

FILED  
Court of Appeals  
Division II  
State of Washington  
7/9/2018 1:42 PM

NO. 50637-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

---

CHIMACUM SCHOOL DISTRICT,

Respondent,

vs.

D.J.P.,

Appellant.

---

**BRIEF OF RESPONDENT  
CHIMACUM SCHOOL DISTRICT**

---

MICHAEL E. HAAS  
Jefferson County Prosecuting Attorney  
Attorney for Respondent  
P.O. Box 1220  
Port Townsend, WA 98368  
(360) 385-9180

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

I. COUNTERSTATEMENT OF THE ISSUES ..... 1

II. STATEMENT OF THE CASE ..... 1

III. ARGUMENT ..... 3

A. The underlying case has been dismissed thus this case is  
moot and need not be resolved by the Court of Appeals.....3

1. No alleged failure to set meeting at convenient  
time .....4

2. No requirement to conduct and act on WARNS  
assessment .....4

B. The Chimacum School District had a limited obligation to  
take data-based actions to address D.J.P.’s absences .....6

C. The Trial Court did not err by suppressing discussion of the  
WARNS assessment .....6

IV. CONCLUSION.....7

**TABLE OF AUTHORITIES**

**Washington State Cases**

*In re Rebecca K.*, 101 Wn. App. 309, 2 P.3d 501 (2000)..... 3

**Statutes**

RCW 28A.225.020 ..... 2, 4 – 6

RCW 28A.225.025 ..... 3, 5

RCW 28A.225.026 ..... 5

RCW 28A.225.0261 ..... 5

RCW 28A.225.027 ..... 5

RCW 28A.225.030 ..... 2, 4, 5

RCW 28A.225.035 ..... 5

RCW 36.27.020 ..... 1

**Court Rules**

ER 401 ..... 6

ER 402 ..... 7

**I. COUNTERSTATEMENT OF THE ISSUES**

- A. The underlying case has been dismissed thus this case is moot and need not be resolved by the Court of Appeals.**
- B. The Chimacum School District had a limited obligation to take data-based actions to address D.J.P.'s absences.**
- C. The Trial Court did not err by suppressing discussion of the WARNS assessment.**

**II. STATEMENT OF THE CASE**

The Chimacum School District<sup>1</sup> (hereinafter “CSD”) filed a truancy petition in this matter on December 13, 2016. CP 1 – 11. The Trial Court held a contested fact finding hearing on April 13, 2017, and determined D.J.P. was a truant. RP 3, CP 4. About two and a half months later, on June 27, 2017, as the school year ended, the Trial Court dismissed the underlying truancy. See Attachment A which is incorporated by reference and is subject to a concomitantly filed Motion to Supplement the Record.

At the April 13, 2017 Fact Finding Hearing CSD Middle School Principal Carthum testified he was familiar with D.J.P.'s attendance at CSD and his

---

<sup>1</sup> Throughout Appellant's brief, Appellant implies the “State” has a role in this litigation. For the sake of clarity, with no disrespect intended, the State of Washington is not a party to this action per se. The Petitioner in this matter is the Chimacum School District represented by the civil section of the Jefferson County Prosecutor's Office.

The prosecuting attorney shall, pursuant to RCW 36.27.020(3):

Appear for and represent the state, county, and *all school districts* subject to the supervisory control and direction of the attorney general in all criminal and civil proceedings in which the state or the county or any school district in the county may be a party ... [italics added].

attendance records. *Id.* at 8. Principal Carthum noticed D.J.P. had attendance problems as early as the Fall of 2016. *Id.* In an attempt to remedy D.J.P.’s truancy, the CSD sent a letter to D.J.P.’s mother advising her of the problem on September 29, 2016. CP 3.

The attendance problems were such that Mr. Carthum met with D.J.P. on October 10, 2016. RP 8 – 9. *Id.* The CSD sent another letter to D.J.P.’s mother on October 20, 2016, reminding her of the CSD’s concerns about D.J.P.’s unexcused absences. CP 4. Within that letter the CSD requested D.J.P.’s mother call to schedule a conference within 10 days of the date of the letter. *Id.*

At one of the meetings in October 2016, Mr. Carthum warned D.J.P. that if he “hit 10 unexcused absences in a school year he could end up in court. “ RP at 9. Apparently not hearing from D.J.P.’s mother, the CSD took the initiative and scheduled a conference with D.J.P.’s mother for October 31, 2016. *Id.* Unfortunately, she did not make it to the meeting. *Id.* Although the record does not indicate with specificity when he spoke with her, Mr. Carthum testified he also spoke with D.J.P.’s mother “numerous times” “[p]robably between October [2016] and January [2017], when the Petition was filed.” *Id.*<sup>2</sup>

Ultimately the CSD determined it needed to file the underlying petition to have D.J.P. declared a truant pursuant to RCW 28A.225.020/030 after D.J.P. accrued ten unexcused absences by early December 2016. CP 1 – 11. By the time

---

<sup>2</sup> As indicated above, the Petition was actually filed on December 13, 2016.

of the Fact Finding Hearing on April 13, 2017, 13 year old D.J.P. had acquired 26 unexcused absences from school. CP 1, RP 14.

