No. 95973-1

Court of Appeals No. 77032-2-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

EVERETT SCHOOL DISTRICT,

Respondent,

v.

A. L.,
(A minor child)

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SNOHOMISH COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Pursuant to RAP 13.4, Petitioner A.L. asks this Court to accept review of the opinion of the Court of Appeals in *Everett School District v. A.J.L.*, 77032-2-I.

B. OPINION BELOW

The Everett School District filed a petition asking the court to find A.L. truant and asking the court to assume jurisdiction of A.L. Although A.L. had previously appeared in the matter and he appeared by counsel at the hearing, the court entered a truancy order by default due to A.L.'s personal absence at the hearing. Despite counsel's objections and statutory and constitutional requirements, the court entered an order insisting no other option existed if the child was not present.

A.L. appealed arguing the trial court procedure violates due process, because he was not afforded a fact-finding hearing.. The Court of Appeals concluded that because a Superior Court judge independently review the evidence on a motion revise, the absence of an actual fact-finding hearing did not deprive A.L. of due process.

C. ISSUE PRESENTED

Beyond notice and a meaningful opportunity to be heard, the Due Process Clause of the Fourteenth Amendment requires additional procedural protections prior to deprivation of constitutionally protected interests where on balance the interest at stake and risk of erroneous deprivation outweigh the government's interest in affording a less protective proceeding. Here, the default order and procedure used by the trial court over defense counsel's objection and request for an evidentiary hearing, subjects A.L. to future confinement and did so based upon a legally and factually inadequate petition and did so based upon rank hearsay and unsupported allegations. Does the risk of the erroneous deprivation of A.L.'s liberty outweigh the government's interest in a summary proceeding such that due process requires an evidentiary hearing?

D. SUMMARY OF CASE

The Everett School District filed a truancy petition involving A.L. a 16 year-old student with an Individual Education Plan (IEP) at a district high school. CP 116. The district alleged A.L. had missed a number of days of school. CP 117. The district's petition alleged a number of unidentified district employees took steps taken by. CP 116-19. The

district, represented by a nonlawyer, attached a number of documents to the petition. CP 120-42. Those documents supported some, but not all, the allegations contained in the petition.

While A.L. did not appear at the fact-finding hearing, he did appear by counsel. Despite counsel's presence, and over his objections, a juvenile court commissioner entered a truancy order by default. CP 85.

A.L. filed a motion to revise the commissioner's order. CP 35-84. The court denied the motion. 5/17/17 RP 44.

E. ARGUMENT

Entry of a truancy order by default violates RCW 28A.235.035 and deprives children of due process.

At minimum, due process requires a person be afforded notice and opportunity to be heard at a meaningful time and in a meaningful way. *Armstrong v. Manzo,* 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965). Beyond that, "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge,* 424 U.S. 319, 334, 96 S .Ct. 893, 47 L. Ed.2d 18 (1976) (quoting *Morrissey v. Brewer,* 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)). To make the determination of what process is due, a court must balance three factors: (1) "the private interest that will be

affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Matthews*, 424 U.S. at 335.

The trial court's refusal to conduct a required evidentiary hearing and instead entering a truancy order by default, raises a substantial constitutional question warranting review under RAP 13.4.

Counsel objected to the court entering an order based solely on the petition. 4/20/17 RP 20. The court responded "what else would there be if [the] young person chooses not to be here?" *Id.* Counsel explained that even in the child's absence the statute required a fact-finding hearing and the matter could not proceed simply on the declaration of a school official. Counsel continued "there is a massive amount of hearsay within these documents and nobody has laid a foundation for anything." *Id.* The court cut counsel's argument short and concluded that based solely on the petition and attachments "I'm entering the order. We're not further discussing this." *Id.*

The trial court's order provides:

1.2 ☒ The ☒ student ☐ parent(s) are in default.

CP 86.

Nonetheless, the Court of Appeals concludes the trial court did not enter a default order. Opinion at 8. That conclusion is wholly at odds with the record. The trial court's order speaks for itself.

