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NO. 51327-7-II

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

CHIMACUM SCHOOL DISTRICT,

Respondent,

vs.

R.L.P.,

Appellant.

**BRIEF OF RESPONDENT
CHIMACUM SCHOOL DISTRICT**

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BRIEF OF RESPONDENT

In re Truancy of R.L.P., No. 51327-7-II

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 established R.L.P. had the requisite number of unexcused absences to be adjudicated a truant.**
- C. The Chimacum School District took the steps necessary to reduce the likelihood of continued truant behavior by R.L.P.**

II. STATEMENT OF THE CASE

The Chimacum School District (hereinafter “CSD”) filed a truancy petition in this matter on March 10, 2017. CP 1 – 6. Appellate Counsel for RLP correctly notes that the underlying petition only references nine unexcused absences within the 2016/2017 school year. *Id.*

The Trial Court held a contested fact finding hearing on April 27, 2017. RP 3. At that hearing, CSD Principal Barga testified he was familiar with R.L.P.’s attendance at CSD and his attendance records. *Id.* at 4. Principal Barga noticed R.L.P. had attendance problems as early as the Fall of 2016. *Id.* at 4 -5. The attendance problems continued in to November of 2016. *Id.* at 5. As a result, the CSD had a conference with R.L.P.’s mother in November 2016, and also began corresponding with her. *Id.* at 5 – 6.

At the conference the CSD and R.L.P.’s mother discussed that R.L.P. did not like to get up to come to school, that the CSD would try different things to encourage R.L.P. to attend school, and R.L.P.’s mother would try to encourage R.L.P. to attend school while they were at home. *Id.* at 6.

Principal Barga testified that R.L.P. would show up to school tired. *Id.* As a mechanism to maintain his interest in school the CSD would let R.L.P. come to the office and rest during recess. *Id.* at 6 – 7. It helped some but Principal Barga questioned its long-term efficacy. *Id.* at 7. Principal Barga also testified there was some conversation with R.L.P.’s mother about R.L.P. coming to school with D.[P] – an older brother. *Id.* at 8.

Unfortunately nothing seemed to work and the CSD filed the underlying petition to have R.L.P. declared a truant. CP 1 – 6. Despite the information contained within the underlying petition to have R.L.P. declared a truant, Principal Barga testified R.L.P. had 22 unexcused absences at the time the CSD filed the petition. RP 10. By the time of the contested fact finding, the number of unexcused absences climbed to 28, with a total of 45 absences (or approximately 1/3 of the school year). *Id.*

On April 27, 2017, the Trial Court entered findings and an order determining R.L.P. to be truant and that the CSD had taken necessary steps to ameliorate the cause of R.L.P.’s absences. CP 7 – 8. Two months later, on June 27, 2017, as the school year ended, the Trial Court dismissed the underlying truancy. CP 14.

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. R.L.P. raises two issues on appeal: 1) whether the CSD proved the requisite number of absences; and 2) whether the CSD took sufficient steps to reduce the likelihood R.L.P. would continue to incur future unexcused absences.

As stated in the Fact section of this Brief, R.L.P. had nearly three times the number of unexcused absences permitted in a school year by the time Principal Barga testified. See RCW 28A.225.030 (seven unexcused absences in a month or ten in a school year).¹ The statute is clear, and it is clear the CSD complied with

¹ RCW 28A.225.030(1) If a child under the age of seventeen is required to attend school under RCW 28A.225.010 and if the actions taken by a school district under RCW 28A.225.020 are not successful in substantially reducing an enrolled student's absences from public school, not later than the seventh unexcused absence by a child within any month during the current school year or not later than the tenth unexcused absence during the current school year the school district shall file a petition and supporting affidavit for a civil action with the juvenile court alleging a violation of RCW 28A.225.010: (a) By the parent; (b) by the child; or (c) by the parent and the child. ...

this portion of the truancy statute. As such, there is no issue meriting further scrutiny.

With respect to the second issue raised by R.L.P.: Whether the CSD took the necessary steps to reduce the likelihood R.L.P. would continue to incur future unexcused absences, the CSD posits that it complied with the statute.

RCW 28A.225.020 provides in relevant part as follows:

(1) If a child required to attend school under RCW 28A.225.010 fails to attend school without valid justification, the public school in which the child is enrolled shall:

(a) Inform the child's parent by a notice in writing or by telephone whenever the child has failed to attend school after one unexcused absence within any month during the current school year. School officials shall inform the parent of the potential consequences of additional unexcused absences. ...;

(b) Schedule a conference or conferences with the parent and child at a time reasonably convenient for all persons included for the purpose of analyzing the causes of the child's absences after three unexcused absences within any month during the current school year. If a regularly scheduled parent-teacher conference day is to take place within thirty days of the third unexcused absence, then the school district may schedule this conference on that day. If the child's parent does not attend the scheduled conference, the conference may be conducted with the student and school official. However the parent shall be notified of the steps to be taken to eliminate or reduce the child's absence; and

(c) At some point after the second and before the fifth unexcused absence, take data-informed steps to eliminate or reduce the child's absences.

