

**78A-6-319 Educational neglect of a child -- Procedures -- Defenses.**

- (1) With regard to a child who is the subject of a petition under this chapter based on educational neglect:
  - (a) if allegations include failure of a child to make adequate educational progress, the court shall permit demonstration of the child's educational skills and abilities based upon any of the criteria used in granting school credit, in accordance with Section 53A-11-102.5;
  - (b) parental refusal to comply with actions taken by school authorities in violation of Sections 53A-13-101.1, 53A-13-101.2, or 53A-13-101.3, does not constitute educational neglect;
  - (c) parental refusal to support efforts by a school to encourage a child to act in accordance with any educational objective that focuses on the adoption or expression of a personal philosophy, attitude, or belief that is not reasonably necessary to maintain order and discipline in the school, prevent unreasonable endangerment of persons or property, or to maintain concepts of civility and propriety appropriate to a school setting, does not constitute educational neglect; and
  - (d) an allegation of educational neglect may not be sustained, based solely on a child's absence from school, unless the child has been absent from school or from any given class, without good cause, for more than 10 consecutive school days or more than 1/16 of the applicable school term.
- (2) A child may not be considered to be educationally neglected, for purposes of this chapter:
  - (a) unless there is clear and convincing evidence that:
    - (i) the child has failed to make adequate educational progress, and school officials have complied with the requirements of Section 53A-11-103; and
    - (ii) the child is two or more years behind the local public school's age group expectations in one or more basic skills, and is not receiving special educational services or systematic remediation efforts designed to correct the problem;
  - (b) if the child's parent or guardian establishes by a preponderance of the evidence that:
    - (i) school authorities have failed to comply with the requirements of Title 53A, Chapter 11, Students in Public Schools, or Chapter 13, Curriculum in the Public Schools;
    - (ii) the child is being instructed at home in compliance with Section 53A-11-102;
    - (iii) there is documentation that the child has demonstrated educational progress at a level commensurate with the child's ability;
    - (iv) the parent, guardian, or other person in control of the child has made a good faith effort to secure the child's regular attendance in school;
    - (v) good cause or a valid excuse exists for the child's absence from school;
    - (vi) the child is not required to attend school pursuant to court order or is exempt under other applicable state or federal law;
    - (vii) the student has performed above the twenty-fifth percentile of the local public school's age group expectations in all basic skills, as measured by a standardized academic achievement test administered by the school district where the student resides; or
    - (viii) the parent or guardian has proffered a reasonable alternative to required school curriculum, in accordance with Section 53A-13-101.2, that alternative was rejected by the school district, but the parents have implemented the alternative curriculum; or
  - (c) if the child is attending school on a regular basis.

Renumbered and Amended by Chapter 3, 2008 General Session