Next, the opinion concludes there was no error in the failure to conduct an evidentiary hearing because the superior court reviewed the record *de novo*. Opinion at 8-9. The fact that the superior court judge reviewed the record on revision does not resolve the failure to conduct a fact-finding hearing in the first instance. The denial of a trial is not remedied by a reviewing court's determination that the evidence against the person is sufficient or even overwhelming.

The relevant statute required the court conduct a hearing on the petition at which the district must establish the allegations in the petition by a preponderance of the evidence. RCW 28A.225.035(4)(12). That never happened.

Beyond the failure to comply with the statute, the denial of an evidentiary hearing violated A.L.'s right to due process.

1. A.L.'s physical liberty was at stake at the initial truancy hearing.

The private interest at stake at an initial hearing on a truancy petition is substantial – the potential for physical confinement. At the time the truancy petition was filed against A.L., RCW 28A.225.090(1)(f) allowed the court to confine him following the finding of truancy. Opinion at 10; *see also*, *Lake Washington School District v. C.L.*, 197 Wn. App. 1023 (75515–3–I, 2016) (unpublished case cited pursuant to GR 14.1(a)).

Here, based upon a default judgment, the court assumed jurisdiction of A.L. until his 18th birthday – December 31, 2019. Until that time, the court has the ability to demand A.L.'s presence at future hearings, to issue warrants for his arrest should he not appear, and to find him in contempt and incarcerate him.

The Court of Appeals reasons, that because A.L. was not actually confined, no liberty interest was at stake. Opinion at 10. That fundamentally misunderstands the requirements of due process.

Additional protections are not triggered by the actual loss of a liberty interest; rather they are triggered by the threatened loss balanced with the risk of an erroneous deprivation and government interests. *Redmond v. Moore*, 151 Wn.2d 664, 670, 91 P.3d 875 (2004). It would

be no protection at all to require actual erroneous loss of liberty as a threshold requirement to the contention that additional protections were necessary.

In *Lake Washington School District v. C.L.*, 197 Wn. App. 1023 (75515–3–I, 2016) (unpublished case cited pursuant to GR 14.1(a)), the court did not demand appointment of counsel because the child was in fact incarcerated, he was not. Instead, counsel was required because the risk of incarceration existed. Too, in *Bellevue Sch. Dist. v. E.S.*, 171 Wn.2d 695, 257 P.3d 570 (2011) the Court did not conclude counsel was unnecessary because the child was not in fact jailed. Instead, the court concluded that under the old statute there was no liberty interest at stake; that is the child could not be confined after the first hearing.

It does not matter if A.L. was actually confined after the initial hearing. The procedural protections are not triggered only after a person has been denied a liberty interest, as in that case they could never then guard against the erroneous deprivation of that interest. Such a backward looking process would be wholly pointless and afford no protection at all.

Because A.L. faced the loss of physical liberty, the most fundamental liberty interest was at stake.

2. The entry of a truancy order by default creates a substantial risk that children will be erroneously denied their physical liberty.

Without an evidentiary hearing the risk of erroneous deprivation is substantial and real. The truancy petition and supporting material in this case was prepared by a nonlawyer. Indeed, RCW 28A.225.035(10) requires a court to permit a nonlawyer to represent the district at the initial hearing. Thus, a nonlawyer is tasked with prosecuting a matter that risks the loss of liberty for the opposing party. No matter how meticulous that person may be, affording that degree of authority to a person not trained in the law carries a substantial risk of error. Indeed, in this case the error is apparent.

The "proof" offered by the school district's nonlawyer representative to support the allegations in the petition consisted solely of documents created by several nontestifying and some unidentified individuals. As defense counsel noted the default procedure prevented the court from assessing the reliability of those claims. 4/20/17 RP 20.

For example, the documents attached to the petition include attendance logs without any explanation for whom or how those logs are compiled and kept. CP 120-21. The district provided no explanation of how attendance information is gathered at Everett High School. The

district provided no explanation for whether the logs are contemporaneously created and whether they are dependent upon reports from unidentified classroom teachers.

