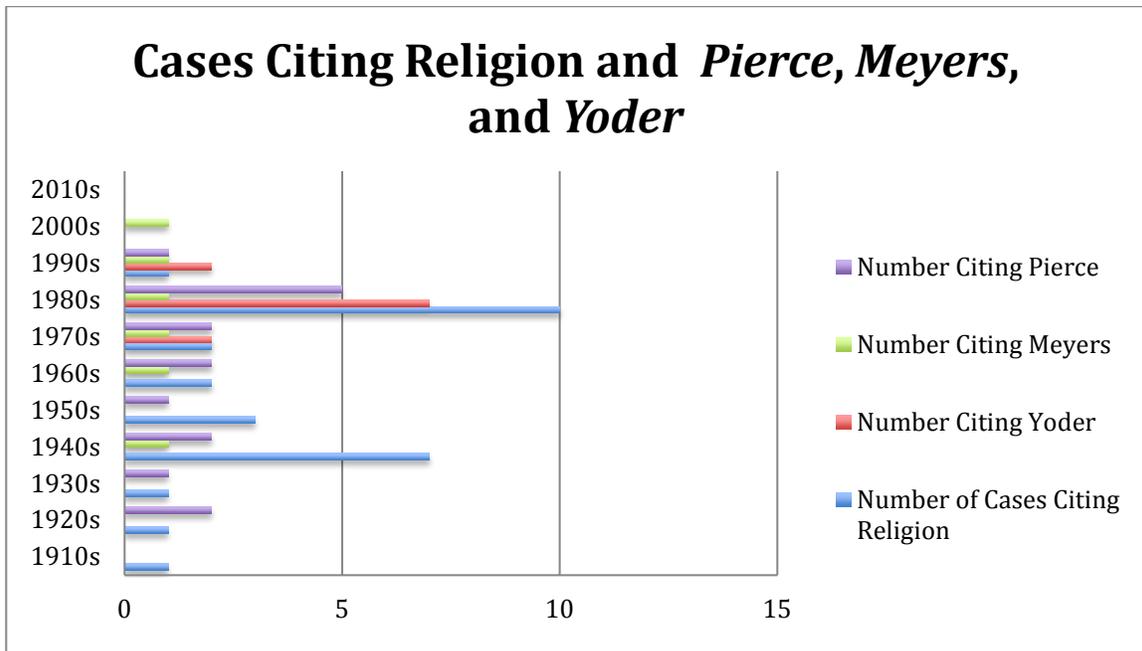


Figure 15. Cases citing religion and *Pierce*, *Meyer*, and *Yoder*.

While many parents cited one of these historical compulsory education cases in their arguments, there was a discernable trend of these arguments being misplaced. For example, in several of the cases in which parents cited *Pierce* and *Yoder* in their arguments, the cases did not involve religion, and therefore, First Amendment claims could not be reasonably considered. In a broad sense, *Pierce* supports the idea that parents have a right to choose either public or private education for their children. In a more narrow sense, *Pierce* has been interpreted as providing parents the right to direct the religious education of their children. However, the courts have not interpreted in any sense that *Pierce* supports the proposition that parents have a constitutional right to direct their children’s education in any and every situation.

As many of the case outcomes illustrated, the right of a parent to direct his child’s education is subject to the reasonable right of the state to regulate the schools, which includes

inspections, supervision, teacher credentials, and certain other requirements. As *Yoder* stated, “There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education.” As previously mentioned, no court in this study held that parents have a fundamental right to direct their children’s education under all circumstances. On the contrary, state interference with such rights beckons strict scrutiny only within the context of the First Amendment. As evidenced in the cases within this study, parents do not possess a fundamental right to direct the education of their children deserving of strict scrutiny; instead, they only possess a right protected by a reasonable basis standard.

In reviewing the cases citing *Meyers*, *Yoder*, and *Pierce*, it was evidenced that determining what religious beliefs or practices are entitled to constitutional protection is a delicate question. Historically, there appears to be a balancing act in weighing the parents’ rights with those of the state to ensure equitable instruction for all children. That said, the courts consistently ruled that ordered liberty does not allow every person to make his own mandates on issues in which society as a whole has an important vested interest, such as educating American children to become skilled and knowledgeable adults in the country’s workforce. Even when religious impingements were questioned, the courts held that the state’s compelling interest in the education of the state’s children often justified the burden imposed on defendants’ religious beliefs. As the world economy becomes exponentially more global and the demands for a trained workforce are paramount for the competitive edge, it should be interesting to follow similar arguments as new legislation (ESSA) compels schools to more carefully supervise and report student absences and truancy.

