

**In the Supreme Court of the State of California**

**In re A.N., a Person Coming Under the  
Juvenile Court Law**

Case No. S242494

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

**Plaintiff and Respondent,**

**v.**

**A.N.,**

**Defendant and Appellant.**

**SUPREME COURT  
FILED**

**NOV 17 2017**

**Jorge Navarrete Clerk**

**Deputy**

Second Appellate District, Case No. B275914  
Ventura County Superior Court, Case No. 2015040294  
The Honorable William R. Redmond, Commissioner

**RESPONDENT'S ANSWER BRIEF ON THE MERITS**

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## ISSUES PRESENTED

This Court granted review of the following issues, as framed in appellant's petition for review:

(1) Is the utilization of a school attendance review board or truancy mediation process required before juvenile court proceedings can be instituted to declare a juvenile a habitual truant?

(2) Does Education Code section 48264.5 require the issuance of a fourth truancy report before commencing such a proceeding?

## INTRODUCTION

Truancy is a significant problem in California. Thousands of children are truant each year, leading to negative consequences for the children, the schools, and ultimately California. In 2015-2016, over seven percent of K-5 students in California—some 210,000 students—were absent ten percent of the school year, with that rate jumping to 14% for African-American students.<sup>1</sup> As chronic absenteeism continues into later school years, it leads to lower academic achievement and test scores, dropping out, and, for many young people, incarceration.<sup>2</sup>

Truancy is also a complex problem. Children fall into truancy for a variety of reasons, such as family instability, homelessness, transportation problems, mental health issues, and undiagnosed learning disabilities. In response, the Legislature created and continues to improve upon a graduated structure of discretionary actions that gives school districts the flexibility to use multiple resources to address the needs of their individual

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<sup>1</sup> In School + On Track 2016: Cal. Attorney General's 2016 Report on California's Elementary School Truancy & Absenteeism Crisis at p. 2, <[https://oag.ca.gov/sites/all/files/agweb/pdfs/tr/truancy\\_2016\\_en.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/tr/truancy_2016_en.pdf)>, last visited Nov. 15, 2017.

<sup>2</sup> *Id.* at p. 1.

students, and reduces the need for juvenile court intervention. One of those resources is a school attendance review board (SARB), a multidisciplinary group of community representatives designed to provide students with the resources they need to attend school regularly.

In this case, A.N., a high school student, missed school frequently in the beginning of the 2015 school year. Her absences were persistent; in October and November 2015, she was truant on more days than she was present. In December, the district attorney filed a petition to declare her a ward of the juvenile court to address her truancy. In January, she appeared before a SARB, but this process did not fully address her continuing attendance issues, and her juvenile court hearing commenced in April 2016. On May 10, 2016, the juvenile court commissioner declared A.N. a habitual truant and imposed a fine.

A.N. contends that the juvenile court had no jurisdiction over her—and thus the petition should not have been filed—until two preconditions were met: (1) the SARB process was completed; and (2) the school had issued a notice to her parents of her fourth truancy. (See Opening Brief on the Merits (OBM) 5-6.) But her position is based on a misunderstanding of how state truancy law operates.

The Education Code provides that a student is initially classified as a truant when he or she has three unexcused absences. Each additional unexcused absence is an additional truancy, and every truancy must be reported to the district attendance supervisor or the superintendent. Even early truancy events come with consequences, including parent meetings and peace officer warnings. The third time the school reports a truancy (in other words, five unexcused absences or tardies), the student may be referred to a SARB, if that is an available resource. If the SARB's efforts are ineffective, or there is a fourth truancy (six unexcused absences or tardies)—whether or not the student or parents are given notice of the

additional truancy—the student may come within the jurisdiction of the juvenile court. Where a SARB is available, a juvenile court petition may be *filed* before the SARB meeting, but the student must be asked to appear before a SARB before the juvenile court *hearing* commences. This order of events recognizes that the SARB process may obviate the need for a court-ordered remedy, but the juvenile court will eventually intervene if less formal options fail to correct the problem. Indeed, the filing of a petition may impress upon the student the real possibility of juvenile court action, thereby encouraging that student to work with the SARB.

In A.N.’s case, this process was followed. The judgment should be affirmed.

