

IN THE SUPREME COURT OF CALIFORNIA

In re A.N.

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

*Plaintiff and Respondent*

vs.

A. N.,

*Defendant and Appellant.*

Case No. S242494

Ct. App. 2/6 B275914  
Ventura County Super. Ct.  
No. 2015040294

SUPREME COURT  
**FILED**

FEB 26 2018

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Deputy

**MOTION BY CALIFORNIA RURAL LEGAL ASSISTANCE, INC. FOR  
LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT  
AND [PROPOSED] AMICUS CURIAE BRIEF**

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

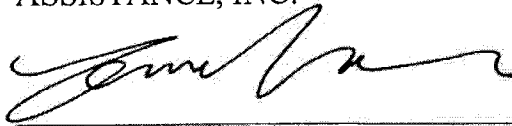
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There are no interested persons or entities that must be reported in this certificate. Cal. Rules of Court, rule 8.208(e)(3).

Dated: February 21, 2018

CALIFORNIA RURAL LEGAL  
ASSISTANCE, INC.



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Monica De La Hoya  
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**APPLICATION FOR LEAVE TO SUBMIT AMICUS CURIAE  
BRIEF IN SUPPORT OF APPELLANT**

To the Honorable Court:

Pursuant to California Rule of Court 8.520 (f) CALIFORNIA RURAL LEGAL ASSISTANCE, INC. hereby respectfully requests leave to file the accompanying amicus curiae brief in support of Appellant, A.N.

CALIFORNIA RURAL LEGAL ASSISTANCE, INC. (CRLA) is a non-profit legal services organization funded, in part, by the Legal Services Corporation and California's IOLTA trust fund program administered by the California State Bar Association. CRLA has 18 offices that provide outreach, education and direct legal representation to low-income communities in over 25 counties. Education is a program priority for CRLA which has a long history of education advocacy on behalf of vulnerable student groups including low-income students, English Learners, migrant students, and students with disabilities. CRLA provides legal assistance to students and parents in a variety of education matters including issues involving language access, discipline, truancy, referrals to school attendance review boards, and transfers to alternative education programs. CRLA has provided both written and oral testimony to the California Legislature regarding the impacts of proposed legislation affecting school discipline, alternative education, and juvenile justice youth. Many of CRLA's school age clients have struggled with behavior and school attendance issues – often due to unaddressed disabilities, homelessness, bullying and school safety concerns. CRLA has represented students and parents

who have been referred to school attendance review boards due to habitual truancy and/or habitual insubordination in multiple counties across the state including, but not limited to, Ventura, Imperial, San Luis Obispo, and Yuba counties.

Cynthia L. Rice, Monica De La Hoya, and Franchesca S. Verdin are attorneys with CRLA. Ms. Rice specializes in education and employment law and serves as a Director of Litigation, Advocacy, and Training. She has litigated several cases in both state and federal court to enforce students' rights to a free public school education and equal educational opportunity. Ms. Verdin specializes in education law and directs CRLA's Rural Education Equity Program. She is involved in local and statewide education advocacy and has represented students throughout the state including court-involved youth facing school discipline and SARB hearings. Ms. De La Hoya is the directing attorney of CRLA's Oxnard office serving Ventura County and provides representation with respect to housing, labor, public benefits, and education. She is a former public defender and has represented parents at SARB hearings and truancy trials.

*Amicus Curiae* has knowledge of local and state truancy and school attendance review board practices and is knowledgeable about the disproportionate impacts of punitive responses to truancy on low-income students of color, students with disabilities, and homeless youth. Amicus Curiae has collected information about the legislative history and contemporaneous construction of the truancy and SARB statutes as well as truancy and SARB trends and comparative referral rates.

Amicus Curiae submit this brief to address those issues in the context of Appellant's case and will not repeat the arguments of the Appellant.

This application is timely made within 30 days after Appellant's Reply Brief was filed. CRLA is the sole author of the *amicus curiae* brief. No person or entity other than CRLA, its members, or counsel made a monetary contribution to fund the preparation or submission of the *amicus curiae* brief.

#### CONCLUSION

For all the foregoing reasons, Amicus Curiae respectfully requests leave to file the accompanying *amicus curiae* brief.

Dated: February 21, 2018

CALIFORNIA RURAL LEGAL  
ASSISTANCE, INC.