While there was much discussion about parental rights, there was certainly an absence of arguments for the children's rights. With the exception of *Kenny A. ex. rel. Winn v. Perdue* (2003), in which foster children argued for their right to education access, no other case hinged on the right of the individual child. The courts consistently turned their attention to the rights of the child's parent or guardian instead. That said, the courts did acknowledge that the object of compulsory education law was to ensure that children were not left to ignorance, that they would receive an education which would help them find their places in society. In other words, while the impetus of compulsory education was to provide all children with adequate educational opportunities, the overall objective was to help them contribute to the overall welfare of the country by becoming productive citizens as adults.

While the locations of the cases were spread throughout the country, most of them occurred in the northeastern states in which the populations were greater and schools were more abundant. Of the 101 cases, only 6 occurred in western states, beyond Texas, and none were related to religion in any way. Many of the states without cases represented in this study have pastoral communities with far fewer schools than their northeastern counterparts. There were 9 religion-related cases located in the Bible Belt; however, there were 13 cases in the upper northeast section of the country, with Ohio having more than any other state.

New York represented more cases than any other state, and of those were included the only cases involving protests in the study. One strong regional commonality among cases was those involving Amish families. Of the five cases involving parents or children of the Amish faith, four of them occurred in connected northeastern states: Indiana, Ohio, and Pennsylvania. Cases involving students saluting to the American flag were also predominantly found in northeastern states: Ohio, New Jersey, New York, and Pennsylvania.

With the exception of the first flag salute case in 1918 (*Troyer*), all resulted in favorable rulings for the parents. Because flag exercises impinged on the accused religious convictions, the schools could not mandate the children in question to participate. With the exception of the *Troyer*, it is interesting to note that the remaining cases occurred within a five-year time span in the years 1939-1944. Also of interest is that there were no additional cases beyond 1944 related to flag exercises and compulsory school attendance violations.

Another trend was the emphasis placed on the burden of proof, both for the defendant parents and complainants. The parents' appeals often hinged on the credible evidence they could supply to substantiate their arguments. For those cases that occurred after *Wisconsin v. Yoder* (1972), the courts were very consistent in defense of *Yoder*, requiring evidence that religious practices were sincerely held and long standing before allowing the claim of *Yoder* to proceed.

There was a variety of arguments against the states' compelled school attendance mandates, particularly the right to exercise religion freely and the parent's right to direct his child's education. Parents also questioned the constitutionality of certain school requirements, such as immunizations. A trend evidenced across the wide diversity of arguments was the court's responsive argument that the laws and procedures in place were justified for serving general welfare of the country. Several cited *Pierce*, stating that the parental right to direct the religious upbringing of children was subject to the reasonable right of the state to regulate all school and supervise children's education. The courts consistently held that the state's legitimate interest in assuring that its citizens received a quality education outweighed a parents right to religion or to solely direct the education of his child.

4. What principles can be derived from court cases involving criminal liability of parents/guardians in relation to compulsory attendance?

The following guiding principles were developed as a result of court decisions through the analysis of case briefs.

1. District and school administrators, as well as truancy officers if not serving an administrative role, should be well-versed in the wording and potential interpretations of their respective state's compulsory school attendance statutes (*State v. McDonald*, 1926; *State v. Trucke*, 1987; *State v. White*, 1993; *Pitts v. State*, 2013).

2. School leaders should understand and participate in the proper procedures in which to establish policies and procedures for parents who wish to home school their children (*People v. Turner*, 1953; *In re Shinn*, 1961; *State v. Lowry*, 1963; *Grigg v. Com.* 1982; *State v. Skeel*, 1992).

3. School leaders should be familiar with teacher certification guidelines in nonpublic schools (*Grigg v. Com.*, 1982, *State v. Bowman*, 1982; *State v. Newstrom*, 1985).

4. School leaders should comprehend and follow the proper protocol for filing claims of compulsory attendance violations (*People v. Harrell*, 1962; *Livingston Parish School Board v. Lofton*, 1982; *Maas v. State*, 1992; *State v. Frady*, 2009).

