

EDUCATIONAL NEGLECT CASE LAW

By Margaret A. Burt, Esq. 12/16

What is educational neglect? How much school has to be missed? What about impact on child?

Matter of Shelly Renee K., 99 AD2d 1072 (3rd Dept. 1981)

Was not ed neglect that child was absent 13 times without excuse and tardy multiple times where no evidence that this had an adverse impact on child's education

Matter of Jovann B., 153 AD2d 858 (2nd Dept. 1989)

Was ed neglect where child absent 1/3 of school days over a 2 year period

Matter of Jessica Y., 161 AD2d 368 (1st Dept. 1990)

Was not ed neglect where child missed 142 days in one year but no proof that child did not receive a minimum of care and child was transferred to another school where she did graduate

Matter of Jennifer N., 173 AD2d 971 (3rd Dept. 1991)

Was not ed neglect where child missed school but mother had told school, child was under a doctor's care and was back at school when doctor allowed it and child's education did not suffer

Matter of Kyle T., 255 AD2d 581 (4th Dept. 1998)

Was ed neglect where child missed 45 days in one year, and mother removed child from school and thereafter did not enroll him anywhere else or provide any home schooling

Matter of Ryan J., 255 AD2d 999 (4th Dept. 1998)

Was ed neglect where 13 year old missed 46 days of school in 5 month period, then did not attend at all for next 4 months, currently failing all classes, law guardian had arranged a home tutor

Matter of Chad V., 265 AD2d 607 (3rd Dept. 1999)

Was ed neglect where child did not attend school at all for 1st 20 days of school, mother said she was not interested in child attending school and another sib also not enrolled in school

In Re Alan B., 267 AD2d 306 (2nd Dept. 1999)

Was ed neglect for 6 year old to miss 32 days in a four month period (other neglect as well)

Matter of Fatima A., 276 AD2d 791 (2nd Dept. 2000)

Was ed neglect where child missed 101 out of 166 days and mother could not provide proof that she had permission to home school or that she was in fact homeschooling

Matter of Donald P., 285 AD2d 510 (2nd Dept. 2001)

Was ed neglect where twin boys had excessive unexcused absences, failed classes, mother ignored contact from school, rejected services

Matter of Ember R., 285 AD2d 757 (3rd Dept. 2001)

Was ed neglect where one child missed 38 days of school and other missed 39 and both had been tardy 38 other days, older child had a failing grade point average, other child was not failing but grades had suffered, no proof of any home schooling, mother's claims of child being harassed at school not proven

Matter of Aishia O., 284 AD2d 581 (3rd Dept. 2001)

Was ed neglect where child had special needs and missing school caused more than loss of education

In re Giancarlo P., 306 AD2d 28 (1st Dept. 2003)

Was not ed neglect where child had prolonged and unexcused absences but parent was trying to seek special ed program and no evidence that child's education was affected

Matter of Matthew B., 24 AD3d 1183 (4th Dept. 2003)

Was not ed neglect to not enroll a child in the fall who would not turn 6 by December 1, but **Was** neglect re older child who missed or was late 61 times in less than 6 months and missed 15 days in a one month period

Matter of Antonio NN., 28 AD2d 810 (3rd Dept. 2006)

Was ed neglect where "significant unexcused absentee rate has a detrimental effect on child's education" – one child missed 30 days and was tardy 89 days in a school year, school had called mother 40 times and she had only returned 2 calls, child was failing (other neglect issues as well)

Matter of Shawndalaya H., 818 NYS2d 330 (3rd Dept. 2006)

Was ed neglect where child missed 13 out of 17 days of school and mother had "unfounded disdain" for school system (other neglect issues as well)

Matter of Ashley X., 50 AD3d 1194 (3rd Dept. 2008)

Was ed neglect where child missed 28 of 82 days of first half of second grade – 25 days without any excuse being provided, no medical report, no records of home schooling, child was behind in several subjects which could be improved with more faithful attendance