In addition, there are numerous allegations in the petition that are simply unsupported by the documentary evidence. For example the petition asserts an attendance contract was entered by the district and A.L. and his mother. CP 117 While there is a document entitled "Attendance Contract" attached to the petition, CP 122, that document does not bear any person's signature or anything indicating it was actually agreed to by the parties nor does it bear a date indicating when such an agreement was entered.

The petition asserts the district conducted a Washington Assessment of the Risks and Needs of Students (WARNS) assessment. CP 117. But the district provided no evidence beyond that bare assertion to support its claim. The petition does not attach the assessment or a report generated from such an assessment, nor identify which staffer(s) performed the assessment, nor even provide the date such an assessment was performed. Thus, counsel had no means to question the methodology or conclusions of that unidentified person. Moreover, the court had no ability to gauge the accuracy of the

district's claim. Instead, the court could only accept the claim on its face.

The petition also alleges the district arranged to provide morning calls to A.L. in an effort to alleviate absences. CP 118. However, the district again provides no evidence to support that claim. There is no evidence of who made those calls or when they began. An evidentiary hearing would have permitted counsel to test the district's bald assertions.

At a revision hearing challenging the procedure by which the truancy order was entered, the school district's representative responded that this is how such matters always proceeded and that the quantum of "evidence" provided in this case mirrors that in prior cases. 5/17/17 RP 39. Rather than quiet fears regarding the constitutional adequacy of the process, that acknowledgment underscores why *C.L.* properly demands appointment of counsel. If legally insufficient petitions and wholly inadequate proof have sufficed to permit truancy findings in the past, the risk of erroneous deprivation of physical liberty is even greater than that illustrated in this case. The default procedure does not provide the necessary procedural protections and indeed impedes constitutionally sufficient process.

The risk of erroneous deprivation of A.L.'s liberty is real. An evidentiary hearing where counsel can address these shortcomings through live testimony adds substantial value to the proceeding and guards against the erroneous deprivation of A.L.'s liberty. By refusing to conduct a hearing, and instead entering a default judgment, the court renders meaningless the right to counsel.

The Court of Appeals concludes no due process violation occurred because A.L. had the opportunity to present evidence. Opinion at 11. Due process requires more than the opportunity challenge, rebut, or disprove the district's claims, it requires the district prove the factual allegations in the first instance.

The risk of erroneous deprivation of A.L.'s liberty is real. An evidentiary hearing where counsel can address these shortcomings through live testimony adds substantial value to the proceeding and guards against the erroneous deprivation of A.L.'s liberty.

3. No government interest outweighs the risk of erroneous deprivation of A.L.'s liberty such as to justify use of default proceeding.

The legislative recognition of the importance of the State's interest in ensuring regular school attendance is evident in the compulsory school attendance laws. *See* RCW 28A.225.010. However, a process which

increases the risk of erroneous truancy orders does not further that interest. Indeed, such a process misallocates scarce resources, diverting them from cases where court intervention is proper to those where it is not. Moreover, courts have recognized the doubtfulness of the proposition that the truancy process advances a child's educational outcomes. *Bellevue Sch. Dist. v. E.S.*, 148 Wn. App. 205, 216, n.48, 199 P.3d 1010 (2009), *reversed*, 171 Wn.2d 695 (2011). The status quo does not further the State's interest and in fact frustrates it.

The cost of conducting fact-finding hearings may well be more than simply entering a default order. However, the statute specifically contemplates an evidentiary hearing. The statute contemplates the juvenile court will determine whether the allegations have been proved by a preponderance of the evidence. RCW 28A.225.035(12). ER 1101, which exempts certain hearings from the rules of evidence, does not include truancy fact-finding hearings among those exempt proceedings. Therefore, the rules of evidence apply to truancy fact-finding hearings. The legislature has already indicated its desire for a more robust hearing than occurred here. Indeed, providing a meaningful hearing in a case such as this where the petition is factually unsupported saves

substantial money by ensuring those petitions are dismissed early in the process without further expenditure and diversion of resources.

No interest outweighs the risk of erroneous deprivation of A.L.'s liberty.