5. School leaders should be familiar with CHINS (Child in Need of Supervision) and PINS (Person in Need of Supervision) as (or if) it relates to compulsory attendance in their respective states (*Ossant v. Millard*, 1972; *Mass v. State*, 1992).

6. So long as a child's education is not neglected, the parents have the right to manage and supervise the education of their child, as long as it is done in an appropriate and effective manner within the guidelines of the state statute (*Wright v. State*, 1922; *State ex rel. Nagle v. Olin*, 1980; *People v. DeJonge*, 1991; *People v. Bennett*, 1993).

7. Parents may be charged for compulsory school attendance violations as a result of excessive family vacations, even those trips the parents consider “educational” destinations (*Com. v. Hall*, 1983).

8. School leaders should understand the term “substantially equivalent” instruction, as it relates to the required instruction in nonpublic instructional venues, including that of homeschools (*State v. Maasa*, 1967; *State v. Moorehead*, 1981; *Matter of Falk*, 1981, *State v. Trucke*, 1987).

9. Parents must prove that the compulsory school attendance laws significantly burden their exercise of their religious beliefs to qualify for a compulsory school attendance religious exemption (*Rice v. Com.*, 1948; *Com. v. Renfrow*, 1955; *Howell v. State*, 1986).

10. A child cannot be found delinquent or unruly because of his parents’ unwillingness to send him to school (*In Interest of C.S.*, 1986).

11. Fines for compulsory school attendance violations should be administered reasonably and equitably (*State v. Hershberger*, 1955; *Rivera v. Lebanon School District*, 2011).

12. The compulsory school attendance statutes do not prosecute parents for their children’s failures, but instead, prosecute the parents for their own failure in causing their children to attend school (*in re Jeannette*, 1987; *State v. Hensley*, 2003; *In re Gloria H*, 2009).

13. If a child skips school, unbeknownst to his parent or guardian, the parent or guardian cannot be charged with a compulsory school attendance violation (*State v. Hensley*, 2003; *In re Gloria H*, 2009).

14. Compulsory school statutes cannot be applied to tardiness if the child is regularly attending school otherwise (*Blake v. Com.*, 2014).

15. The delegation of authority by the legislature to local school systems to establish and implement attendance policies is a constitutionally sound legislative function (*People v. DeJonge*, 1991; *Eukers v. State*, 2000).

16. In a warrant, the criminal offense must be included, as opposed to charging a parent solely for failure to cause his child to attend school (*State v. Johnson*, 1924).

17. A state's statute providing for criminal prosecution of parents or guardians for failing to send their children to school does not extend for prosecution of the student himself for failure to attend school, regardless of the student's age (*State ex rel. Estes v. Egnor*, 1994).

18. There must be proof of residence to show that a court has jurisdiction for alleged compulsory school attendance violation (*People v. Saddlemire*, 1919; *State v. Lunde*, 1988).

19. School leaders and boards of education should understand and participate in the proper reporting procedures for students in their attendance zones who are not enrolled in public schools (*State v. Skeel*, 1992).

20. School leaders should have a firm understanding of the concept of due process (*Abella v. Riverside Unified School District*, 1976; *in re Jeannette*, 1987; *People v. DeJonge*, 1991).

21. School leaders should understand what is meant by the "Amish exception" (*Wisconsin v. Yoder*, 1972; *State v. Riddle*, 1981).

22. The state, if appointed a child's guardian, must comply with the compulsory school attendance statute in ensuring that the child attends school (*Kenny A. ex rel. Winn v. Perdue*, 2003).

23. School leaders should be familiar with the proceedings and scope of seminal compulsory school attendance cases, such as *Meyers*, *Pierce*, and *Yoder (State Ex Rel. Nagle v. Olin*, 1980; *State v. Newstrom*, 1985; *People v. Bennett*, 1993; *Eukers v. State*, 2000).

### **Conclusions**

When school attendance was first compelled for the American public, education's primary goal was to assist children in adopting moral and religious principles, and the secondary purpose was to teach them to read and write. Much has changed since those early years. It is paramount that education policymakers and school leaders keep abreast of emerging issues related to compulsory school attendance. Moreover, both public and nonpublic educators should review the compulsory education laws in their respective states, as well as local policies and procedures. Doing so is a proactive, or even preventative, strategy to avoid serious issues or litigation related to compelled school attendance.