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Monica De La Hoya  
Cynthia L. Rice  
Franchesca S. Verdin

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## I. INTRODUCTION

More than 10% of all California public school children are chronically absent.<sup>1</sup> Chronic absence, which affects more than 694,000 students, disproportionately impacts low-income children, racial/ethnic minorities, children with disabilities, foster and homeless youth.<sup>2</sup> Under the standard espoused by the Court of Appeal and championed by the Attorney General in this case, children who fall into one or more of these groups are much more likely to be prosecuted for truancy in violation of numerous laws that are specifically designed to protect and divert them from the juvenile justice system. The mere occurrence of four or more truantries – construed by the Court and Respondent as six or more unexcused absences – can result in immediate citation and referral to the juvenile court without first attempting statutorily mandated interventions such as a referral to a School Attendance Review Board (SARB), truancy mediation or a comparable program. *In re*

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<sup>1</sup>A student is considered a chronic absentee if the student is absent on 10% or more of the school days in the school year when the total number of days a pupil is absent is divided by the total number of days the pupil is enrolled and school was actually taught in the regular day schools of the district, exclusive of Saturdays and Sundays. Educ. Code § 60901(c). See California Department of Education (CDE) Data Quest, 2016-2017 Chronic Absenteeism Rate: Statewide Report, available at <https://dq.cde.ca.gov/dataquest/DQCensus/AttChrAbsRateLevels.aspx?agglvel=State&cds=00&year=2016-17>, last visited on February 21, 2018.

<sup>2</sup> See CDE Data Quest, 2016-2017 Chronic Absenteeism Rate: Statewide Report, *supra*; See also discussion at pp. 9-11, *infra*.

*A.N.* (2017) 11 Cal.App.5th 403, 406. The Respondent asserts that, where SARB is available, children may be cited for truancy and a Welfare & Institutions Code § 601(b) petition filed before they are ever referred to SARB so long as children are referred at some point before their juvenile court hearing. This is at odds with the legislative intent of SARB which is to provide intensive guidance and coordinated community services to meet the special needs of students with school attendance problems and ensure maximum utilization of community resources prior to *any* involvement with the juvenile justice system. Educ. Code § 48320.

Contact with the juvenile justice system can be harmful. Indeed legislation has been passed to minimize some of the impacts of juvenile court involvement that we know exist for children who have had contact with that system including contact through an arrest, adjudication, or detention in a juvenile facility.<sup>3</sup> California's truancy statutes were amended in 2012 with a desire to minimize juvenile court involvement to address truancy based in

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<sup>3</sup> Stats. 2012, ch. 381, § 1, SB 1088 (amended Educ. Code § 48645.5 to prohibit a public school from denying enrollment or readmission to a pupil solely on the basis that he or she has had contact with the juvenile justice system).

part on research showing that children with juvenile court involvement are as much as 4 times more likely to drop out of school.<sup>4</sup>

As Amicus Curiae will demonstrate in this brief, the Court of Appeal's opinion runs afoul our state truancy laws, undercuts express mandates for students with disabilities, homeless and foster youth, and is against public policy as it leads to devastating results for children and families in poverty.

## II. ARGUMENT

### A. The Children Most Likely to be Truant May Fall into Truancy for Reasons Beyond their Control.

As recognized by the State Superintendent of Public Instruction, Tom Torlakson, “[t]here are many reasons a student can fall into a pattern of being chronically absent that are *beyond their control...*”<sup>5</sup> (Emphasis added). Indeed, this reality is explicitly recognized by the Respondent: “Truancy is 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.” (Resp. Answer Brief, p. 6.)

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<sup>4</sup> Assembly Floor Analysis of AB 2616, August 24, 2012, available at [http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201120120AB2616](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201120120AB2616), last visited on February 21, 2018.

<sup>5</sup> Release #17-88, December 5, 2017, “State Schools Chief Tom Torlakson Announces Statewide Chronic Absenteeism Data Available for the First Time” available at <https://www.cde.ca.gov/nr/ne/yr17/yr17rel88.asp>, last visited on February 21, 2018.

Yet without inquiring as to the reasons for Appellant’s absences, the the district, the trial court and the Court of Appeal washed their hands of her; the Court of Appeal characterizing her as “recalcitrant” and concluding that she had an “unwavering commitment to avoiding an education” solely on the basis that Appellant had accumulated absences. Neither the trial court nor the Court of Appeal made an effort to determine whether meaningful interventions had, in fact, been attempted by her school consistent with the requirements of state truancy and SARB statutes. *In re A.N.* (2017) 11 Cal.App.5th 403. Under this approach, foster youth, homeless and disabled children, may just as easily be labelled “recalcitrant” and education avoidant due to absences that are the result of their home situation or educational challenges that could be addressed through support and intervention. *Id.* at 408. In a News Release dated December 5, 2017, the California Department of Education (CDE) announced the release of statewide chronic absenteeism data including data showing which student subgroups have the highest rates of chronic absence. The following tables were provided:

**Table 1: 2016-17 Chronic Absenteeism Counts & Rates by Race/Ethnicity**

<b>Race/Ethnicity</b>	<b>Cumulative Enrollment</b>	<b>Chronic Absenteeism Count</b>	<b>Chronic Absenteeism Rate</b>
African American	369,453	69,556	18.80%