## LEGAL BACKGROUND

All children between 6 and 18 in California must attend school. (Ed. Code, § 48200.)<sup>3</sup> California enforces its compulsory education law by early intervention when students are absent from school, and with multiple types of resources as appropriate for the individual student.

### A. Truancy Laws and School Attendance Review Boards

A student who is absent or over 30 minutes late to school on three dates without a valid excuse is defined as truant. (§ 48260.) A valid excuse includes reasons such as illness or religious holiday, and the school administration, in its discretion, may also excuse absences. (§§ 48205, 48260, subd. (c).) The school must “report[.]” the truancy to the school district superintendent or attendance supervisor (who is responsible for monitoring student attendance, as discussed in Part B below). (§ 48260, subd. (a).)

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<sup>3</sup> Subsequent citations are to the Education Code unless otherwise noted.



On the student's "initial classification" as truant, the school district must "notify" the student's parent or guardian that the student is truant, and advise the parent of the student's obligation to attend school and the ramifications of his or her failure to attend, including legal sanctions for both student and parent. (§ 48260.5.) The notification must also advise the parent that there are resources to help the parent, including alternative education programs, and that the school is available to discuss solutions to the student's truancy. (§ 48260.5, subds. (e), (d).) Finally, the notification must suggest that the parent accompany the student to school and attend classes with him or her. (§ 48260.5, subd. (h).) This notification is made by the "most cost-effective method possible," which may be electronic mail or a phone call. (§ 48260.5.)

After the initial three absences, which result in the student being classified as truant, every additional unexcused absence is another truancy, which also must be "reported" to the attendance supervisor or district superintendent. (§ 48261.) A student who has been reported truant three times—in other words, has five or more unexcused absences—is classified as a habitual truant after the school district has made a conscientious effort to hold a conference with the student and his or her parent. (§ 48262.)

The Education Code provides for escalating discretionary consequences in response to a student's trancies. At the first truancy report—again, issued after three unexcused absences or tardies—the student's parent or guardian may be requested to attend a meeting at the school to develop a plan to ensure the student's attendance. (§ 48264.5, subd. (a).) At the second report (four absences or tardies), the student may be given a written warning from a peace officer. (§ 48264.5, subd. (b).)

At the third report (five absences or tardies), the student may be required to attend a meeting of either a SARB, or a truancy mediation program or similar program. (§§ 48264.5, subd. (c), 48263.) SARBs are

interdisciplinary groups that may be organized at the county or local level to provide “intensive guidance and coordinated community services” for students who are struggling with attendance or behavior problems.

(§ 48320.) In addition to school representatives and prosecutors, SARBs include representatives of county probation and welfare departments, health care and mental health personnel, and representatives of community-based youth service centers. (§ 48321, subd. (a)(2).) SARBs are intended to marshal community and regional resources in order to address the student’s individual barriers to attendance and may refer a student to appropriate community services. (§ 48263.) SARBs are meant to help the student stay in school. (§ 48320.) Establishing a SARB is a discretionary decision by the county or school district. (§ 48321, subds. (a)(1), (d), (e).)

Truancy mediation programs, the other option after three truanancies, operate under the auspices of either the district attorney or probation officer. Representatives from those entities meet with the student and parent to discuss the legal consequences of truancy. (§ 48263.5, subd. (b); Welf. & Inst. Code, § 601.3.) Like SARBs, the establishment of truancy mediation programs is discretionary. (§ 48263.5, subd. (b); Welf. & Inst. Code, § 601.3.)

At the fourth truancy (six absences or tardies), or if the student “does not successfully complete the truancy mediation program or other similar program,” the student “may be within the jurisdiction of the juvenile court.” (§ 48264.5, subds. (c), (d).) Recent amendments to section 48264.5 have made referral to juvenile court discretionary rather than mandatory. While the language had previously stated that the student “shall” be within the juvenile court jurisdiction the fourth time a truancy is required to be reported, in 2012 the Legislature amended the statute to state that the juvenile “may” be within the juvenile court jurisdiction the fourth time a truancy is issued. (Compare Stats 2001, ch. 734, § 29 and Stats. 2012, ch.

432, § 2; OBM, p. 16.) This amendment brought the discretionary nature of a juvenile court petition in line with the discretionary nature of the other truancy consequences.