Parents must understand their responsibilities as they relate to compulsory school attendance. This includes parents of children who attend public, private, and homeschools. If in doubt, a parent is certainly within his boundaries to inquire about his child's attendance records, both the accuracy of them and the protocols in place. If a parent elects to homeschool his child, it is his responsibility to review the state statutes and local policies regarding home instruction to ensure that his child's attendance records and other required documentation are recorded and maintained appropriately.

This study was intended to examine 101 cases between 1918 and 2014 for the legal outcomes, main issues, and trends that occurred. While compulsory attendance laws vary to some degree from state to state, there was much to be learned from the large amount of data analyzed in this study. The data garnered from the case studies were analyzed to gain insight as

to the laws and principles that various courts consider when ruling on cases involving liability of parents or guardians in relationship to compulsory school attendance violations. The outcomes of these court cases should help school leaders and personnel better understand how the court views the importance of compulsory school attendance.

As illustrated in the 96-year span of this study, the issue of compulsory school attendance has long been and continues to be a controversial area of dispute between those parents who argue for broader rights over their children's education and those who view attendance laws as a necessary means to ensure quality education for America's youth. For the most part, the parents' arguments have remained the same over the years in that they believe they should have the right to control their children's education. In response, the courts have generally maintained that because education is vital to the public welfare of the state, compulsory attendance laws are reasonable and necessary exercises of state power. That said, the legislature must continue to be judicious in balancing the state's interest in educating children with the rights of parents to direct the upbringing of their children.

ESSA, which will go into effect in the 2016-2017 school year, has a strong stance on addressing and mitigating chronic absenteeism. As schools across the country prepare for its implementation, it is hoped that this study will provide some clarity on issues that school leaders and personnel need to know, as well as how to implement attendance policies and procedures accordingly to improve school attendance, and ultimately, student achievement.

## **Recommendations for Further Study**

Based on findings and conclusions of this study, the following recommendations are made.

1. With lines now blurred between homeschools and public schools (whereas high school homeschool students now participate in various courses at nearby public schools), a study should be conducted to determine how, or if, parent litigation related to compulsory attendance laws is affected.

2. Many high schools now offer dual enrollment and/or virtual options for students, whereas students may only attend the actual school part-time, if at all. Research should be conducted to determine how these options affect attendance and student success.

3. Whereas attendance has long been defined by homeroom presence and/or class seat time, the definition is evolving as schools implement various hybrid schedules, apprenticeships, accelerated courses, early graduations, and digital platforms. A study should be conducted to analyze the evolution of the definition of attendance, particularly in the last 15 years as the landscape of schools has changed dramatically.

4. Research should be conducted to determine which school calendars and bell schedules show the most promise in encouraging and maintaining high student attendance.

5. Schools have long been asked to measure the average daily attendance and truancy. With ESSA's focus on chronic absenteeism (missing 10% of the school year, or 18 days), research should be conducted to study these students who are missing so many days of school, regardless of whether their absences are excused.

6. Initial research should be conducted on ESSA's impact on improving student attendance.

7. A study should be conducted on homeschool parents' understanding of compulsory school attendance laws.

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APPENDIX A

SUMMARY OF VACCINATION REQUIREMENTS BY VACCINE OR ANTIGEN

Summary of Vaccination Requirements by Vaccine or Antigen (2007-2008)																						
For Childcare (CC), Kindergarten (K), and Middle School (MS)																						
	DTaP		Hep A		Hep B			Hib	IPV	MMR		Measles Dose 2		MCV4	Polio		PCV	Td or Tdap	Varicella			
	CC	K	CC	K	CC	K	MS	CC	MS	CC	K	K	MS	MS	CC	K	CC	MS	CC	K	MS	
Alabama																						
Alaska																						
American Samoa																						
Arizona			*																			
Arkansas											AA											
California											AA											
Colorado																						
Connecticut																						
Delaware																						
District of Columbia																						
Federated States/Micronesia	Did not report requirements																					
Florida																						
Georgia																						
Guam																						
Hawaii																						
Idaho																						
Illinois																						
Indiana																						
Iowa											A	A										
Kansas																						
Kentucky																						
Louisiana							**						**									**
Maine																						
Marshall Islands	Did not report requirements																					
Maryland																						
Massachusetts																						
Michigan																						
Minnesota																						
Mississippi																						
Missouri																						
Montana																						
N. Mariana Islands																						
Nebraska																						
Nevada			**		**	**														**	**	**
New Hampshire																						
New Jersey																						
New Mexico																						
New York																						
North Carolina																						
North Dakota																						
Ohio																						
Oklahoma																						
Oregon																						
Palau	Did not report requirements																					
Pennsylvania																						
Puerto Rico																						
Rhode Island																						
South Carolina																						
South Dakota																						
Tennessee																						
Texas			*																			
Utah																						
Vermont											A											
Virgin Islands																						
Virginia																						
Washington																						
West Virginia											A	A	**									
Wisconsin																						
Wyoming																						