Counsel for D.J.P. correctly notes a WARNS<sup>3</sup> evaluation did not occur until April 13, 2017. RP 21. The CSD does not dispute D.J.P.’s description of his family living situation/homelessness.

### III. ARGUMENT

#### A. **The underlying case has been dismissed thus this case is moot and need not be resolved by the Court of Appeals**

As a general rule, appellate courts will not decide moot questions or abstract propositions. But “a moot case may be decided if it involves a matter of continuing and substantial public interest.” “In determining whether an issue involves a sufficient public interest, we consider the public or private nature of the question, the need for future guidance provided by an authoritative determination, and the likelihood of recurrence.”

*In re Rebecca K.*, 101 Wn. App. 309, 313, 2 P.3d 501 (2000)[internal citations omitted].

The Trial Court’s dismissal of this matter on June 27, 2017, renders the appellate phase of this case moot. There is nothing left for this Court to do and this Court should dismiss the appeal.

This Court may, of course, decide this case if it involves a continuing and substantial public interest. D.J.P. raises two issues on appeal: 1) whether the CSD met its statutory obligations to take data-based actions to address D.J.P.’s

---

<sup>3</sup> Washington assessment of the risks and needs of students (WARNS). See RCW 28A.225.025.

absences (including a failure to schedule a conference with his mother at a reasonably convenient time; and 2) Whether the Trial Court erred in its decision to suppress discussion of the WARNS assessment?

In the instant case, D.J.P. clearly had the requisite number of unexcused absences to justify the filing of a truancy petition as contemplated by RCW 28A.225.020/030. And by the time of the contested fact finding hearing D.J.P. had more than 2 ½ times the number of unexcused absences required for a truancy finding.

1. No Failure to Set Meeting at Convenient Time

With respect to the first sub-issue of Issue One for D.J.P., the CSD did make efforts to set a meeting with D.J.P.'s mother at a convenient time. The October 20, 2016 letter requested she call the CSD to set up an appointment. Apparently that never occurred. When she failed to act, the CSD took the initiative and set an appointment for D.J.P.'s mother that she never appeared for. The CSD does not have the power to force parents to appear for meetings. With respect to this issue, the CSD complied with the letter and the spirit of RCW 28A.225.020(1)(b) requiring school districts to set up school district/parent meetings at times convenient to the parties.

2. No requirement to Conduct and Act on WARNS assessment

The CSD was not required to conduct or act on a WARNS assessment. In April of 2017, the WARNS assessment requirement was a new statutory feature.

See Laws of 2016: 2<sup>nd</sup> Sub. HB 2449, Ch. 205, Sections 1, 4(1)(c), and 6. The testimony of Mr. Munnich makes it clear that there was a belief that WARNS was to be used for Community Truancy Boards but not necessarily for court. RP 22. Additionally, he testified that Truancy Boards would not be in place until the following fall e.g. Fall 2017. *Id.* This is consistent with the newly amended/enacted truancy statute:

NEW SECTION. Sec. 6. A new section is added to chapter 28A.225 RCW to read as follows:

- (1) By the beginning of the 2017-18 school year, juvenile courts must establish, through a memorandum of understanding with each school district within their respective counties, a coordinated and collaborative approach to address truancy through the establishment of a community truancy board ...

Further, with respect to the truancy statutes in general, the Court will notice substantial amendments occurring in 2016 and 2017, which address Community Truancy Boards. See RCW 28A.225.025, 026, 0261, 027, 030, and 035. Thus it is a stretch to suggest that a school district was required to comply with WARNS assessments in the Spring of 2017.

Now that Community Truancy Boards are required in no uncertain terms, and given the mootness of this case in light of its dismissal, it is unlikely further court intervention is required.

///

///

///

**B. The Chimacum School District had a limited obligation to take data-based actions to address D.J.P.'s absences.**

For the reasons stated above, it is debatable whether a WARNS assessment was required in this case at that time. That said, the CSD had, under the existing statute, an obligation to take other steps to reduce truancy to include:

[A]djusting the child's school program or school or course assignment, providing more individualized or remedial instruction, providing appropriate vocational courses or work experience, referring the child to a community truancy board, (if available,) requiring the child to attend an alternative school or program, or assisting the parent or child to obtain supplementary services that might eliminate or ameliorate the cause or causes for the absence from school.

RCW 28A.225.020

Unfortunately the record is silent as to which, if any, of the above steps were taken. If this case were still active it might make sense for this Court to remand the matter to the Superior Court for additional findings but in light of the dismissal of the case, there is really no remedy available to Appellant.