### **B. School District Resources to Address Truancy**

Every school district and county superintendent must appoint an attendance supervisor to track student attendance and monitor compliance with compulsory education laws. (§ 48240.) Through 2016, the school district prescribed the specific duties of the attendance supervisor in order to execute those laws. (Former § 48240, added by Stats.1976, c. 1010, § 2.) This year, the Legislature amended the Education Code to more specifically articulate the responsibilities of the attendance supervisor, who “promotes a culture of attendance and establishes a system to accurately track pupil attendance” in order to identify and address attendance problems.

(§ 48240, subd. (b).) The attendance supervisor is responsible for identifying patterns of chronic truancy among students and for implementing strategies to address that problem. (*Ibid.*) The attendance supervisor also identifies individual students with attendance problems to provide support services and interventions. (*Ibid.*) Those services may include facilitating communication between school and family, promoting activities that increase the student’s connection to school, referring the student to a school nurse or counselor, and collaborating with other agencies and interdisciplinary teams. (§ 48240, subd. (c).)

As noted, the attendant supervisor may refer a student with truancy issues to a SARB. (§§ 48264.5, subd. (c), 48263; see also § 48240, subd. (c)(9).) If the community services a SARB offers to the student do not address the student’s problem, or the parent or student fail to use them, the SARB may refer the student to the county district attorney’s or probation officer’s truancy mediation program. (§ 48263.)

### C. Juvenile Court Petition and Hearing

If the student attends a truancy mediation that does not remedy the student's attendance problem, the district attorney or probation officer may file a juvenile court petition. (Welf. & Inst. Code, § 601.3, subd. (e).) Similarly, if the SARB process does not resolve the student's truancy problem and there is no mediation program, the SARB "may direct the county superintendent of schools to, and, thereupon, the county superintendent of schools shall, request a petition on behalf of the pupil in the juvenile court." (§ 48263.)

The Welfare and Institutions Code defines the jurisdiction of the juvenile court. Consistent with Education Code section 48264.5, it provides that the juvenile court may assume jurisdiction after "four or more truanancies within one school year" or "a [SARB] or probation officer determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor," or "if the minor fails to respond to directives of a [SARB] or probation officer or to services provided." (Welf. & Inst. Code, § 601, subd. (b).)

The juvenile court hearing "shall not proceed[.]" however, until the court receives evidence that the school followed each of the graduated steps—parent meeting invitation; peace officer warning; and either a SARB meeting or truancy mediation—for addressing truancy, unless there is no SARB, in which case that step is not required. (Welf. & Inst. Code, § 258, subd. (b)(1).)<sup>4</sup> The court must also receive evidence about the school's attempts to address the student's truancy. (*Ibid.*; see also § 48263 [directing probation officer or SARB (after truancy mediation or SARB meeting, respectively) to "submit to the juvenile court documentation of

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<sup>4</sup> To the People's knowledge, Welfare and Institutions Code section 258 was not raised to the Court of Appeal by either party.

efforts to secure attendance as well as its recommendations on what action the juvenile court shall take to bring about a proper disposition”].) The court may continue the hearing in order to “allow the [student] the opportunity to demonstrate improved attendance” before the court takes action, and may then dismiss the case. (Welf. & Inst. Code, § 258, subd. (b)(5).)

If the court finds that the student has four trancies or finds that the SARB has been ineffective in resolving the student’s truancy, the juvenile court shall issue orders directed at improving the student’s school attendance. (Welf. & Inst. Code, §§ 258, subd. (b)(6), 601, subd. (b).) This may include community service, payment of a fine, and attendance at a truancy prevention program. (Welf. & Inst. Code, § 258, subd. (b)(6), § 48264.5, subd. (d).) If the student has already attended a SARB or a mediation or other diversion program, and still has not shown improvement, the student may also lose his or her driver’s license. (§ 48264.5, subd. (d)(4).)

The flow chart on the next page shows what the process looks like in a school district with a SARB.<sup>5</sup>

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<sup>5</sup> See In School + On Track: Cal. Attorney General’s 2013 Report on California’s Elementary School Truancy & Absentee Crisis, p. 65, <[https://oag.ca.gov/sites/all/files/agweb/pdfs/tr/truancy\\_2013.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/tr/truancy_2013.pdf)>, last visited Nov. 15, 2017.

# THE SARB PROCESS

Habitual truants and students with irregular attendance may be referred to SARB.  
The district attendance supervisor shall notify the guardian and student that they must attend a SARB hearing.