Required
  Not Required
  Recommended

\*Required for specific geographic area(s) only  
 \*\*Required for new entrants only  
 A-Mumps not required  
 AA-Measles containing vaccine accepted  
 o-Documented history of disease acceptable

Source: Centers for Disease Control and Prevention. (2015, February 12). *Immunization requirements for child care and school*. Retrieved from <http://www.cdc.gov/vaccines/parents/record-reqs/childcare-school.html>

APPENDIX B

SUMMARY OF VACCINATION REQUIREMENTS BY GRADE LEVEL

Summary of Vaccination Requirements by Grade Level (2007-2008)																					
For Childcare, Kindergarten, and Middle School																					
	Childcare							Kindergarten						Middle School							
	DTaP	Hep A	Hep B	Hib	MMR	Polio	PCV	Varicella	DTaP	Hep A	Hep B	MMR	Measles Dose 2	Polio	Varicella	Hep B	HPV	Measles Dose 2	MCVA	Td or Tdap	Varicella
Alabama							o								o						o
Alaska							o														
American Samoa																					
Arizona							o														o
Arkansas							o				AA										o
California							o				AA										**
Colorado					o		o				o	o									o
Connecticut							o														o
Delaware							o											**			o
District of Columbia							o														o
Federated States/Micronesia	Did not report requirements																				
Florida							o														o
Georgia																					
Guam																					
Hawaii							o														o
Idaho																					
Illinois																					
Indiana							o														
Iowa					A		o				A										
Kansas																					
Kentucky																					
Louisiana																**	**				**
Maine							o														o
Marshall Islands	Did not report requirements																				
Maryland																					
Massachusetts							o														o
Michigan							o														o
Minnesota							o														o
Mississippi							o														
Missouri							o														
Montana																					
N. Mariana Islands																					
Nebraska							o														o
Nevada										**	**				**	**					**
New Hampshire																					
New Jersey							o														o
New Mexico							o														o
New York							o					o	o					o			o
North Carolina					o		o					o	o					o			o
North Dakota							o														
Ohio																					
Oklahoma							o														o
Oregon							o														o
Palau	Did not report requirements																				
Pennsylvania							o														o
Puerto Rico							o														o
Rhode Island																					
South Carolina																					o
South Dakota																					
Tennessee							o														
Texas							o														o
Utah																					o
Vermont											A										
Virgin Islands																					
Virginia							o														
Washington																					
West Virginia					A		o				A						**				
Wisconsin							o														o
Wyoming																					

Required
  Not required
  Recommended

\*Required for specific geographic area(s) only  
 \*\*Required for new entrants only  
 A Mumps not required  
 AA Measles containing vaccine accepted  
 o Documented history of disease acceptable

Source: Centers for Disease Control and Prevention. (2015, February 12). *Immunization requirements for child care and school*. Retrieved from <http://www.cdc.gov/vaccines/parents/record-reqs/childcare-school.html>