**C. The Trial Court did not err by suppressing discussion of the WARNS assessment.**

Counsel for D.J.P. asked Kurt Munnich, a juvenile probation officer, “what sort of issues were causing school engagement to be a problem ... [a]ccording to your evaluation?” RP 23. The CSD objected on the grounds of relevancy. *Id.* at 23 – 24. The Trial Court sustained the objection.

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” ER 401.

“All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible.” ER 402

Here evidence related to the WARNS assessment was not relevant. As Judge Harper stated: “I’m going to sustain the objection with respect to referencing the Warnes [sic] evaluation. ... Questions that are relevant to the time period we’re discussing ..., actual efforts that were made, are certainly germane.” RP 24.

Appellant correctly notes in his brief that evidentiary determinations are reviewed for abuse of discretion. Appellant’s Brief at p. 23. Here Judge Harper determined that the parties needed to focus on the evidence as it existed at the time of the filing of the Petition. This meant excluding information related to the WARNS assessment compiled earlier in the day. The CSD respectfully suggests it would error to do otherwise.

#### **IV. CONCLUSION**

This case is moot as the underlying case was dismissed by the Trial Court and this Court can offer no further relief. Further, even if there was confusion as to what the CSD could or could not do in terms of the WARNS assessment, the law regarding truancy actions has changed substantially. It is now abundantly

clear that a WARNS assessment, among other things, must be completed for the benefit of a Community Truancy Board. Further guidance is not required by this Court on this topic.

For the foregoing reasons, the Chimacum School District respectfully requests the Trial Court's decisions and orders in this matter, to include the Order of Dismissal, be affirmed.

Respectfully submitted this 9<sup>th</sup> day of July, 2018.



---

MICHAEL E. HAAS, WSBA #17663  
Jefferson County Prosecuting Attorney  
Attorney for Respondent

**PROOF OF SERVICE**

I, Michael Haas, declare that on this date:

I filed the Chimacum School District's BRIEF OF RESPONDENT electronically with the Court of Appeals, Division II, through the Court's online filing system. I delivered an electronic version of the brief, using the Court's filing portal, to:

Elizabeth Rania Rampersad, WSBA #47224  
rampersadr@nwattorney.net

I declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct. Dated this 9<sup>th</sup> day of July, 2018, and signed at Port Townsend, Washington



Michael Haas

ll

FILED

2017 JUN 27 PM 4: 05

IN SUPERIOR COURT  
JEFFERSON COUNTY CLERK

<b>SUPERIOR COURT OF WASHINGTON COUNTY OF JEFFERSON</b>	
CHIMACUM SCHOOL DISTRICT	Petitioner
vs.	
PADEN, DAWSON JO	Student
Student's D.O.B. 11/20/2003	

NO: 16-7-00039-5

**ORDER DISMISSING TRUANCY**

( Chimacum Middle School)

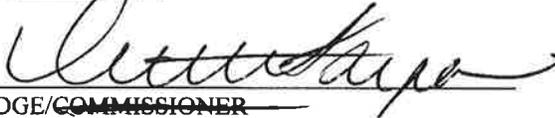
Ref # 16-R-038918

On this 27 day of June, 2017, this cause came regularly on for hearing by the Court upon the petitioning School District's motion to dismiss the truancy based upon the fact that the respondent

SCHOOL YEAR HAS ENDED

This petition is no longer necessary. The Court being fully advised in the premises, it is by the Court **ORDERED**, that said motion be and the same is hereby GRANTED. This truancy matter is dismissed.

Done in open court this 27 day of June, 2017.

  
\_\_\_\_\_  
JUDGE/COMMISSIONER

Presented by  
  
\_\_\_\_\_  
KURT MUNNICH  
TRUANCY COORDINATOR

ORDER DISMISSING TRUANCY

**ATTACHMENT** A

**JEFFERSON COUNTY PROSECUTING ATTORNEY**

**July 09, 2018 - 1:42 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50637-8  
**Appellate Court Case Title:** Chimacum School District, Respondent v Dawson Paden, Appellant  
**Superior Court Case Number:** 16-7-00039-5

**The following documents have been uploaded:**

- 506378\_Briefs\_20180709134044D2582383\_3377.pdf  
This File Contains:  
Briefs - Respondents Reply  
*The Original File Name was Brief of Respondent.pdf*

**A copy of the uploaded files will be sent to:**

- rampersadr@nwattorney.net
- swiftm@nwattorney.net

**Comments:**

---

Sender Name: Michael Haas - Email: mhaas@co.jefferson.wa.us  
Address:  
1820 JEFFERSON ST  
PO BOX 1220  
PORT TOWNSEND, WA, 98368-6951  
Phone: 360-385-9180

**Note: The Filing Id is 20180709134044D2582383**