On balance the risk of erroneous deprivation of children's liberty prevents entry of truancy orders by default. Instead due process requires an evidentiary hearing.

F. CONCLUSION

For the reasons set forth above, this OCurt should grant review pursuant to RAP 13.4.

Respectfully submitted this 12th day of June, 2018.

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

In re Matter of Truancy of: A.J.L., DOB: 12/31/01 EVERETT SCHOOL DISTRICT, Respondent, v. A.J.L. DOB: 12/31/01, Appellant.	No. 77032-2-I UNPUBLISHED OPINION FILED: May 14, 2018

VERELLEN, J. — A.J.L. appeals a superior court truancy order, contending the superior court did not enter adequate findings to support the court's assertion of jurisdiction over the truancy. The school district petition, supported by an assistant principal's declaration under penalty of perjury, alleged that A.J.L. had 28 unexcused absences during the 2016-17 school year, that specific actions taken by the district had not been successful, and that court intervention and supervision were necessary. A superior court judge, on a motion to revise a commissioner's ruling, found by a preponderance of the evidence that the school district had taken appropriate steps to address the unexcused absences and that, based on the

result of the interventions that were put in place, court supervision is still necessary. We conclude those findings are adequate to assert jurisdiction consistent with RCW 28A.225.035.

A.J.L. also contends he was denied due process by virtue of his being at risk of detention under the statute in effect at his initial truancy hearing. He focuses on the lack of an evidentiary hearing. But A.J.L. and his parents received adequate notice of the hearing, his attorney was present at all hearings, he did not subpoena or call any witnesses to testify, and at the hearing on the motion to revise, the attorney was allowed to make an offer of proof of any objections or evidence he would have presented at the hearing before the court commissioner. A.J.L. does not establish that the procedures followed by the superior court presented a risk of erroneous deprivation of a liberty interest. And the district's legitimate interests outweigh the potential burdens of a mandatory evidentiary hearing for all initial truancy hearings. A.J.L. does not establish any due process violation.

Therefore, we affirm.

FACTS

On February 1, 2017, the Everett School District filed a petition regarding truancy in Snohomish County Superior Court. The petition asked the court to assume jurisdiction over A.J.L. and issue an order compelling school attendance and other relief under RCW 28A.225.090.

The district filed the petition based on A.J.L.'s numerous absences within the school year. The petition listed 28 unexcused absences and set forth actions the district took to eliminate or reduce the absences, including contacting A.J.L.'s mother multiple times, holding a conference with A.J.L., entering into a behavior contract with A.J.L., conducting the Washington Assessment of the Risks and Needs of Students (WARNS), providing interventions consistent with A.J.L.'s WARNS profile, and referring A.J.L. to a community truancy board. The petition alleged that court intervention was necessary to help the district reduce the unexcused absences. The assistant principal, Doug Plucker, signed the petition under penalty of perjury.

On February 3, 2017, A.J.L.'s mother was served with a notice and summons to juvenile for truancy hearing. On February 7, the Snohomish County Public Defender Association filed a notice of limited appearance for A.J.L. and a request for discovery to the district. On February 27, Plucker delivered the petition and the notice and summons to A.J.L. On that same day, A.J.L., his mother, and Plucker signed a behavior contract to "clarify the school's attendance and behavior expectations, and to help establish systems that will help the student be successful at Everett High School."[1] A.J.L. was also referred to the local truancy board.

[1] Clerk's Papers (CP) at 107.

At the initial fact finding hearing on March 9, A.J.L., his mother, and his attorney all appeared and agreed to continue the hearing to April 20. The parties also agreed that A.J.L. would continue attending Everett High School while completing the intake at Sequoia High School. The order granting the continuance expressly directed A.J.L. and his parent to appear before the juvenile court on April 20, 2017.

At the April 20 hearing, A.J.L. was represented by his attorney. Neither A.J.L. nor a parent attended the hearing. The district was represented by non-attorney Erin Wilson.[2] The superior court commissioner found by a preponderance of the evidence there were facts sufficient to enter an order to abate truancy and entered findings and an order. The commissioner also checked a box indicating that A.J.L. was in default.