Matter of Jessica J., 57 AD3d 271 (1st Dept 2008)

Was ed neglect to keep special ed child out of school for 44 days with no alternative arrangements for education but **was not** derivative re second child – mother had kept special ed child home over an "unreasonable over reaction" to child having been left at the wrong bus stop and mother refused care fare as well as refused to walk child to

school that was 6 blocks away but second child had not been excessively absent and her ed needs were being met

Matter of Danny R., 60 AD3d 450 (1st Dept. 2009)

Was ed neglect where children missed 240 and 159 days of school respectively in last 2.5 years; also derivately neglectful of preschool child

Matter of Shanae F., 61 AD3d 403 (1st Dept. 2009)

Was not ed neglect where mother kept 14 year old out of school but was trying to get child transferred to another school and claimed, unrebutted, that school was frustrating her attempts to transfer the child

Matter of T-Shauna K., 63 AD3d 420 (1st Dept. 2009)

Was ed neglect to for two children who had 50 unexcused absences in a school year – other issues of neglect as well

Matter of Cuntrel A., 70 AD3d 1308 (4th Dept. 2010)

Was ed neglect where two children had a significant unexcused absentee rate that had effected their education. The father provided no proof to justify their absences or to show that they were being educated elsewhere.

Matter of Annalize P., 78 AD3d 413 (1st Dept. 2010)

Was ed neglect where child had 5 excused and 24 unexcused absences during the school year and these absences adversely affected her academic performance

Matter of Regina HH., 79 AD3d 1205 (3rd Dept. 2010)

Was ed neglect where 14 year old missed 50 out of 88 days of school and was late on 5 other days. The mother claimed that the child had medical and anxiety issues which made it difficult to get her out of bed in the morning. The mother did not have medical documentation of the absences and no one but the mother had witnessed the alleged anxiety attacks. The child had told some people that she stayed home to take care of her mother and that she did not want to leave her mother. The child was failing all her classes. The mother testified that she had been told that the child would have to attend every day for the rest of the year and all summer long in order to be promoted to the next grade. The mother minimized the situation and did not call the caseworker as recommended when the child would not get up in the mornings.

Matter of Eric C., 79 AD3d 1037 (2nd Dept. 2010)

Was ed neglect where submitted and unrebutted evidence showed that the child had excessive absences from school and the mother offered no reasonable justification for those absences.

Matter of Santino B., 93 AD3d 1086 (3rd Dept. 2012)

Was ed neglect where parents did not assurer attendance in school which resulted in the children flunking courses and repeating grades. The boys were 14 and 12 years old. The younger child was absent 37 times and tardy 72 times between September

and April. Most of his grades were Fs. The parents would not cooperate with the school about this child's issues and would not allow him to be tested for learning disabilities. The older boy was absent 30 days in the same period and tardy on 30 other days and was suspended for another 10 days due to his behavior. He was repeating 7th grade having flunked four subjects the year before and the parents had refused to enroll him in summer school. He was now failing 6 subjects.

Matter of Gabriella G., 194 AD3d 1136 (4th Dept. 2013)

Was ed neglect where children had significant , unexcused absences with no justification

Matter of Teresa L., 106 AD3d 1008 (2nd Dept. 2013)

Was ed neglect where had excessive unexcused absences which now meant child would have to repeat 6th grade; properly certified as business records allows school records into evidence

Matter of Brianna R., 115 AD3d 403 (1st Dept. 2014)

Was not ed neglect where 15 year old girl with mental health and behavioral issues – she was defiant, violent, lied and would threaten to harm herself; had mood disorders, hallucinations and trouble sleeping. She was hospitalized and medicated to the extent that she was drowsy and disoriented at times. While child missed 83 days in prior school year and 63 days in first half of current year; she was not educationally neglected as her missing school was often due to these issues. The mother attempted to get her to attend school by exploring other school options for her and talking to the school many times about the situation. While the matter was pending and the child was in foster care, ACS could not get the child to go to school either and the school could not get her to stay in the building even if she got there.