American Indian or Alaska Native	34,005	7,124	20.90%
Asian	573,637	20,606	3.60%
Filipino	156,496	7,817	5.00%
Hispanic or Latino	3,462,159	407,181	11.80%
Pacific Islander	30,574	4,724	15.50%
White	1,505,255	145,981	9.70%
Two or More Races	213,730	22,085	10.30%
Not Reported	60,187	8,956	14.90%
<b>Statewide Total</b>	<b>6,405,496</b>	<b>694,030</b>	<b>10.80%</b>

**Table 2: 2016-17 Chronic Absenteeism Counts & Rates by Program Subgroup**

<b>Program Populations</b>	<b>Cumulative Enrollment</b>	<b>Chronic Absenteeism Count</b>	<b>Chronic Absenteeism Rate</b>
English Learners	1,403,879	147,341	10.5%
Foster Youth	55,288	13,879	25.1%
Homeless Youth	252,525	53,630	21.2%
Migrant Education	58,253	5,298	9.1%
Socioeconomically Disadvantaged	3,915,714	529,250	13.5%
Students with Disabilities	771,024	136,566	17.7%
<b>Statewide Total</b>	<b>6,405,496</b>	<b>694,030</b>	<b>10.8%</b>

As demonstrated by this data, children who are Native American, African-American, foster youth, homeless, or have disabilities are among the student groups with the highest rates of chronic absenteeism. The rates for children who fall into multiple of these categories are even more devastating. For instance, African-American and Native American children who have disabilities and are homeless experience rates of chronic absenteeism that are 4 times the state average: 42.1% of all Native American and 40.6% of all African-American students who are homeless and have disabilities are chronically absent from school.<sup>6</sup> In cases of truancy, our statutes make clear that the presumption is need, not recalcitrance. This is supported by the data evidencing that the children most likely to be truant have challenging life circumstances that are beyond their control including poverty, disability, homelessness, and juvenile dependency.

The Court's decision evidences a total disconnect with the real life experiences of children and the complexity of truancy and chronic absence. The fact that the Court would tout this case as "a good example" of collective community efforts, where there is no evidence in the record that the student was provided services or interventions to address the root causes of her

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<sup>6</sup> See CDE Data Quest, 2016-2017 Chronic Absenteeism Rate: Statewide Report Disaggregated by Ethnicity available at <https://dq.cde.ca.gov/dataquest/DQCensus/AttChrAbsRate.aspx?agglevel=State&cds=00&year=2016-17>, last visited on February 21, 2018.

truancy before she was cited and referred to the juvenile court, is outrageous. *In re A.N.*, supra, 408. The only good example this case provides is how our disconnected public education and juvenile justice systems are failing our neediest children. SARBs were introduced by the Legislature in 1974 “as part of a system of interventions intended to make maximum use of school district and community resources to reengage students, improve graduation rates and *divert minors away from the justice system.*”<sup>7</sup> California’s truancy and SARB statutes have been amended over the years to address the root causes of school attendance issues through a system of targeted interventions and graduated consequences with prosecution and juvenile court involvement as a last resort. See e.g., Stats. 2012, ch. 432, § 2, AB 2616. The purpose of these statutes is completely frustrated by the decision of the Court of Appeal that the mere occurrence of four trancies is sufficient in and of itself to confer jurisdiction. This construction, which favors broad jurisdiction of the juvenile court over truancy matters, must not be upheld in

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<sup>7</sup> State School Attendance Review Board (SARB) Handbook, p. 14, available at <http://www.sdcoe.net/student-services/student-support/Documents/2015-04-14-state-SARB-handbook.pdf>, last visited on February 21, 2018; See also CDE’s webpage on “School Attendance Review Boards” available at <http://www.cde.ca.gov/ls/ai/sb/>, last visited on February 21, 2018 (“the Legislature enacted California Education Code (EC) Section 48320 to enhance the enforcement of compulsory education laws and to *divert students with school attendance or behavior problems from the juvenile justice system until all available resources have been exhausted*)(Emphasis added.)

in the face of the specific statutory scheme and legislative action intended to limit juvenile court involvement in truancy matters.

**B. Referral to SARB, Truancy Mediation, or a Comparable Program is a Condition Precedent to Juvenile Court Jurisdiction.**

In *all* cases where a child is before the juvenile court on the basis of truancy, as described in Welfare & Institutions Code § 601(b), “[e]vidence that the minor’s school has undertaken the actions specified in subdivisions (a), (b), *and (c) of Section 48264.5* of the Education Code” must be provided to the court. Welf. & Inst. Code § 258(b)(1)(A) (Emphasis added.)

Education Code § 48264.5, which specifies a series of graduated consequences for students who are reported truant, makes clear that a student is not within the jurisdiction of the juvenile court *unless* it is first determined that the student has failed to successfully complete a truancy mediation program pursuant to Education Code § 48263 or Welfare & Institutions Code § 601.3 or other similar program. Educ. Code § 48264.5(c) (“If the pupil does not successfully complete the truancy mediation program or other similar program, the pupil *shall be subject to subdivision (d).*”) (Emphasis added.) To construe that the juvenile court has jurisdiction any earlier than that, as the Court of Appeal has done here, renders subdivision (c) of Education Code § 48264.5 a nullity and contradicts the express requirements of Welfare & Institutions Code § 258. “[C]ourts do not construe statutory

provisions ‘so as to render them superfluous.’” *In re J. W.* (2002) 29 Cal. 4th 200, 210.