A.J.L.'s attorney moved to revise the commissioner's ruling. On revision, the Snohomish County Superior Court judge allowed A.J.L.'s attorney to make an offer of proof. The attorney acknowledged the absences were unexcused and listed a series of objections. The court denied the motion to revise.

A.J.L. appeals.

ANALYSIS

Generally, we review a truancy order to determine whether substantial evidence supports the superior court's findings of fact and if so, whether those

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[2] RCW 28A.225.035(10) provides the court shall permit a school district representative who is not an attorney to represent the school district.

findings support the superior court's conclusions of law.[3] We review constitutional challenges de novo.[4]

I. Statutory Findings

A court commissioner has "authority, and jurisdiction, concurrent with a juvenile court judge, to hear all cases under RCW 28A.225.030, 28A.225.090, and 28A.225.035 and to enter judgment and make orders with the same power, force, and effect as any judge of the juvenile court"[5] Any court commissioner decision is subject to revision by a superior court judge if a motion or demand is made within 10 days of the entry of the order or judgment by the court commissioner.[6] "On revision, the superior court [judge] reviews both the commissioner's findings of fact and conclusions of law de novo based upon the evidence and issues presented to the commissioner."[7] The judge "may issue his or her own independent factual findings and legal conclusions."[8] "Once the superior court [judge] makes a decision on revision, 'the appeal is from the superior court [judge's] decision, not the commissioner's.'"[9]

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[3] State v. B.J.S., 140 Wn. App. 91, 97, 169 P.3d 34 (2007).

[4] Bellevue Sch. Dist. v. E.S., 171 Wn.2d 695, 702, 257 P.3d 570 (2011).

[5] RCW 28A.225.095.

[6] RCW 28A.225.095; RCW 2.24.050.

[7] State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004).

[8] Marriage of Lyle, 199 Wn. App. 629, 632-33, 398 P.3d 1225 (2017)

[9] Ramer, 151 Wn.2d at 113 (quoting State v. Hoffman, 115 Wn. App. 91, 101, 60 P.3d 1261 (2003)).

Here, the superior court judge denied A.J.L.'s motion for revision. The court's minute entry includes the judge's independent finding "by a preponderance of the evidence that the school district has taken steps as appropriate and based on those efforts, court supervision is still necessary."[10] Therefore, we limit our review to the superior court's order and findings.

A.J.L. argues the truancy order does not include the necessary statutory findings but provides no compelling authority that detailed findings are required for each of the underlying facts supporting the petition.

The petition for a civil truancy action under RCW 28A.225.030 shall consist of 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.[11]

Additionally, the petition "shall set forth facts that support the allegations in this section" and provide information about the relief requested by the district.[12] RCW 28A.225.035(12) provides:

> If the allegations in the petition are established by a preponderance of the evidence, the court shall grant the petition and enter an order

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[10] CP at 33.

[11] RCW 28A.225.035(1).

[12] RCW 28A.225.035(3).

> assuming jurisdiction to intervene for the period of time determined by the court, after considering the facts alleged in the petition and the circumstances of the juvenile, to most likely cause the juvenile to return to and remain in school while the juvenile is subject to this chapter. In no case may the order expire before the end of the school year in which it is entered.

Though RCW 28A.225.035(12) *does* require the court to consider "the facts alleged in the petition and the circumstances of the juvenile," the statute does not expressly require the court to enter findings as to each of the facts underlying the petition.

The petition alleged (1) A.J.L. had 28 unexcused absences, which exceeded the statutory threshold of 10 unexcused absences within the school year, (2) the district's actions had not been successful in substantially reducing A.J.L.'s absences, and (3) court intervention and supervision were necessary to assist the school district to reduce A.J.L.'s absences. The petition was signed under penalty of perjury by an assistant principal for the district.

The minute entry for the revision hearing expressly states, "The court finds by a preponderance of the evidence that the school district has taken steps as appropriate and[,] based on those efforts, court supervision is still necessary."[13]

Additionally, near the conclusion of the revision hearing, A.J.L.'s counsel expressly inquired:

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[13] CP at 27.

