

**Education Alert  
July 2018**

**CRA PROCEEDINGS: WHEN DOES A CHILD “WILLFULLY” FAIL TO ATTEND SCHOOL?**

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Earlier this year, the Massachusetts Supreme Judicial Court clarified when a child failing to attend school qualifies as a “Child Requiring Assistance” under the truancy provisions of Massachusetts General Laws Chapter 119, sections 21 and 39E-39I.

The underlying case, *Millis Public Schools v. M.P., et al.*, Docket No. SJC-12384 (2018), involved a fifteen year old girl, M.P., who continuously failed to attend school due to a combination of physical and mental disabilities, including a severe bladder condition and autism. After M.P. was absent from school for approximately two months, the Millis Public Schools (Millis) filed a CRA Petition alleging that M.P. was habitually truant, which is a category under the CRA law defined as applying to “a school-aged child, not excused from attendance under the lawful and reasonable regulations of such child’s school, who willfully fails to attend school for more than [eight] school days in a quarter.”

After filing the CRA Petition, but before the Juvenile Court rendered a decision, Millis attempted to place M.P. in several different out-of-district settings, and even offered in-home tutoring. Unfortunately, despite the school district’s efforts, M.P. was not receiving an appropriate education. She failed to attend placements outside of her home, and only periodically met with her tutors. Throughout the CRA process, Millis advocated on behalf of M.P. and her entitlement to be educated, indicating that while she chose not to attend school due to her medical concerns, it had filed a CRA because her intentional choices to stay home and not meet with in-home providers deprived her of a free appropriate public education.

Due to Millis’ strong advocacy on behalf of M.P., the Juvenile Court ultimately found that M.P. was a Child Requiring Assistance due to her continuous absence from school regardless of placement. However, the judge did not order her to return to school or order a change in her custody arrangements, finding that the services that had been arranged by Millis and M.P.’s parents during the pendency of the case were currently appropriate to meet her needs.

M.P.’s attorneys appealed the Juvenile Court’s decision. Given its ultimate goal of getting M.P. educated, Millis decided not to participate in the appeals process. On appeal, the SJC reversed the Juvenile Court’s decision, stating that M.P.’s absences were not willful. While the SJC did

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not explicitly define “willfully” in this context, the Court explained that M.P.’s absences were not willful because, although they were the result of intentional choices, the purpose underlying them was not to “play hooky” from school, but rather, to address her concerns surrounding her bladder condition.

The SJC concluded that “a finding of willfulness is a fact-based inquiry that will depend on the circumstances of each case. Not every case involving a mental or physical disability necessarily will shield a child from a finding of willfulness, since not every disability affects a child’s ability to attend school.” While not every child on an IEP or 504 Plan will be exempted from the habitually truant category of the CRA law by this analysis, the SJC’s very broad language surrounding willfulness will likely affect many school districts dealing with special education student absences due to anxiety, compulsion-driven behaviors, and other related conditions.

Before this decision was rendered, filing a CRA Petition was the most logical solution in many cases for school districts otherwise at a loss for how to help absentee special education students. With this SJC ruling, however, school districts may need to consider alternative measures for these students, including filing a BSEA Hearing Request, a Failure to Send Petition, or even a Care and Protection Petition, in lieu of filing a CRA Petition. In light of this new SJC decision, we strongly recommend that school officials contact their lawyer for a fact-intensive discussion of which legal proceeding will be most effective in addressing absentee special education students before filing proceedings in Juvenile Court.

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*If you have any questions about this issue, please contact Elizabeth Sherwood or the attorney responsible for your account, or call (617) 479-5000.*

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