While the establishment of SARBs and truancy mediation programs may be discretionary, once they are established they must be used consistent with their statutory purpose. Although the Legislature did not require the establishment of any SARB at the local or county level, it made clear its intent that once established a SARB should “propose and promote the use of alternatives to the juvenile court system” and “provide, in any proposed alternative, for ... maximum utilization of community and regional resources ... prior to *any* involvement with the judicial system.” Educ. Code § 48320(b) (Emphasis added.)

Education Code § 48263 provides that where a SARB *is* available, the district attorney or probation officer (if either has elected to participate in a truancy mediation program) may only be notified *after* the SARB has determined that: (1) available community services cannot resolve the problem of the student or (2) the student or student’s parents have failed to respond to directives of the SARB or services provided.<sup>8</sup> Respondent’s

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<sup>8</sup> If the district attorney or the probation office has not elected to participate in a truancy mediation program described in § 48263.5, the SARB or probation officer may direct the county superintendent of schools to request a petition on behalf of the pupil in the juvenile court of the county if it has determined that available community resources cannot resolve the truancy

argument that a truancy petition may be filed before a SARB hearing occurs contravenes the express limitations imposed by the legislature on the SARB process, which require that the SARB first attempt to resolve the student's truancy and determine that it cannot because available community services cannot address the problem or because the student or student's parents have failed to respond to directives or services provided, before SARB may contact the district attorney or probation for further action.

Under Welfare & Institutions Code § 601.3, if the district attorney or probation officer is notified by a SARB that a minor continues to be classified as a truant "*after review and counseling* by the SARB" or probation, the district attorney or probation officer may request the parents and the child to attend a meeting in the district attorney's office or at the probation department to discuss the possible legal consequences of the minor's truancy. *Id.* Welfare & Institutions Code § 601.3(e) provides that "[u]pon completion of the meeting authorized by this section, the probation officer or the district attorney, after consultation with the probation officer, may file a petition pursuant to Section 601 ***if the district attorney or the probation officer determines*** that available community resources cannot resolve the truancy

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problem, or if the pupil or the parents or guardians of the pupil, or both, have failed to respond to services provided or to the directives of the school attendance review board, the probation officer, or services provided. Education Code § 48263.

problem, or if the pupil or the parents or guardians of the pupil, or both, have failed to respond to services provided or to the directives of the school, the school attendance review board, the probation officer, or the district attorney.” (Emphasis added.) Therefore, a determination that available community resources cannot resolve the truancy problem or that the student or student’s parents have failed to respond to directives or services provided must be made *before* a petition may be filed.

Even in counties that do not have a SARB or truancy mediation program, state law mandates that a “comparable program” will be provided before a pupil will be subject to the jurisdiction of the juvenile court under Educ. Code § 48264.5(c). See also Educ. Code § 48260.6. And even then, a determination must still be made before a 601 petition may be filed that either (1) available community resources cannot resolve the problem of the truant student or (2) the student or the student’s parents, or both, have failed to respond to the directives of the school district or services provided. Educ. Code § 48263; Welf. & Inst. Code § 258.

These statutes make clear that a petition pursuant to Welfare & Institutions Code § 601(b) may be filed *only after* referral to SARB, truancy mediation or a comparable program and *after* it is determined that available community resources cannot resolve the truancy problem or that the student or student’s parents, or both, have either failed to respond to services

provided or to the directives of the school, the school attendance review board, the probation officer, or the district attorney. The Respondent's approach here circumvents that process and issues the student a go directly to Juvenile Court card based solely on a showing that the student has accrued "six or more unexcused absences." *In re A.N.* at 406.<sup>9</sup>

Respondent concedes that "[w]here 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..." (Resp. Answer Brief, 18.) (Emphasis added.) However, Respondent argues that the petition may be filed before a referral to SARB is made so long as the SARB process is used before the actual juvenile court hearing commences.<sup>10</sup> As

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<sup>9</sup> Respondent and the Court of Appeal justify this process with a focus on the 26 unexcused absences documented by the district. However, the rule adopted by the court, expressly allows for a juvenile court referral after merely six unexcused absences. Moreover, it completely eliminates the intervention and support steps required under the SARB legislative mandate.