APPENDIX C  
CHILDCARE AND SCHOOL EXEMPTIONS ALLOWED

Grantee	Childcare and School Exemptions Allowed (2007 - 2008)			
	Medical		Religious	Philosophical
	Temporary	Permanent		
Alabama		X	X	
Alaska		X	X	
Arizona	X	X	**	*
Arkansas	X		X	X
California	X	X	X	X
Colorado	X	X	X	X
Connecticut		X	X	
Delaware	X	X	X	
District of Columbia	X	X	X	
Florida	X	X	X	
Georgia	X		X	
Guam	X	X	X	
Hawaii	X	X	X	
Idaho	X	X	X	X
Illinois		X	X	
Indiana^	X	X	X	
Iowa	X	X	X	
Kansas	X		X	
Kentucky	X	X	X	
Louisiana	X	X	X	X
Maine	X		X	X
Maryland	X	X	X	
Massachusetts	X	X	X	
Michigan	X	X	X	X
Minnesota	X	X	X	X
Mississippi	X	X		
Missouri		X	*	**
Montana	X	X	X	
Nebraska	X	X	X	**
Nevada	X	X	X	
New Hampshire	X		X	
New Jersey	X	X	X	
New Mexico	X	X	X	X
New York	X	X	X	
North Carolina	X	X	X	
North Dakota		X	X	X
Ohio	X	X	X	X
Oklahoma	X	X	X	X
Oregon	X	X	X	
Pennsylvania	X	X	X	
Puerto Rico	X	X	X	
Rhode Island	X	X	X	
South Carolina	X	X	X	
South Dakota		X	X	
Tennessee	X	X	X	
Texas	X	X	X	X
Utah	X	X	X	X
Vermont	X	X	X	X
Virginia	X	X	X	
Washington	X	X	X	X
West Virginia	X	X		
Wisconsin	X	X	X	X
Wyoming	X	X	X	

X Exemption allowed  
\* Allowed in schools only  
\*\* Allowed in childcare and head start facilities only  
^ Medical exemptions are referred to as "Acute" and "Chronic"  
Note: Federated States/Micronesia, Marshall Islands, Palau did not report requirements

Source: Centers for Disease Control and Prevention. (2015, February 12). *Immunization requirements for child care and school*. Retrieved from <http://www.cdc.gov/vaccines/parents/record-reqs/childcare-school.html>

APPENDIX D

SAMPLE SCHOOL WITHDRAWAL FORM

**SAMPLE**

**SCHOOL SYSTEM WITHDRAWAL FORM**

Today's Date: \_\_\_\_\_ Withdrawal Date (if not the same): \_\_\_\_\_

Student's Full Name: \_\_\_\_\_ Grade Enrolled: \_\_\_\_\_

Current Address: \_\_\_\_\_

Parent/Guardian's Signature: \_\_\_\_\_

**REASON FOR WITHDRAWAL**

Providing the following information is strictly voluntary; but appreciated as it supports an accurate account of our students. Thank you and best of luck.

Please check:

\_\_\_\_\_ Non-public/Private school

\_\_\_\_\_ Church school

\_\_\_\_\_ Homeschool

\_\_\_\_\_ Out-of-state move

\_\_\_\_\_ Other \_\_\_\_\_

\*Students 17 years of age must engage in the Student Exit Interview and Process.

Source: Alabama Department of Education (2015). *School attendance manual*. Montgomery, AL: Author.

APPENDIX E  
COMPLETE LISTING OF CHARGES

<b>Year</b>	<b>Case</b>	<b>State</b>	<b>School Setting</b>	<b>Prosecuting Claim</b>	<b>Ruled in Favor of Parent/ Guardian/ Child</b>
1918	<i>Troyer v. State</i>	Ohio	Public School	CSA Violation	
1919	<i>People v. Himmanen</i>	New York	Public School	CSA Violation	
1919	<i>People v. Saddlemire</i>	New York	Public School	CSA Violation	X
1921	<i>Com. v. Butler</i>	Pennsylvania	Public School	CSA Violation	
1921	<i>Commonwealth v. Florence</i>	Kentucky	Public School	CSA Violation	
1922	<i>Wright v. State</i>	Oklahoma	Home Instruction	CSA Violation	X
1924	<i>State v. Johnson</i>	N. Carolina	Public School	CSA Violation	X
1926	<i>State v. McDonald</i>	N. Dakota	Public School	CSA Violation	X
1926	<i>State v. Kessel</i>	N. Dakota	Public School	CSA Violation	
1926	<i>Barber v. School Board of Rochester</i>	New Hampshire	Public School	CSA Threat	
1927	<i>Byler v. State</i>	Ohio	Public School	CSA Violation	X
1927	<i>Parr v. State</i>	Ohio	Public School	CSA Violation	
1927	<i>State v. Maguire</i>	Vermont	Public School	CSA Violation	Split
1927	<i>State v. Lewis</i>	N. Carolina	Private School	CSA Violation	X
1929	<i>State v. Burroughs</i>	Vermont	Public School	CSA Violation	X
1929	<i>State v. Hoyt</i>	New Hampshire	Home Instruction	CSA Violation	
1930	<i>Bishop v. Houston Independent School District</i>	Texas	Public School	Injunction to Require Attendance	
1936	<i>Arps v. State</i>	Ohio	Public School	CSA Violation	X
1936	<i>State v. Ghrist</i>	Iowa	Public School	CSA Violation	
1937	<i>State v. Drew</i>	New Hampshire	Public School	CSA Violation	
1938	<i>In re Richards</i>	New York	Home Instruction	Neglect / CSA Threat	X
1939	<i>People ex rel. Fish v. Sandstrom</i>	New York	Public School	CSA Violation	X