Guardian and student attend SARB hearing.

Does the SARB determine that available community resources can resolve the truancy problem?

YES

The SARB directs the student and guardian to utilize available community resources, and enters into a SARB contract.

Does the SARB determine that the student/another guardian abided by the contract?

YES

Attendance improves.

NO

The SARB refers the case to the District Attorney or probation officer.

Does the DA or probation officer participate in a truancy mediation program?

YES

SARB notifies the DA or probation officer of the truancy or irregular attendance.

The DA or probation officer may request the guardian and student attend a mediation to discuss the attendance problem. If successful, attendance improves.

The DA determines whether to charge the guardian with a crime.

NO

SARB may direct the county superintendent (who shall abide by the request) to petition a court for disposition of the crime.

The court shall hear all cases referred to it by the county superintendent by the SARB for probable cause, and shall determine whether to charge the guardian with a crime.

## STATEMENT OF THE CASE

### A. Factual Background

In the fall of 2015, A.N. was a ninth grader at Hueneme High School. (RT 126, 127.) Hueneme High School had a computerized attendance system, where teachers recorded attendance for every period and the information was automatically reported to the attendance supervisor and the school district. (RT 56, 58.) The attendance advisor at Hueneme High, Richard Gomez, reviewed reports from the attendance database to determine which students had attendance problems. (RT 55.) He could also access reports on any individual student's attendance record and follow up with recommendations to the student and parent. (RT 55, 62, 83-85.) Gomez was responsible for compliance with the truancy statutes, including parental notifications and requests to attend a SARB meeting. (RT 73-75.)

Unfortunately, A.N. had a severe truancy problem. A.N. was absent or tardy three consecutive school days—September 17, 18, and 21, 2015—without an excuse and at that point was statutorily a truant. (CT 77; § 48260.) She had four more absences before the end of September, and on October 6, 2015, the school sent a letter to her parents referencing her first four absences. (CT 77, 80-81.) The school sent a second letter to her parents a week later, identifying five more unexcused absences. (CT 82-83.) A.N. was truant 12 days in October; between trancies and excused absences, A.N. attended school for only six full days in October 2015. (CT 77.) She was truant every day the first week of November and had a total of 12 trancies that month. (CT 77-78.)

Gomez talked with A.N. directly on more than one occasion and referred her to services such as counseling or tutoring. (RT 69, 70, 83.) On December 12, A.N. received a citation from a peace officer for habitual truancy under Education Code section 48262. (CT 2.) On December 15,

the school sent a third letter to A.N.'s home listing additional truancies and stating that "a referral may be made to initiate the social and legal interventions to resolve this attendance problem including, but not limited to, a referral to the [SARB]." (CT 84-85.)

A.N. and her mother attended a SARB meeting on January 12, 2016. (CT 90; RT 94-94, 109.) At the SARB meeting, A.N.'s mother was advised that she would be cited if A.N. was absent again without a valid excuse. (CT 87, 90.) A.N. and her mother both signed a contract at the SARB meeting; A.N. agreed to attend school regularly, obey all school rules, and perform satisfactorily in the classroom, and her mother agreed to provide illness verifications and contact the school about all absences. (CT 90.) On January 27, 2016, A.N. had another unexcused absence. (CT 78.)

#### **B. Procedural Background**

On December 31, 2015, about two weeks before the January 12, 2016 SARB meeting, the district attorney filed a petition to declare A.N. a ward of the juvenile court under Welfare and Institutions Code section 601, subdivision (b), due to habitual truancy. (CT 1.) On February 5, 2016, a few weeks after the SARB meeting, A.N. entered a denial to the petition. (RT 1; CT 5-6.) Trial was held in April and May, 2016, and on May 10, 2016, the court sustained the petition. (RT 135.) The court found that A.N. had 28 "full truant days" despite the school's unsuccessful attempts at intervention, including multiple parent communications and a SARB meeting. (*Ibid.*) The court initially ordered 20 hours of community service, but changed the penalty to a \$50 fine at A.N.'s request. (*Ibid.*)

A.N. appealed, contending that "failing to respond to a SARB directive is a prerequisite to juvenile court intervention" and alternatively that "a fourth truancy report must issue before the juvenile court can assert jurisdiction over a habitual truant." (*In re A.N.* (2017) 11 Cal.App.5th 403,



407, 408.) The Court of Appeal affirmed. It held that neither the SARB process nor a fourth “truancy report” is a prerequisite to juvenile court intervention. (*Id.* at p. 408.) It noted that the statutes governing juvenile court jurisdiction over truants “provide the court with flexibility to achieve the legislative objective of a full-time education for California’s students” and “[t]hey do not create a single, rigid path leading to the juvenile court.” (*Id.* at p. 407.)