<sup>10</sup>At the time A.N. was cited and prosecuted for truancy, students and parents in Ventura County were cited at much higher rates than students and parents in other counties. According to the 2015-2016 Annual SARB Report for Ventura County, 869 students and 482 parents were cited for truancy that school year. Ventura County Office of Education, Summary of Annual School Attendance Review Board Data for Ventura County (2015-2016), available at <http://www.vcoe.org/Portals/7/VCOE-Administration/StuServ-Documents/SARB/COUNTY%20WIDE%20SARB%20DATA%20FINAL%20VERSION%202015-16.pdf>, last visited on February 21, 2018.



explained above, Respondent is wrong – the SARB and truancy statutes limit when the district attorney or probation department may be notified regarding a child who is truant and in all cases require a specific determination to be made before a petition is filed – a determination that cannot possibly be made if the SARB process has not commenced. Respondent’s position is unlawful as it exceeds its prosecutorial authority under the express requirements of

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These statistics starkly contrast with the statistics of larger counties such as Los Angeles. Los Angeles County serves over 1.5 million students, more than 10x the population served by Ventura County (141,899). Yet, Los Angeles County has fewer juvenile court referrals for truancy. According to the 2015-2016 Annual SARB Report for Los Angeles County, only 43 cases were referred to the juvenile court. Los Angeles County Office of Education, Summary of Annual School Attendance Review Board Data for Los Angeles County (2015-2016), available at <http://www.lacoe.edu/Portals/0/StudentServices/Final%202015-16%20Annual%20SARB%20Report.pdf>, last visited on February 21, 2018.

Less than 1.5% of all cases referred to SARB resulted in a referral to the juvenile court in Los Angeles County. In contrast, more than 40% of all students and 23% of all parents referred to SARB were cited and referred to the juvenile court in Ventura County. In 2016-2017, 220 students and 81 parents were cited for truancy in Ventura County. Ventura County Office of Education, Summary of Annual School Attendance Review Board Data for Ventura County (2016-2017), available at <http://www.vcoe.org/Portals/7/VCOE-Administration/StuServ-Documents/SARB/One%20Page%20for%20CountyWide%20SARB%201617.pdf>, last visited on February 21, 2018.

These statistics raise serious concerns regarding the prosecution of truancy cases in Ventura County suggesting, as defended by Respondent, that citations are issued and court referrals made without first attempting to provide meaningful interventions through the SARB process, as was the case with appellant A.N. While truancy citations and court referrals in Ventura County have declined as a result of local community and education reform efforts, A.N. was not a beneficiary of those reforms and the Respondent’s position is at odds with those efforts.

Education Code §§ 48263, 48264.5 and Welfare & Institutions Code §§ 258, 601(b), and 601.3. It is also completely contradictory to the legislative intent of the SARB process to “promote the use of alternatives to the juvenile justice system”, and maximize the utilization of community resources on behalf of children “prior to *any* involvement with the judicial system.” Educ. Code § 48320 (Emphasis added.)

**C. A Fourth (or Subsequent) Truancy Report Must Issue Following Referral to SARB, Truancy Mediation, or a Comparable Program before A Juvenile Court is Vested with Jurisdiction.**

In determining juvenile court jurisdiction, the most important consideration is not how many times a student has been reported as truant through a computer generated system – as argued by Respondent – but rather that the school has provided proper notice to the student and the student’s parents and has exhausted available interventions without having resolved the truancy problem consistent with the requirements of Education Code § 48264.5. Under Education Code § 48264.5, a student falls within the jurisdiction of the juvenile court no earlier than the fourth time that the student is reported as truant following the interventions provided in conformity with that statute.

The Court of Appeal held that a fourth truancy report need not issue before the juvenile court may assert jurisdiction over a habitual truant. The

Respondent admits that the law requires a school to report every truancy to relevant school officials, but denies any obligation to report or notify a student's parents of the same. The Respondent asserts that even if the school had not complied with any reporting procedures for the student's truancy, the failure to comply would not affect the court's jurisdiction because Welfare & Institutions Code § 601(b) says nothing about reporting requirements. (Resp. Answer Brief, 24.) Welfare & Institutions Code § 601(b) says nothing about due process either, but surely due process applies and must be provided before a student may be charged with violating that statute.

Due process requires that if a fourth truancy is going to be used as a basis to initiate a juvenile court petition that the truancy be reported not just to relevant education officials, but to parents and students themselves so that an opportunity to correct, excuse, or verify the absence is provided before a petition is filed. Under the construction advanced by the Respondent, a juvenile court petition could be filed against a student without the student or his/her parents ever receiving proper notice of the alleged trancies upon which the petition is based. While a computer database may be used by schools to maintain school attendance records, it does not satisfy their existing duty to timely notify parents when their child is absent from school.

Education Code § 51101(a) provides that parents “*have the right* and should have the opportunity, as mutually supportive and respectful partners

in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children, ... [including] (4) *to be notified on a timely basis if their child is absent from school without permission.*” (Emphasis added.)