1942	<i>In re Latrecchia</i>	New Jersey	Public School	Disorderly Persons	X
1943	<i>State v. Davis</i>	S. Dakota	Public School	CSA Violation	X
1944	<i>Com. v. Conte</i>	Pennsylvania	Public School	CSA Violation	X
1944	<i>Com. v. Crowley</i>	Pennsylvania	Public School	CSA Violation	X
1945	<i>Gardner v. Domestic Relations Court of City of New York</i>	New York	Not Applicable	CSA Violation	X
1945	<i>Everson v. Board of Education of Ewing Township</i>	New Jersey	Parochial School	Not Applicable	
1946	<i>State v. Pettifield</i>	Louisiana	Public School	CSA Violation	X
1948	<i>Rice v. Com</i>	Virginia	Home Instruction	CSA Violation	
1948	<i>Gingerich v. State</i>	Indiana	Home Instruction	CSA Violation	
1951	<i>Anderson v. State</i>	Georgia	Public School	CSA Violation	
1953	<i>People v. Turner</i>	California	Home Instruction	CSA Violation	
1955	<i>Com. v. Smoker</i>	Pennsylvania	Home Instruction	CSA Violation	
1955	<i>Com. v. Renfrew</i>	Massachusetts	Home Instruction	CSA Violation	
1955	<i>State v. Hershberger</i>	Ohio	Private School	CSA Violation	Split
1956	<i>Palmer v. District Trustees of District. No. 21</i>	Texas	Public School	Injunction to Restrain Parent's Transportation	X
1957	<i>Sheppard v. State</i>	Oklahoma	Home Instruction	CSA Violation	X
1957	<i>Dobbins v. Com.</i>	Virginia	Public School	CSA Violation	X
1958	<i>In re Skipwith</i>	New York	Public School	Neglect	X
1958	<i>State v. Pilkinton</i>	Missouri	Home Instruction	CSA Violation	X
1961	<i>In re Shinn</i>	California	Home Instruction	Neglect	
1962	<i>People v. Harrell</i>	Illinois	Private School	CSA Violation	
1963	<i>State v. Lowry</i>	Kansas	Home Instruction	CSA Violation	

1964	<i>People on Complaint of Belfon v. Anonymous</i>	New York	Public School	CSA Violation	
1965	<i>State v. Miday</i>	N. Carolina	Public School	CSA Violation	X
1965	<i>State v. Vaughn</i>	New Jersey	Public School	CSA Violation / Disorderly persons	
1966	<i>State v. Garber</i>	Kansas	Home Instruction	CSA Violation	
1967	<i>State v. Massa</i>	New Jersey	Home Instruction	CSA Violation	X
1968	<i>Cavanagh v. Galamison</i>	New York	Public School	CSA Violation	Split
1969	<i>Maynard v. Shanker</i>	New York	Public School	CSA Violation / Neglect	
1970	<i>Kerr v. State Public Welfare Commission</i>	Oregon	Public School	Cruelty	
1972	<i>Ossant v. Millard</i>	New York	Public School	PINS	X
1974	<i>In re Davis</i>	New Hampshire	Private Instructor	Neglect	X
1974	<i>Hatch v. Goerke</i>	Oklahoma	Public School	CSA Threat	
1976	<i>Matter of Baum</i>	New York	Public School	Neglect	
1976	<i>Abella v. Riverside Unified School District</i>	California	Public School	School Exempted Student	X
1977	<i>People v. Serna</i>	California	Public School	CSA Violation	X
1978	<i>State v. Vietto</i>	N. Carolina	Private School	CSA Violation	
1980	<i>State v. Chavis</i>	N. Carolina	Public School	CSA Violation	
1980	<i>State v. Shaver</i>	N. Dakota	Private School	CSA Violation	
1980	<i>State ex rel. Nagle v. Olin</i>	Ohio	Private School	CSA Violation	X
1981	<i>State v. Moorhead</i>	Iowa	Home Instruction	CSA Violation	
1981	<i>Matter of Falk</i>	New York	Home Instruction	Neglect	X
1981	<i>Hill v. State</i>	Alabama	Home Instruction	CSA Violation	
1981	<i>State v. Riddle</i>	W. Virginia	Home Instruction	CSA Violation	
1982	<i>State v. White</i>	Wisconsin	Home Instruction	CSA Violation	