(i) In middle school and high school, these steps must include application of the Washington assessment of the risks and needs of students (WARNS) or other assessment by a school district's designee under RCW 28A.225.026.

(ii) For any child with an existing individualized education plan or 504 plan, these steps must include the convening of the child's individualized

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education plan or 504 plan team, including a behavior specialist or mental health specialist where appropriate, to consider the reasons for the absences. If necessary, and if consent from the parent is given, a functional behavior assessment to explore the function of the absence behavior shall be conducted and a detailed behavior plan completed. Time should be allowed for the behavior plan to be initiated and data tracked to determine progress.

(iii) With respect to any child, without an existing individualized education plan or 504 plan, reasonably believed to have a mental or physical disability or impairment, these steps must include informing the child's parent of the right to obtain an appropriate evaluation at no cost to the parent to determine whether the child has a disability or impairment and needs accommodations, related services, or special education services. This includes children with suspected emotional or behavioral disabilities as defined in WAC 392-172A-01035. If the school obtains consent to conduct an evaluation, time should be allowed for the evaluation to be completed, and if the child is found to be eligible for special education services, accommodations, or related services, a plan developed to address the child's needs.

(iv) These steps must include, where appropriate, providing an available approved best practice or research-based intervention, or both, consistent with the WARNS profile or other assessment, if an assessment was applied, adjusting 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, 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.

As pointed out in his brief, R.L.P. was ten at the time the CSD filed the underlying petition. R.L.P.'s brief, p. 1. As such, the WARNS provision above does not apply. It is unknown whether R.L.P. had an IEP or 504 plan. As for what "data-informed" steps look like in a pre-truancy setting - that is questionable, and also not likely available.

Regardless of the language of RCW 28A.225.020, RCW 28A.225.035

provides in pertinent part:

(1) A petition for a civil action under RCW 28A.225.030 or 28A.225.015 shall consist of a written notification to the court alleging that:

(a) The child has unexcused absences as described in RCW 28A.225.030(1) during the current school year;

(b) Actions taken by the school district have not been successful in substantially reducing the child's absences from school; and

(c) Court intervention and supervision are necessary to assist the school district or parent to reduce the child's absences from school.

The CSD filed an appropriate petition. CP 1 – 6. R.L.P. had 28 unexcused absences at the time Principal Barga testified as stated previously, far more than the ten unexcused absences in one school year for a truancy petition to be viable. Finally, with 28 unexcused absences and a total of 45 absences overall, it was no doubt clear to the Trial Court that court intervention was necessary. One can almost hear the exasperation in the Trial Court judge's voice: he's not going to school, he needs to go to school and the Court's going to do something about it, or to the extent the Court can do something about it it's going to do something about it and not just throw this out. RP 27.

The CSD established it took necessary steps to prevent further truant action by R.L.P. but the case also demonstrated the C.S.D. needed the assistance of the courts. Based on that information there is no need for additional review of this case as any public interest is nominal at best. Furthermore, with the increased

usage of Community Truancy Boards, per RCW 28A.225.035(4) it is unlikely this type of case would return to the fore.

B. The Chimacum School District established R.L.P. had the requisite number of unexcused absences to be adjudicated a truant.

As stated previously, RCW 28A.225.030 requires a truancy petition filing where the child in question has ten or more unexcused absences in a year. R.L.P. had 28 unexcused absences from school by the time Principal Barga took the witness stand in April of 2017. The Statutory element related to the number of unexcused absences in a month or school year is grossly exceeded.

C. The Chimacum School District took the steps necessary to reduce the likelihood of continued truant behavior by R.L.P.

The CSD wrote to R.L.P.'s mother in an attempt to reduce R.L.P.'s truant behavior, met or conferred with her as required by RCW 28A.225.020, and even tried to entice R.L.P. to attend school by permitting to go to the office at recess to rest. All to no avail.

IV. CONCLUSION

A. This case is moot and further action is not required by this Court other than to affirm the Trial Court's decisions in this matter.

B. The Chimacum School District very clearly established R.L.P. had the requisite number of unexcused absences to be adjudicated a truant.

C. The Chimacum School District wrote to R.L.P.'s mother to try to

reduce R.L.P.'s truant behavior, conferred with R.L.P.'s mother to try to curb the truant behavior, and even tried to come up with a work-around by letting R.L.P. rest during recess so R.L.P. would be more motivated to attend school.

In desperation the Chimacum School District, faced with a ten year old child with 28 unexcused absences and a total of 45 absences (or approximately one third of the school year), sought assistance from the Jefferson County Superior Court. That Court came to the CSD's rescue – and more importantly, to R.L.P.'s rescue.

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

Respectfully submitted this 23rd day of April, 2018.



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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:

Tiffinie B. Ma, WSBA #51420
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I declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct. Dated this 23rd day of April, 2018, and signed at Port Townsend, Washington.



Michael Haas

JEFFERSON COUNTY PROSECUTING ATTORNEY

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Transmittal Information

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