A computer database that reports absences to the attendance supervisor and school district only does not comply with the school’s ongoing duty to notify parents of absences, especially when those absences will be used as a basis to prosecute their children. The Attorney General’s position that the mere occurrence of six absences is all that is needed to vest the juvenile court with jurisdiction over a child for truancy, would mean that the court could exercise its jurisdiction over more than 694,000 public school children currently identified as chronically absent even if their schools have failed to notify their parents, have done nothing to help address the root causes of their truancy, and without regard for factors beyond their control such as poverty, homelessness, juvenile dependency or disability. The statutes, which limit referral to the juvenile court as a last resort, do not support this construction.

**D. Prosecution for Truancy in the Juvenile Court is Reserved as a Last Resort When Attempts to Address the Root Causes of a Child’s Truancy Have Failed.**

California’s truancy laws are designed to enforce compulsory education requirements and keep students in school. Policies and practices

that result in immediate citation of students for truancy conflict with both the intent and express requirements of these laws making it less likely that students will graduate and more likely that students will drop out of school. Over the last decade, increased attention on the “school to prison pipeline” as well as high truancy, suspension, and expulsion rates has led to a series of legislative and policy changes designed to reduce punitive disciplinary measures and minimize juvenile court involvement for school attendance and behavioral issues. Many of these changes promote the use of alternative means of correction, afford greater discretion to our schools and courts, and promote alignment of our state law and policy with best practices to improve school climate and student engagement. These changes have been driven and supported by data demonstrating the disproportionate impacts of punitive discipline on low-income students, students of color, and other vulnerable groups, such as students with disabilities, foster and homeless youth, as well as growing research on what actually works to improve school attendance.

AB 2616, enacted in 2012, is just one of several pieces of legislation that was passed to promote non-punitive responses and minimize juvenile court involvement. This legislation amended Education Code § 48264.5 to provide greater discretion to address the root causes of attendance issues

early on while minimizing court and police involvement.<sup>11</sup> AB 2616 aligned truancy laws with best practices favoring school-based rather than law-enforcement based interventions.

Guidance promulgated by the California Department of Education (CDE) and State School Attendance Review Board – of which the Attorney General’s Office is a part – as well as a series of reports issued by the Attorney General’s Office lend further support that the juvenile court is reserved as a last resort to address truancy. Uniform guidelines released by CDE and the State SARB in the form of a handbook of practices, guidance, and tools for improving student attendance, behavior and learning entitled the “State SARB Handbook” make clear, consistent with the statutory scheme, that although SARBs do have the power, when necessary, to refer students and their parents or guardians to court, they are intended to serve as

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<sup>11</sup> AB 2616 was consistent with the goal of a series of bills that were introduced and passed in the same year that reduce punitive disciplinary measures and focus on alternative ways to keep students in school including; *e.g.*, AB 1729 (Stats. 2012, ch. 425, § 3, AB 1729), which requires other means of correction to be used and fail prior to in-school or out-of-school suspension and limited the circumstances in which students may be suspended for a first offence; and AB 2537 (Stats. 2012, ch. 431, § 3, AB 2537), which limits the types of acts committed by students that are grounds for mandatory expulsion and affords greater discretion for administrators to make a recommendation other than expulsion for certain acts if warranted by the specific factual circumstances or other means of correction would address the conduct.

a safety net.<sup>12</sup> For students deemed “habitual truants,” the handbook states that once a student has been “reported as a truant three or more times per school year and the school/district has made a conscientious effort to hold at least one conference with the parent or guardian and the pupil, and unexcused absences or tardiness have continued, the school district *needs to issue a directive* requesting the family to attend a SARB hearing or a truancy mediation meeting.” *Id.* at 53. (Emphasis added.) “If the pupil *continually and willfully violates SARB directives and/or truancy mediation directives*, the school district may request a citation be issued to the pupil pursuant to WIC Section 601 (b) or EC § 48262.” *Id.* at 54 (Emphasis added.) The State SARB Handbook makes clear that a habitually truant student does not get cited until the student has had an opportunity to receive interventions provided by SARB or a truancy mediation and continually and willfully fails to comply. *Id.* “An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts....Courts must,

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<sup>12</sup> State SARB, School Attendance Review Board Handbook: A Roadmap for Improved School Attendance and Behavior (2015), p. 10, available at <http://www.cde.ca.gov/ls/ai/sb/sarbhandbook.asp>, last visited on February 21, 2018. Pursuant to Educ. Code § 48325(b)(4)(c), the State SARB “shall make recommendations annually to the Superintendent of Public Instruction, and to state agencies as deemed appropriate, regarding the needs and services provided to high-risk youth, including youth with school attendance or behavioral problems, in the state public schools, and shall propose uniform guidelines...”

in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation.” *Yamaha Corp. of America v. State Bd. of Equalization*, (1998) 19 Cal. 4th 1, 7.