## ARGUMENT

Appellant advances two arguments. First, she contends that a SARB meeting or truancy mediation must take place before there is juvenile court jurisdiction. (OBM 8-14.) Second, she contends that a fourth “truancy report” must be issued—as opposed to simply a fourth truancy occurring with the student’s sixth absence—before the juvenile court has jurisdiction. (OBM 14-17.) By this, she appears to mean a notice issued to the student’s parent, rather than a report of truancy made to the attendance supervisor or district superintendent. (See OBM 6 [referring to “third notification letter”].) She asserts that strong public policy and legislative intent support these two positions. (OBM 17-18.)

As discussed below, these arguments are without merit. A.N.’s juvenile court proceeding complied with both the letter and the intent of the Education and Welfare and Institutions Codes.

### **I. A JUVENILE COURT PETITION CAN BE FILED BEFORE A SCHOOL ATTENDANCE REVIEW BOARD MEETING OR TRUANCY MEDIATION OCCURS**

Appellant argues that a SARB or truancy mediation proceeding must have taken place before there can be any juvenile court jurisdiction or petition filed. (OBM 8.) She contends that the reference to “four or more truanancies” in Welfare and Institutions Code section 601 “must be harmonized” with Education Code section 48264.5, which requires

graduated discretionary consequences for truancy, including the possibility of a SARB referral. (OBM 9.) Appellant contends that, under those graduated circumstances, “before issuing a fourth truancy report and possibly referring the pupil to the juvenile court, the pupil must be afforded a truancy mediation by SARB or a similar type of mediation.” (OBM 12.)

Appellant is not quite correct. Where a SARB is available, the school must show the juvenile court that it has “undertaken” the steps contemplated by Education Code section 48264.5, including referral to a SARB, before the juvenile court *hearing* can begin. (Welf. & Inst. Code, § 258, subd. (b).) But there is no requirement that this process be completed before the *petition* is filed. Rather, Welfare and Institutions Code section 601 provides three alternate paths to juvenile court jurisdiction: “If a minor has four or more trancies within one school year as defined in Section 48260 of the Education Code *or* a school attendance review board or probation officer determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor . . . , *or* if the minor fails to respond to directives of a school attendance review board or probation officer or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.” (Welf. & Inst. Code, § 601, subd. (b), italics added.) The language of section 601 is in the disjunctive, indicating that any one of these conditions is an independent path to juvenile court. Thus, under the Welfare & Institutions Code there is no requirement that the school district must have completed a SARB meeting prior to filing a juvenile court petition if the student has four or more trancies.

A reading of the relevant sections of the Education Code leads to the same conclusion. Section 48264.5 describes the structure of escalating discretionary responses to trancies. After three unexcused absences, when

the student is deemed truant, the school may meet with the parent.

(§ 48264.5, subd. (a).) After another unexcused absence, which is another truancy under section 48261, the student may receive a written warning from a peace officer. (§ 48264.5, subd. (b).) And after the third truancy report, when the student is defined as a habitual truant, he or she may be referred to a SARB or a truancy mediation program or similar program. (§§ 48264.5, subd. (c), 48263.) The statute, which uses the word “may” at every stage, offers these programs as options for the truant and the school district, but it does not require them. Rather, it vests the school and the school district with discretion to address the student’s needs based on the student’s individual circumstances.

At the fourth truancy (sixth absence), the student may be within the jurisdiction of the juvenile court. (§ 48264.5, subd. (d).) The statute admits of no precondition for this consequence. It does not state that the student must first complete any program, such as a SARB or truancy mediation. Again, the statute uses the word “may,” and therefore does not require anyone to initiate a juvenile court proceeding, but offers it as an option to the authorities who are trying to encourage the student’s school attendance.

