

## EDUCATIONAL NEGLECT CASE LAW

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

Matter of Shelly Renee K., 99 AD2d 1072, 436 NYS2d 99 (3<sup>rd</sup> 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, 545 NYS2d 376 (2<sup>nd</sup> 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, 555 NYS2d 114 (1<sup>st</sup> 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, 569 NYS2d 480 (3<sup>rd</sup> 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, 680 NYS2d 376 (4<sup>th</sup> 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, 679 NYS2d 495 (4<sup>th</sup> 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, 695 NYS2d 764 (3<sup>rd</sup> Dept. 1999)

**Was** ed neglect where child did not attend school at all for 1<sup>st</sup> 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, 700 NYS2d 200 (2<sup>nd</sup> 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, 715 NYS2d 250 (2<sup>nd</sup> 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, 727 NYS2d 162 (2<sup>nd</sup> 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, 727 NYS2d 767 (3<sup>rd</sup> 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, 725 NYS 2d 783 (3<sup>rd</sup> 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, 761 NYS2d 165 (1<sup>st</sup> 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, 808 NYS2d 513 (4<sup>th</sup> 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, 812 NYS2d 176 (3<sup>rd</sup> 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 (3<sup>rd</sup> 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, 854 NYS2d 794 (3<sup>rd</sup> 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 (1<sup>st</sup> 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, 874 NYS2d 122 (1<sup>st</sup> 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, 874 NYS2d 911 (1<sup>st</sup> 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, 879 NYS2d 462 (1<sup>st</sup> 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 (4<sup>th</sup> 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 (1<sup>st</sup> 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 (3<sup>rd</sup> 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 (2<sup>nd</sup> 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.

## When is home schooling adequate?

Matter of Franz 55 AD2d 424, 390 NYS2d 940 (3<sup>rd</sup> Dept. 1977)

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

Matter of Andrew TT 122 AD362, 504 NYS2d 326 (3<sup>rd</sup> 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, 518 NYS2d 65 (4<sup>th</sup> 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, 528 NYS2d 759 (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, 583 NYS 2d 462 (1<sup>st</sup> 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, 757 NYS2d 12 (1<sup>st</sup> 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, 758 NYS2d 884 (4<sup>th</sup> 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, 807 NYS2d 181 (3<sup>rd</sup> 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, 812 NYS2d 708 (3<sup>rd</sup> 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)

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

Matter of Melissa R., 162 AD2d 754, 557 NYS2d 668 (3<sup>rd</sup> 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, 608 NYS2d 575 (3<sup>rd</sup> 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, 725 NYS2d 742

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

Matter of Christopher UU., 24 AD3d 1129, 807 NYS2d 186 (3<sup>rd</sup> 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 (1<sup>st</sup> 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