The Attorney General’s position that a child may be cited and referred to the juvenile court before a child is referred to SARB so long as the SARB process has commenced before the child’s juvenile court hearing is inconsistent with their own published reports of what the law requires. According to a report by the Attorney General, “SARBs function as the intermediate step between schools and prosecuting authorities.”<sup>13</sup> Indeed the flowchart included in Respondent’s Answer Brief at p. 14 places SARB between a habitually truant student and the District Attorney’s office.<sup>14</sup> That is because SARB – where it is available – is a condition precedent to juvenile court jurisdiction. To hold otherwise, would turn the SARB process on its head.

The Legislative intent of the SARB process is to “promote the use of alternatives to the juvenile justice system”, and maximize the utilization of

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<sup>13</sup> In School + On Track: Cal. Attorney General’s 2013 Report on California’s Elementary School Truancy & Absentee Crisis, p.64, available at [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 on February 21, 2018.

<sup>14</sup> *Id.* at 65.



resources on behalf of children “prior to *any* involvement with the judicial system.” Educ. Code § 48320. A system of prosecution that involves the judicial system before attempting alternatives including referral to SARB where SARB is available is counter to that purpose and violates the specific limitations imposed by the Legislature.

**E. The Standard Adopted by the Court of Appeal Conflicts with State and Federal Laws Designed to Protect Children who are Foster Youth, Homeless, and/or Have Disabilities.**

Numerous state and federal laws protect the rights of students who are homeless, foster youth, and/or have disabilities to have access to the same free, appropriate public education as is provided to other students. These laws impose affirmative duties on school districts to identify and address barriers to regular school attendance that may result from homelessness, foster care, and/or disability.

The McKinney-Vento Act is federal legislation that ensures the educational rights and protections of children experiencing homelessness. 42 U.S.C. § 11431, et seq.; Educ. Code § 48850 et seq. (imposes these obligations on districts as a matter of state law.) It requires all local educational agencies (LEAs), including public school districts and county offices of education, to ensure that homeless students have access to the same free, appropriate public education as is provided to other children. Consistent with that duty, the State and LEAs are required to review and undertake steps

to revise laws, regulations, practices, or policies that may act as barriers to the identification, enrollment, attendance, or success in school of homeless children. 42 U.S.C. § 11432(g)(1)(I), (g)(7).

Under the construction of the Court of Appeal of the Welfare and Institutions Code § 601(b) as conferring broad jurisdiction of the juvenile court in truancy matters, children who are homeless can be prosecuted for truancy before their schools may identify them as homeless, irrespective of whether their truancy is due to their homelessness, and regardless of whether services to which they may be entitled under state and federal law – such as transportation<sup>15</sup> to and from school – have been provided.

State law provides similar protections for foster youth. Educ. Code § 48850 et seq. The Legislature recognizes that the mobility of children in foster care often disrupts their educational experience and has imposed duties on school districts and other public agencies to help mitigate against the harm of those disruptions. Educ. Code § 49069.5(a)(1). Among the protections is the requirement that Districts designate a staff person to serve as the educational liaison for foster children. Educ. Code § 48853.5(c). The educational liaison has numerous duties including ensuring the proper educational placement and enrollment of foster children, assisting foster

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<sup>15</sup> 42 U.S.C. § 11432(g)(1)(J)(iii)(I); Educ. Code § 48852.7.

children when transferring from one school to another school, and ensuring the timely transfer of records so that foster children may be immediately enrolled. School districts must ensure that, if a child in foster care is absent from school due to a decision by the court or placing agency to change the child's placement, the grades and credits for the child will be calculated as of the date the pupil left school and no lowering of grades will occur as a result of the absence. Educ. Code § 49069.5(g). School districts must also ensure that a foster child's grades are not lowered as a result of an absence if that is due to a court appearance or related court ordered activity. Educ. Code § 49069.5(h). If the mere occurrence of four truancies – as defined by Respondent as six unexcused absences – is all that is needed to confer the juvenile court with jurisdiction, foster children can be prosecuted for truancy before they may have an opportunity to verify any absences due to changes in placement, court appearances or related court activities, and irrespective of whether the District is complying with its obligations to ensure that they are provided with proper educational placements and promptly enrolled if they are transferring from one school to another.

Children with disabilities are also protected by state and federal law. The Individuals with Disabilities Education Act (IDEA) is the primary federal program that authorizes state and local aid for special education and related services for children with disabilities. 20 U.S.C. § 1400 et seq. A

primary purpose of the IDEA is “(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (B) to ensure that the rights of children with disabilities and parents of such children are protected ...” 20 U.S.C. § 1400(d)(1). The State and its school districts have an affirmative duty to find children who are in need of special education and related services. 20 U.S.C. § 1412(a)(3); Educ. Code § 56300 (districts must “actively and systematically seek out all individuals with exceptional needs”). All children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and assessed. 20 U.S.C. § 1412(a)(3); Educ. Code § 56301. State and federal law protects students with disabilities from adverse disciplinary action resulting in changes in placement, such as expulsion, based on behaviors that are a manifestation of the child’s disability. 20 U.S.C. § 1415(k); Educ. Code § 48915.5.