Thus, both Welfare and Institutions Code section 601 and Education Code section 48264.5 provide that after four trancies, a student may be subject to the juvenile court jurisdiction. After a juvenile court petition has been filed, the school must refer the student to a SARB—if the county or district has a SARB and such referral has not already occurred—before the juvenile court hearing may proceed. (Welf. & Inst. Code, § 258, subd. (b).)

Appellant claims, however, that the SARB process must be *completed* before the juvenile court petition is filed at all. Appellant acknowledges that section 48264.5 does not express such a requirement, but explains that this is because not every county has a SARB. (OBM 12.) For counties that do not have a SARB, appellant maintains, truancy mediation is a condition

precedent to the filing of a juvenile petition. (OBM 13.) But the statute does not contain any mandatory language, for either SARBs or truancy mediation programs (the establishment of which is also discretionary), prior to the filing of a juvenile court petition.

Appellant contends that the legislative history of Welfare and Institutions Code section 601 and Education Code section 48264.5 compels a conclusion that the SARB process is required before a juvenile court petition can be filed. (OBM, pp. 11-13.) Because the statutory language is plain on its face, there is no reason to consult the legislative history. But, in any event, it suggests only that the Legislature contemplated a graduated system, with court-ordered remedies being a last resort. Granted, some reports in the legislative history explain the progress of truancy discipline, including that the third step (SARB meeting) comes before the fourth step (juvenile court hearing). (*See ibid.*) And while this is generally true, it does not lead to the conclusion that a SARB meeting *must* occur before the juvenile court petition is even filed.

More to the point, the history of the Legislature's amendment of the Welfare and Institutions Code confirms that there are three independent paths to juvenile court jurisdiction, and that any minor with four trancies may be subject to the jurisdiction of a juvenile court before a SARB meeting. Notably, when the Legislature enacted Welfare and Institutions Code section 601, subdivision (b), in 1975, this was not the case: at that time, the statute provided that the student came within the jurisdiction of the juvenile court when the SARB could not provide sufficient services to correct the truancy, or the student failed to comply with the SARB's directives. (Stats. 1975, ch. 192, § 1.) Thus, at that time, the statute read as appellant would have it stand today—it would have been premature to file a petition before a SARB meeting. But in 1994, the Legislature amended section 601 and added the phrase at the beginning of the section providing

that “if a minor has four or more trancies within one school year,” the minor could be declared a ward of the court, thus adding a third route to juvenile court jurisdiction that did not require a preceding SARB meeting. (Stats. 1994, ch. 1023, § 4.) Thus, the Legislature amended the statute *away* from the interpretation appellant advances here. Appellant would have this Court rewind the clock twenty years and simply ignore that legislative amendment.

In 2014, the Legislature revisited the truancy statutes and enacted Welfare and Institutions Code section 258, which states that before the juvenile court *hearing* can commence, the school must have used the SARB process (if there is a SARB). But the Legislature did not amend section 601 to change the trigger for filing a juvenile court *petition*, which may be filed after four trancies. And, that order of events is what happened in this case: after well more than four trancies, the juvenile court petition was filed, and the SARB process was completed before the juvenile court hearing began. (See RT 135.)

Appellant contends that this Court’s decision thirty years ago in *In re Michael G.* (1988) 44 Cal.3d 283 confirms its position that the SARB process must proceed before the juvenile court petition can be filed. But *Michael G.* is not particularly helpful because it was decided under the prior statutory scheme. That case addressed whether a minor who was a ward of the juvenile court due to truancy could be punished by confinement in a secure facility when he willfully disobeyed a court order to attend school. (*Id.* at p. 287.) In explaining the development of truancy law, the Court stated that Welfare and Institutions Code section 601 had been amended “in ways not material to our present inquiry” over the years, and the “most important overall change was to require referral of truants to school attendance review boards before juvenile court intervention.” (*Id.* at p. 290.) Appellant reads this language to mean that the SARB must act

before any juvenile petition is filed. This arguably would have been a reasonable interpretation of section 601 when *Michael G.* was decided. But, as explained above, the Legislature amended the code in 1994 to provide that the juvenile court had jurisdiction after four truanancies. So *Michael G.*, which interprets an earlier statute, does not shed light on the case before the Court now.