> [S]o is the court then finding by a preponderance of the evidence that the school district has established that it has taken steps . . . based on a WARMS assessment and implemented those steps, as appropriate, as the WARMS has recommended, and that based on the efforts that were taken and the interventions that were put in place, court supervision is still necessary?[14]

The court responded, "That is what I am finding at this time."[15]

The minute entry, combined with the court's verbal ruling, adequately memorialized the judge's independent finding that, by a preponderance of the evidence, the school district had taken appropriate steps to address the unexcused absences, and that based on the result of the interventions put in place, court supervision was still necessary. On the existing briefing, those findings are adequate to establish the court had authority to assert jurisdiction over the truancy of A.J.L. consistent with the requirements of RCW 28A.225.035.

II. Due Process Concerns

A.J.L. argues that rather than allowing a default judgment, "basic notions of due process"[16] required an evidentiary hearing so, for example, his attorney could cross-examine witnesses about the allegations in the petition. The provision in RCW 28A.225.035(8)(b) permitting a default judgment is not at issue. Here, the superior court judge conducted de novo review on revision and entered her own

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[14] RP (May 17, 2017) at 41.

[15] Id.

[16] Appellant's Br. at 6.

findings, not based on a default. And, in any event, A.J.L. fails to establish that due process compels a mandatory evidentiary hearing at every initial truancy hearing.

A state may not deprive a person of "life, liberty, or property" without providing them with due process of law.[17] At minimum, due process requires a person be afforded notice and opportunity to be heard at a meaningful time and in a meaningful way.[18] "[D]ue process is flexible and calls for such procedural protections as the particular situation demands."[19] "The fundamental requirement of due process is the right to be heard at a meaningful time and in a meaningful manner."[20]

For purposes of this analysis, we balance the three Matthews v. Eldridge factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[21]

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[17] U.S. CONST. amend. XIV, § 1.

[18] Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965).

[19] Mathews v. Eldridge, 424 U.S. 319, 334, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) (alteration in original) (quoting Morrissey v. Brewer, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)).

[20] In re Dependency of R.L., 123 Wn. App. 215, 222, 98 P.3d 75 (2004) (citing id. at 333).

[21] 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

a. Private Interest

A.J.L. contends his physical liberty was at stake at the initial truancy hearing because the statute in place at the time of the hearing included the potential for physical confinement.

From 2016 to 2017, RCW 28A.225.090(1)(f) allowed the court, following the initial truancy hearing, to order the child to reside at a crisis residential center.[22] A "crisis residential center" is "a secure or semi-secure facility established pursuant to chapter 74.13 RCW."[23] The district does not dispute that placement in a crisis residential center would constitute physical confinement. But A.J.L. was neither placed in a crisis residential center nor at risk of being placed in one without a hearing where he could subpoena or call witnesses. Even if the risk of confinement in this context is viewed as a compelling privacy interest, the two remaining due process factors do not mandate an evidentiary hearing.

b. Risk of Erroneous Deprivation

A.J.L. argues the entry of a truancy order by default creates a substantial risk that children will be erroneously denied their physical liberty. His argument is not compelling.

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[22] LAWS OF 2016, ch. 205, § 9 (effective June 9, 2016); see also LAWS OF 2017 ch. 291, § 5 (effective July 23, 2017) (removed this provision from RCW 28A.225.090(1), although .090(2)(b) continues to include the possible remedy of detention, preferably at a secure crisis residential center close to home rather than a juvenile detention facility at later stages of a truancy matter).

[23] RCW 13.32A.030(7).

Here, A.J.L. received notice and had the opportunity to appear at all hearings. A.J.L. was represented by counsel at each hearing. He had the opportunity to subpoena or call witnesses and present evidence contradicting the statements in the petition. A.J.L. chose not to appear at the April 20 hearing before the commissioner or the May 17 hearing before the judge. He did not subpoena or call any witnesses. He did not offer evidence. A party's decision not to avail themselves of the procedures available to them does not establish a due process violation.[24] Both the commissioner and the judge on revision reviewed the petition and found the necessary elements had been established by a preponderance of the evidence. The judge did not rely on a default. The judge reviewed and discussed with A.J.L.'s attorney the contents of the petition, including the number of unexcused absences,[25] the referral to the truancy board, and other details.