Matter of Isaiha M., 115 AD3d 575 (1st Dept. 2014)

Was ed neglect where oldest child had missed 100 of 128 days of school. This child had special needs due to brain injury and those needs were not being met. The mother had refused to allow medical personnel in the apartment to provide medication for and to check on this child's medical condition. The younger child also missed a significant amount of school and there was no explanation for his absences.

Matter of Jadaquis B., 116 AD3d 448 (1st Dept. 2014)

Was ed neglect where 2 children were absent from school excessively and this affected their performance as both children had to repeat a grade. She provided no explanation for not sending them to school and did not establish that there were any safety issues.

Matter of Jaquan F., 120 AD3d 1113 (1st Dept. 2014)

Was ed neglect where a mother neglected her special needs son. She failed to attend various medical appointments for him and failed to properly supervise him. In a 5 month period, he missed 52 days of school. The mother did not obtain a required protective helmet for the child which caused him to miss more than 2 months of school.

Her claims that the child could not go to school because of medical appointments and bad weather were not credible.

Matter of Justin R., 127 AD3d 758 (2nd Dept. 2015)

Was ed neglect where two children were excessively absent and tardy without reasonable justification. However, the Appellate Court did reverse the portion of the adjudication that was based on the father having failed to complete the paperwork that would allow one of the children to be placed in a special private school. This had not been alleged in the petition and ACS did not properly amend the petition with this allegation as per FCA § 1051 (b).

Matter of Nashawn Dezmen C., 133 AD3d 434 (1st Dept. 2015)

Was not ed neglect where the mother and the children lived in a shelter and the mother testified that the children were often late to school because it took an hour to travel to school in the morning and the shelter rules forbid anyone from leaving before 6AM; after transfer to a closer shelter, attendance did improve, also no showing that the children's tardiness had resulted in impairment or imminent danger of impairment. One child had satisfactory grades and the other child had a mix of grades but that child also had learning disabilities that may have accounted for his grades. The mother had sought tutoring, therapy and other assistance for both children. In spite of significant and numerous obstacles, this mother provided a minimum degree of care for the children.

Matter of Aijianna L., 126 AD3d 1353 (4th Dept. 2015)

Was ed neglect where child had not attended a single day of school in the last 2 years. The child's mental condition was in imminent danger of becoming impaired based on this excessive absence. The mother failed to show that the child was attending any school or receiving instruction in any other place

Matter of Ricky S., 139 AD3d 959 (2nd Dept. 2016)

Was ed neglect where 15 year old missed 39 days out of 74 even though the father did meet with the school about the issue, but was not derivative neglect of other child who was not yet school age since the teen was also very resistant about attendance

Matter of Kiamal E., 139 AD3d 1062 (2nd Dept. 2016)

Was ed neglect where 2 children has excessive absence and tardiness which had a negative impact on their schooling – no credible explanation for children missing school

Matter of Nevaeh A., ___AD3d___, dec'd 11/23/16 (3rd Dept. 2016)

Was ed neglect where 2 children were excessively tardy and absent, no appropriate excuse and children's education was "significantly compromised" due to missed school.

Matter of Malik S., 141 AD3d 428 (1st Dept. 2016)

Was ed neglect (among other issues) where 15 year old missed 134 days out of 139. Mother claimed child was out of control but provided no evidence, claimed she was trying to get the child transferred to another school, but again no evidence

Matter of Agram B., 143 AD3d 702 (2nd Dept. 2016)

Was ed neglect (among other issues) where child with mental health problems was not enrolled in any school program, was not being home schooled and was not getting any services from any special education program

Matter of Kenneth C., ___AD3d___, dec'd 12/23/16 (4th Dept. 2016)

Was ed neglect (among other issues) when 2 children had a total of 150 absences in a school year – creates a prima facie case of ed neglect unless mother can rebut with appropriate explanation but she was not able to

When is home schooling adequate?