Here, the juvenile court petition was filed before the SARB meeting was conducted. Because A.N. had more than four truanancies, this was an appropriate exercise of juvenile court jurisdiction. But, consistent with section 258, A.N.'s juvenile court hearing did not commence until after she met with the SARB. At the SARB meeting, the fact that A.N. had a court date approaching was discussed. (CT 87, 90.) Because the juvenile court properly exercised its jurisdiction, the decision should be affirmed.

## **II. THERE IS NO REQUIREMENT THAT A NOTICE OF A FOURTH TRUANCY BE SENT TO THE STUDENT'S PARENTS BEFORE A JUVENILE COURT HEARING MAY PROCEED**

Appellant contends that there must be a fourth truancy "report" before the juvenile court may assume jurisdiction. (OBM, pp. 14-17 [proposing an extra-textual interpretation of § 48264.5, subd. (d), which provides that "[t]he fourth time a truancy is issued ... the pupil may be within the jurisdiction of the juvenile court ...".]) Although this argument suggests that there was no fourth truancy report here, this is not the case.

The Education Code provides that a school is obligated to report every truancy *to relevant education officials*. After three unexcused absences, a student "shall be classified as a truant and shall be reported to the attendance supervisor or to the superintendent of the school district." (§ 48260.) If the student is again absent from school, he or she "shall again be reported as a truant to the attendance supervisor or the superintendent." (§ 48261.)

Here, A.N.'s absences were entered in a computer database and immediately reported to the attendance supervisor and the school district. (RT 56, 58.) The attendance adviser at her school was able to see every time that she was absent as those absences occurred, and was able to take action accordingly. (RT 55, 62, 83-85.) Therefore, the computer system automatically complied with any reporting requirement, and assured that A.N.'s absences were documented and that every truancy was reported.<sup>6</sup>

Appellant stresses, however, that there were only three letters sent home to A.N.'s parents. (OBM, p. 6; see also *In re A.N.*, *supra*, 11 Cal.App.5th at p. 406.) Thus, appellant's argument may rest on a misapprehension that the "truancy reports" in section 48264.5 are parental notifications as opposed to internal reports, and that a fourth parental notification was required before a juvenile court petition could be filed. There is no such requirement.

The word "report" is used in the truancy statutes to refer to the report to the attendance supervisor or superintendent. The communication with the parents after the first truancy, on the other hand, is a notification. (§ 48260.5.) It is not referred to as a "report" anywhere in the statute. The

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<sup>6</sup> The People note that section 48264.5—which sets out the discretionary graduated consequences for truancy—refers to internal reports, but only for the first three trancies (subdivisions (a)-(c)), and not for the fourth (subdivision (d)), which leads to juvenile court jurisdiction. A case may be made that Legislature intentionally made a distinction between the first three times a student is truant (where reports may assist the school in taking various internal actions) and the fourth (where referral to the juvenile court is the only remaining option). It is also possible that this omission reflects a drafting error and the Legislature in subdivision (d) intended to refer to a truancy report being issued. Because a fourth report was issued in this case, and because the juvenile court had jurisdiction under Welfare and Institutions Code section 601, the Court need not resolve whether section 48264.5, subdivision (d) contemplates a report for a fourth truancy.

notification after the first truancy must use “the most cost-effective method possible,” which could be “electronic mail or a telephone call.” (*Ibid.*) That initial communication is the only point at which the school is required to notify a parent of the child’s truanancies. While there are other times that the school is required to “ma[k]e a conscientious effort to hold at least one conference with a parent” (§ 48262, before deeming student a habitual truant) or the school may request the parent “to attend a meeting” (§ 48264.5, subd. (a), at first truancy report), neither of these circumstances is a reporting requirement, where the school is providing information to a parent. Rather, they are efforts to engage the parent in a dialogue about how to solve the student’s truancy problem. The three letters or notifications sent to A.N.’s home reflect these efforts.

In any event, even if the school had not complied with any reporting procedures for the fourth truancy, that failure would not affect the juvenile court’s jurisdiction. Welfare and Institutions Code section 601, subdivision (b), which addresses juvenile court jurisdiction over truants, says nothing about reporting requirements. It states that “four or more truanancies within one school year” is a predicate to juvenile court jurisdiction.

Under the facts of this case, the juvenile court had jurisdiction.