Moreover, A.J.L.'s counsel was given an opportunity to make an offer of proof as to any questions he would have asked or any objections he would have made. He did not identify any specific questions he would have asked or specific evidence he would have offered. His objections focused on the lack of an

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[24] See In re Dependency of A.G., 93 Wn. App. 268, 279, 968 P.2d 424 (1998), as amended on reconsideration, (Feb. 1, 1999) (holding no due process violation in termination of parental rights when parent had notice but chose not to appear); see also Alvin v. Suzuki, 227 F.3d 107, 116 (3d Cir. 2000) ("In order to state a claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are available to him or her, unless those processes are unavailable or patently inadequate.")

[25] The attorney admitted the absences were unexcused.

opportunity to cross-examine witnesses for the district and the procedure used by the commissioner.

Alternatively, A.J.L. argues that the right to counsel is meaningless in the absence of an evidentiary hearing. But the statute does not require live testimony, it requires a "hearing."[26] Our legislature has used the term "evidentiary hearing" when it so intends.[27] Statutes are presumed constitutional, and the "challenger has a heavy burden to overcome that presumption; the challenger must prove that the statute is unconstitutional beyond a reasonable doubt."[28]

Here, A.J.L. does not establish that the procedure used placed A.J.L. at risk of an erroneous deprivation of his private interest.[29] The petition set forth the information required by statute under penalty of perjury. A.J.L.'s attorney could have presented A.J.L.'s version of events at the hearing and subpoenaed witnesses to testify, but he did not.

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[26] RCW 28A.225.035.

[27] See, e.g., RCW 74.34.135 (providing for evidentiary hearings related to protection of vulnerable adults); RCW 88.04.055 (allowing for evidentiary hearings under certain circumstances under the Charter Boat Safety Act).

[28] Sch. Dists.' All. for Adequate Funding of Special Educ. v. State, 170 Wn.2d 599, 605, 244 P.3d 1 (2010).

[29] See City of Bellevue v. Lee, 166 Wn.2d 581, 587, 210 P.3d 1011 (2009).

c. Governmental Interest

Under the third Mathews factor, we consider the government's interest, including the fiscal and administrative burden of providing additional procedural requirements.[30]

Our legislature has recognized the importance of the State's interest in ensuring regular school attendance.[31] Generally, our courts have acknowledged the State's interest in keeping costs and administrative burdens associated with additional procedures low.[32] There is also a governmental interest in preventing additional procedures from becoming unnecessarily costly and confusing.[33]

Here, adding a mandatory evidentiary hearing for every initial truancy hearing would require school district employees to appear and repeat the same information already provided in the truancy petition signed under penalty of perjury. Producing these witnesses for each and every truancy hearing would take school employees away from school even if there is no dispute over unexcused absences or the steps taken by the school district contemplated by the statute. Court resources would also be impacted. Limiting live testimony to those occasions where the student or district subpoenas or calls witnesses is consistent

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[30] Mathews, 424 U.S. at 348.

[31] See generally ch. 28A.225 RCW.

[32] See State v. Derenoff, 182 Wn. App. 458, 467, 332 P.3d 1001 (2014) ("[T]he governmental interest, including costs and administrative burdens of additional procedures [ ] weighs heavily in favor of the State.").

[33] State v. Beaver, 184 Wn. App. 235, 250, 336 P.3d 654 (2014).

with avoiding unnecessary and costly procedures.

We conclude the factors articulated by the United States Supreme Court in Mathews v. Eldridge, together with the express language of chapter 28A.225 RCW, do not support a mandatory evidentiary hearing. A.J.L. has not established a procedural due process violation.

Therefore, we affirm.

WE CONCUR:

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 77032-2-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Valerie Hughes
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☐ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant Date: June 13, 2018
Washington Appellate Project

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