1982	<i>People v. Berger</i>	Illinois	Public School	CSA Violation	
1982	<i>State v. Bowman</i>	Oregon	Home Instruction	CSA Violation	
1982	<i>Livingston Parish School Board v. Lofton</i>	Louisiana	Home Instruction	CSA Violation	
1982	<i>Grigg v. Com.</i>	Virginia	Home Instruction	CSA Violation	
1983	<i>Com. v. Hall</i>	Pennsylvania	Public School	CSA Violation	
1985	<i>State v. Newstrom</i>	Minnesota	Home Instruction	CSA Violation	X
1986	<i>In Interest of C.S</i>	N. Dakota	Home Instruction	Unruly Children	X
1986	<i>Howell v. State</i>	Texas	Home Instruction	CSA Violation	
1987	<i>In re Jeannette L.</i>	Maryland	Public School	CSA Violation	
1987	<i>State v. Trucke</i>	Iowa	Home Instruction	CSA Violation	X
1988	<i>State v. Lund</i>	N. Dakota	Public School	CSA Violation	X
1989	<i>State v. Wood</i>	Ohio	Home Instruction	CSA Violation / Contributing to Delinquency of Minor	
1991	<i>People v. DeJonge</i>	Michigan	Home Instruction	CSA Violation	
1992	<i>Maas v. State</i>	Alabama	Home Instruction	CHINS	X
1992	<i>State v. Skeel</i>	Iowa	Private Instructors	CSA Violation	
1993	<i>People v. Bennett</i>	Michigan	Home Instruction	CSA Violation	X
1993	<i>State v. White</i>	Wisconsin	Public School	CSA Violation	
1994	<i>State ex rel. Estes v. Egnor</i>	W. Virginia	Public School	CSA Violation	X
1998	<i>Hamilton v. State</i>	Indiana	Public School	Neglect / CSA Violation	X
1999	<i>Brown v. District of Columbia</i>	District of Columbia	Public School	CSA Violation	X
1999	<i>Clyburn v. District of Columbia</i>	District of Columbia	Public School	CSA Violation	X
2000	<i>Eukers v. State</i>	Indiana	Public School	CSA Violation	

2002	<i>In re C.C.J.</i>	Pennsylvania	Public School	Child Delinquency	
2003	<i>Kenny A. ex rel. Winn v. Perdue</i>	Georgia	Not Applicable	Not Applicable	X
2003	<i>State v. Hensley</i>	Ohio	Public School	CSA Violation	X
2005	<i>State v. Self</i>	Missouri	Public School	CSA Violation	X
2005	<i>State v. McGee</i>	Wisconsin	Public School	CSA Violation	X
2009	<i>State v. Frady</i>	N. Carolina	Public School	CSA Violation	
2009	<i>In re Gloria H</i>	Maryland	Public School	CSA Violation	X
2011	<i>State v. Jones</i>	N. Carolina	Public School	CSA Violation	
2011	<i>Rivera v. Lebanon School District</i>	Pennsylvania	Public School	CSA Violation	X
2013	<i>Pitts v. State</i>	Georgia	Public School	CSA Violation	
2014	<i>In re Interest of Laticia S</i>	Nebraska	Public School	Neglect	
2014	<i>Blake v. Com.</i>	Virginia	Public School	CSA Violation	X