### **III. ALLOWING A JUVENILE COURT PETITION TO BE FILED AFTER FOUR TRUANCIES, BUT BEFORE A SARB HEARING OCCURS, SERVES IMPORTANT PUBLIC POLICY**

As discussed above, the Education Code and Welfare and Institutions Code state that after four truanancies, a juvenile court petition may be filed to address the student’s truancy. But this does not indicate an inappropriate rush to juvenile court. Juvenile court intervention is only one option available to the school district and student in order to address the truancy. It is not the primary response, and it is usually a last resort. As a practical matter, the school district has many resources to try to encourage the



student's attendance before proceeding to juvenile court. The school may meet with the parents, issue a written warning, enlist the help of teachers and counselors, request attendance at a SARB, and refer the student to tutors, health professionals, or social workers. But the decision of how to address any individual student's truancy is vested firmly in the discretion of the school and the school district. The school, which knows the student and is in the best position to understand the student's circumstances, is also in the best position to make decisions about how best to encourage the student's school attendance.

Prompt initiation of a juvenile court action may be effective as one of the tools available to school districts to address truancy. Before the hearing to declare a student a ward of the court, the court may have preliminary appearances that might impress upon the student the importance of regular school attendance. A looming juvenile court hearing could be a compelling reason for a student to attend school regularly, and could be used at the SARB meeting to encourage attendance. Here, for example, the notes from the SARB meeting indicate that A.N.'s approaching court date was discussed. (CT 87, 88, 90.) In addition, if the juvenile court petition is filed before the SARB meeting, then the preparations for a hearing—such as assignment of counsel and calendaring a hearing—could begin while other options, such as the SARB meeting, are being pursued. In particularly severe cases, such as A.N.'s, the student would otherwise continue to be routinely absent, and would miss important educational time, while the court machinations took place. And a juvenile court action does not necessarily truncate any progress that may be being made by the SARB. If the judge sees improvement and cooperation with the SARB's efforts, he or she may continue the proceedings to allow the student to address attendance issues, which may obviate the need for further court action. The

juvenile court has discretion to respond to the student's individual needs with different orders designed to encourage school attendance.

This Court should reject appellants' attempt to impose additional restrictions and conditions on the flexible and responsive process created by the Legislature.

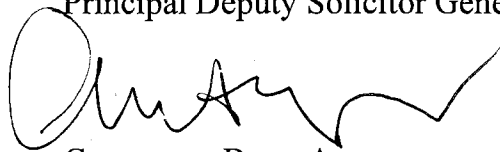
### CONCLUSION

For the reasons stated above, the judgment of the court of appeal should be affirmed.

Dated: November 16, 2017

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
JANILL L. RICHARDS  
Principal Deputy Solicitor General

A handwritten signature in black ink, appearing to read 'Christina Bull Arndt', written over the typed name.

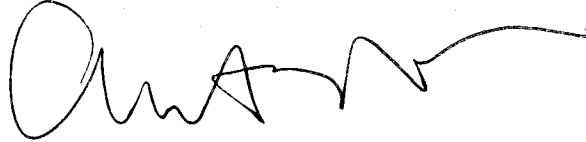
CHRISTINA BULL ARNDT  
Deputy Solicitor General  
*Attorneys for Plaintiff and Respondent*

**CERTIFICATE OF COMPLIANCE**

I certify that the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 6,172 words.

Dated: November 16, 2017

XAVIER BECERRA  
Attorney General of California

A handwritten signature in black ink, appearing to read 'Christina Bull Arndt', with a long horizontal flourish extending to the right.

CHRISTINA BULL ARNDT  
Deputy Solicitor General  
*Attorneys for Plaintiff and Respondent*

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **The People v. A.N.**

No.: **S242494**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 17, 2017, I served the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Office of the County Public Defender  
Attn: William M. Quest, Sr.  
DEPUTY PUBLIC DEFENDER  
800 S. Victoria Avenue, 2<sup>nd</sup> Floor  
Ventura, CA 93009

Court of Appeal  
Second Appellate District  
300 S. Spring Street, 2<sup>nd</sup> Floor  
Los Angeles, CA 90013

Ventura County Superior Court  
The Honorable William R. Redmond,  
Commissioner  
800 S. Victoria Avenue  
Ventura, CA 93009

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 17, 2017, at Los Angeles, California.

\_\_\_\_\_  
Alfred Ryan Palma  
Declarant

\_\_\_\_\_  
  
Signature