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## Ruling expands legal rights of truant students

**By Tim Klass**

*The Associated Press*

Juveniles accused of chronically cutting class in public schools are entitled to a lawyer in their first court hearing, a unanimous three-judge panel of the Washington Court of Appeals has ruled.

Reversing a King County Superior Court ruling and an earlier Court of Appeals finding on different issues, the panel found Monday that denying a juvenile the right to a lawyer from the outset violated constitutional requirements.

In her opinion, Judge Anne Ellington wrote the decision was the first to consider due-process rights of juveniles in initial proceedings under the truancy law enacted in 1995.

Dan Donohoe, a spokesman for the King County Prosecutor's Office, said the ruling was under review and no decision had been made on an appeal.

If it stands, the decision could make Washington the first state in which a juvenile is entitled to counsel at the outset of court truancy proceedings that could lead to penalties, said Paul M. Holland, director of the Ronald A. Peterson Law Clinic at Seattle University, which represented the girl.

"That is the most noteworthy part of this ruling," Holland said.

He said it is part of a growing body of law that recognizes the right to an attorney in certain civil matters as well as in criminal cases.

The decision was hailed by the American Civil Liberties Union, which filed a brief supporting the Bellevue girl identified only as E.S. and described as an emotionally troubled member of a refugee family from Bosnia.

"We have an ongoing effort to assure equal opportunity (to obtain legal counsel) for all students in Washington state," said Sarah Dunn, legal director for the state ACLU chapter.

Under the law, a juvenile with at least seven unexcused absences in a month or 10 in a school year may be ordered to appear in Juvenile Court on a petition by school officials or the youngster's parents without legal representation.

If the petition is supported by "a preponderance of the evidence," the judge may order the juvenile to attend school, change schools, appear before a truancy board or submit to alcohol or other drug testing. Failure to comply may result in contempt proceedings in which counsel is appointed for the child.

According to the appeals ruling, E.S., 13 at the time, was faced with a truancy petition in March 2006 and signed an agreement to accept a court order that included regular class attendance. She was found

repeatedly in contempt for violating the order and a year later was threatened with electronic home monitoring.

At that point, a new lawyer for the girl moved to set aside the initial truancy finding because she had not had a lawyer in the initial hearing.

Superior Court Judge Patricia Clark rejected that argument in July 2007.

The initial Juvenile Court proceeding "affects the child's rights to liberty, privacy and education," Ellington wrote. "Due process requires that the child be afforded counsel."

Robert Boruchowitz, a clinic lawyer who represented the girl in the appeal, said the last he heard she was enrolled earlier in the school year in an online program in another district.

In her case, and often in others, judges at the first stage often have failed to ask "probing questions" into such matters as the reason for chronic truancy, Boruchowitz said.

The girl was accompanied in court only by mother, who has little understanding of English, and a Bosnian interpreter, the appellate court noted.

"Under those circumstances, the idea that they can protect their interests in the truancy proceedings is, well, strained," Boruchowitz said.

Ellington noted that the Court of Appeals upheld the law in 1999 but on other grounds — that the juvenile's interest in avoiding penalties was less compelling than in other civil cases in which a lawyer is guaranteed, such as a mother or father facing loss of parental rights.

That ruling did not consider the "analysis of due process requirements" that was the core of the ruling on E.S., the judge wrote.

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