Matter of Franz 55 AD2d 424 (3rd Dept. 1977)

Was ed neglect where child was not receiving the equivalent of a public school education

Matter of Andrew TT 122 AD362 (3rd Dept. 1986)

Was ed neglect where parents would not cooperate with school to review program of home schooling

Matter of Christa H., 127 AD2d 997 (4th Dept. 1987)

Once petitioner proves child is not attending school, prima facie proof of ed neglect, up to respondent to rebut with proof that child is receiving substantially equivalent education elsewhere

Matter of Blackwelder 139 Misc2d 776 (Sup. Ct., Cayuga County 1988)

Parents would not let school officials visit the home to evaluate if homeschooling program was sufficient created prima facie case of educational neglect which was rebutted by parents proof at court that they were providing a substantially equivalent education – **was not** ed neglect

Matter of Iesha J. 183 AD2d 573 (1st Dept. 1992)

Was not ed neglect where mother provided tutor for child while looking for a school that was safer for the child

In Re Dyandria D., 303 AD2d 233 (1st Dept. 2003)

Was ed neglect where child missed over a third of first grade and education had suffered, no proof child was harassed at school as mother claimed, no proof that child was properly homeschooled as mother was unable to document and was not up to date in home school plan approval (other neglect as well)

Matter of Nicole A., 303 AD2d 1039 (4th Dept. 2003)

Was ed neglect where child was not attending school at all and mother was unable to prove that child was too ill to go to school and would not cooperate with school to provide alternative education

Matter of William AA., 24 AD 3d 1125 (3rd Dept. 2005)

Was neglect for mother to take child out of school and claim he was studying alone during the day while she helped him at night; no records of any kind re work that was done, did not follow the homeschooling regulations (other issues of neglect also present)

Matter of Amanda K., 28 AD3d 813 (3rd Dept. 2006)

Was ed neglect where custodial grandmother failed to follow through on homeschooling program for child with significant health issues, correct paperwork not filed on a timely basis, required standardized tests not given, no school credit for a full year, negative effect on child's educational progress, grandmother did not take advantage of special ed available and did not really home school for a year, as child was special needs – lost more than an average child by missing school (other neglect issues as well)

Matter of Joyitha M., 121 AD3d 444 (2nd Dept. 2014)

Was ed neglect where children had excessive school absences and the mother offered no reasonable explanation. She claimed to be home schooling the children but admitted she had not gotten permission from the school officials to do so. She did not provide any evidence of the schooling she claimed to be providing.

Is a parental failure to deal with school problems ed neglect?

Matter of Melissa R., 162 AD2d 754 (3rd Dept. 1990)

Was ed neglect where children were not performing as well as they could be and parents refused to acknowledge and refused to allow one child to take alternative ed

Matter of Jeremy VV., 202 AD2d 738 (3rd Dept. 1994)

Was not ed neglect where child was a poor student and the parent did not cooperate with teachers – no showing that this was neglect, parent only has to get child to school

Matter of Gerrod BB., 284 AD2d 584 (3rd Dept. 2001)

Was not ed neglect that child was not academically prepared to enter school

Matter of Christopher UU., 24 AD3d 1129 (3rd Dept. 2005)

Was not ed neglect where mother enrolled child in IEP recommended residential placement but then interfered with the placement and removed child, after DSS involvement, mother re-enrolled child in the residential placement with an agreement to

cooperate with the school and with DSS – no evidence that child’s education was adversely affected

Matter of Alexander D. 845 NYS2d 244 (1st Dept. 2007)

Was not ed neglect where 10 year old handicapped child missed multiple days of school. Child had to take lengthy bus ride and was very problematic to get child on bus, parents were trying to find another ed setting for child and missed days of school did not affect child’s education