Allowing children to be prosecuted for truancy based solely on the occurrence of four trancies is likely to subject children with disabilities – both identified and unidentified – to unfair prosecution. It may take up to

60 days for a child to be assessed and an individualized education program (IEP) meeting convened to determine whether or not the child is eligible for special education and related services. 20 U.S.C. § 1414(a)(1)(c); Educ. Code § 56302.1(a). Construing Welfare & Institutions Code § 601(b) as conferring jurisdiction upon the occurrence of four truancies – six unexcused absences – without more, is likely to harm children with disabilities who may have to wait up to two months to be assessed for appropriate services and for whom school attendance issues may be a manifestation of their disability.

**F. The Court of Appeal’s Decision Leads to Disastrous Results for Families Living in Poverty.**

The decision of the Court of Appeal in *In Re A.N.* is likely to exacerbate the school attendance crisis in California as well as the blatant disparities in chronic absence that we know exist for low-income students of color, homeless youth, foster youth, and children with disabilities. The Respondent argues that its approach of prosecuting first and helping later serves important public policy, but research shows that that punitive approach and philosophy is ineffective and has been specifically rejected by our Legislature. While the Legislature has not completely divested the juvenile court from jurisdiction in truancy matters, it has substantially limited its jurisdiction by making clear that it is not automatically conferred and establishing a system of graduated interventions that may not be short-

circuited. Educ. Code § 48264.5 (“The fourth time a truancy is issued within the same school year, the pupil *may* be within the jurisdiction of the juvenile court...”); Educ. Code § 48263 (limiting when a SARB or district may notify the district attorney or probation); Welfare & Institutions Code § 601.3 (limiting when the district attorney may file a § 601(b) petition). The Respondent asserts that the court has discretion to respond to the student’s individual needs with different orders designed to encourage school attendance. (Resp. Answer Brief, 26.) However, the Respondent fails to support this assertion with any actual examples. In fact, here A.N. was assessed a \$50 fine. She was not provided with individualized services, counseling or referrals to help address the trauma she suffered. She was simply offered community service or a fine. (Resp. Answer Brief, 16.) For many low-income children, a fine of \$50 poses a financial hardship on their families. Even though it may present a hardship, some families may feel they have no other option but to opt for the fine and not community service because community service may mean multiple days of lost wages for a parent who has to take their child wherever they need to go to complete the hours. Lack of transportation may present another obstacle, especially for children whose parents may be disabled. Under Education Code § 48294, the fines collected from these families revert back to their school districts and must be used to support the activities of the school attendance review board.

The decision of the Court Appeal in this case essentially results in low-income families subsidizing a process that, according to the Court, they need not have benefited from. This could not possibly have been the intent of our Legislature.


### III. CONCLUSION

For these reasons, we support the arguments of Appellant, A.N. There may not be “a single, rigid path leading to the juvenile court” – but the law makes clear that every path must follow the clear intervention mandates in the law. This Court should reverse the judgment of the Court of Appeal and make clear that referral to SARB, truancy mediation, or a comparable program is a prerequisite to juvenile court jurisdiction and that a fourth report of truancy must be made – not just to education officials and prosecuting authorities but to the parents of children who are alleged to be truant.

Respectfully Submitted,

DATED: February 21, 2018

CALIFORNIA RURAL LEGAL  
ASSISTANCE, INC.

By:   
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Certificate of Word Count

I do hereby certify that this *Amicus Curiae* Brief uses a 13 point font and contains 6,306 words, exclusive of the caption page, tables of contents and authorities, signature blocks, and this certificate.

Respectfully submitted.

Date: February 21, 2018

CALIFORNIA RURAL LEGAL  
ASSISTANCE, INC.

By:



Franchesca S. Verdin



DECLARATION OF SERVICE

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Case Name: *In re A.N.; The People, Plaintiff/Respondent, v. A. N.,  
Defendant/Appellant.*  
Case No. **S242949 from Ct. App. 2/6 B275914 [Superior Court No.  
2015040294]**

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I, Irma Avila-Espinoza, declare:

I am employed with the law offices of CALIFORNIA RURAL LEGAL ASSISTANCE, INC. My business address is 338 South A Street, Oxnard CA 93030. I am over the age of 18 years of age, and not a party to this action.

On February 21, 2018, I served a true and correct copy of the attached:  
**MOTION BY AMICUS CURIAE CALIFORNIA RURAL LEGAL ASSISTANCE, INC. FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT AND [PROPOSED] AMICUS CURIAE BRIEF**

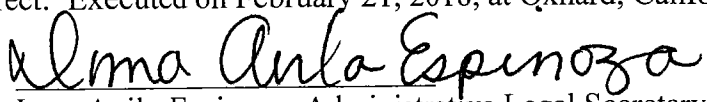
By United States mail as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 21, 2018, at Oxnard, California.

By:   
Irma Avila-Espinoza, Administrative Legal Secretary