



April 15, 2011

Jeff Slowikowski  
Acting Administrator  
Office of Juvenile Justice and Delinquency Prevention  
810 Seventh Street, NW  
Washington, DC 20531  
jeff.slowikowski@usdoj.gov

**VIA E-MAIL**

Dear Acting Administrator Slowikowski:

We write on behalf of the American Civil Liberties Union (ACLU) and the American Civil Liberties Union of Rhode Island (ACLU-RI) to express concern over documented evidence that Rhode Island is securely detaining status offenders in violation of the federal Juvenile Justice Delinquency Prevention Act (JJDP). It is our understanding that Rhode Island Family Court Magistrates are incarcerating youth adjudged wayward for the status offense of truancy without providing them with adequate and timely notice and a meaningful right to be heard. We respectfully request that the Office of Juvenile Justice and Delinquency Prevention investigate this situation and take steps to bring Rhode Island into compliance with the JJDP.

As you know, one of the JJDP's four core protections is deinstitutionalization of status offenders (DSO). Accordingly, the Act provides that status offenders may not be detained or confined in secure detention or correctional facilities.<sup>1</sup> The 2010 OJJDP Guidance Manual states that there may be "rare situations" where short-term secure custody of accused status offenders may be necessary.<sup>2</sup> For example, short term detention prior to formal juvenile court action for investigative purposes, for identification purposes, or for the purpose of allowing return to the juvenile's parents or guardian may be proper.<sup>3</sup> Even in these "rare situations," secure detention of an accused status offender is to be limited to 24 hours prior to an initial court appearance.<sup>4</sup>

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<sup>1</sup> 42 U.S.C. § 5633(a)(11) (2002).

<sup>2</sup> 2010 OJJDP Guidance Manual, Section 3.2 at p. 20,  
<http://www.ojjdp.gov/compliance/guidancemanual2010.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; 28 C.F.R. 31.303(f)(2) (1996).

There is a “valid court order” exception to the rule against detention: adjudicated status offenders may be incarcerated for violating a valid court order. The Guidance Manual defines a valid court order as “a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to such order; and who received, before the issuance of the order, the full due process rights guaranteed to such juvenile by the Constitution of the United States.”<sup>5</sup> Within that raft of Due Process protections, the regulations require that courts have jurisdiction and that they give juveniles fair warning in writing of prohibited conduct and consequences.<sup>6</sup> The regulations also require that the court exhaust all non-institutional options and report findings to the relevant public agency.<sup>7</sup>

The Rhode Island Truancy Court was initially designed to provide at-risk students with quick and efficient access to services and support needed to stay in school. Today, however, it is frequently used by schools throughout the state as a disciplinary device for children who are unable to pay attention while at school or complete class work or homework because of special educational or medical needs.

In December 2010, after a six-month investigation, the *Providence Journal* reported that “[t]he magistrates, who run the weekly truancy court in classrooms, cafeterias and school offices around the state, have declared youths as young as 12 in criminal contempt of court for not answering their questions, swearing, slamming a door on their way out of the room or otherwise showing ‘total disregard for authority.’”<sup>8</sup>

The article, a copy of which is attached, details the arbitrary incarceration of two young girls accused of status offenses. Both stories raise serious questions about procedural deficiencies in their adjudication. For example, Joanne Minaya, the 12 year-old student held in criminal contempt for slamming a door, was immediately ordered detained for two nights without any additional violation hearing. No recording or transcript of her truancy hearing was made. The order was entered even though the child had no parents or lawyer present. She was immediately led away by police.

Status offenders held in criminal contempt, like Joanne, are sent to the Rhode Island Training School, the state’s only secure juvenile detention facility.<sup>9</sup> Once there, the youths are forced to undergo invasive searches, wear prison uniforms and mix with teenagers accused of drug dealing, robbery, weapons possession, assault and other violent crimes. While state law prohibits the detention of status offenders at the Training School, an exception is allowed for criminal contempt of court. By their own admission, the

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<sup>5</sup> Guidance Manual, Section 3.2 at p. 22.

<sup>6</sup> 28 CFR 31.303(f)(3) (1996).

<sup>7</sup> 28 CFR 31.303(f)(3)(vi) (1996).

<sup>8</sup> Lynn Ardit, *R.I. Truants who Offend Magistrates are Sent Straight to Jail*, *Providence Journal*, Dec. 11, 2010, available at [http://www.projo.com/news/content/truancy\\_court\\_12-12-10\\_OGLBM2E\\_v328.31582a9.html](http://www.projo.com/news/content/truancy_court_12-12-10_OGLBM2E_v328.31582a9.html).

<sup>9</sup> Though disparate impact is beyond the scope of this letter, it should be noted that seventy-six percent of youths at the Training School receive special education services for behavioral disorders, and seventeen percent receive these services for learning disabilities. Act for Juvenile Justice, Rhode Island State Fact Sheet 1, [http://www.act4jj.org/media/factsheets/factsheet\\_43.pdf](http://www.act4jj.org/media/factsheets/factsheet_43.pdf).

magistrates have sent at least 28 youths from truancy court to the Training School under that exception since 2005.<sup>10</sup>

It is abundantly clear that the two young students in the *Providence Journal* article were detained in violation of the state's obligations under the JJDP. Discipline for rude behavior is not one of the "rare situations" contemplated by OJJDP that would allow detention of status offenders. Even if detention were appropriate, the Magistrate Judge's order of a 48-hour detention for a status offender is wholly inappropriate.

Moreover, no "valid court order" exception applies in these two reported cases given the lack of due process afforded. As discussed in greater detail below, we believe these students were deprived of due process when they waived into the Truancy Court program. They were further deprived of due process rights when punished with criminal contempt charges. No separate adjudication regarding contempt was undertaken; there was no fair warning in writing of prohibited conduct and consequences; there was no access to an attorney. In fact, given the lack of procedural safeguards in Rhode Island's Truancy Court program, it is likely that none of the detentions ordered by magistrate judges meet the requirements of a "valid court order."

In 2010, ACLU, ACLU-RI, cooperating law firms Strauss, Factor, Laing & Lyons and Hardy Tabor & Chudacoff, and New York Law School's Racial Justice Project, filed suit against the Chief Justice of the Family Court, five magistrate judges and officials from ten school districts, alleging that the Truancy Court program systematically deprived students and their parents or guardians of rights guaranteed to them by the Fourteenth Amendment's Due Process Clause and Rhode Island state law. Specifically, the suit claims that, in violation of federal and state law, the Truancy Court program:

- Exercises jurisdiction over truancy petitions that are legally insufficient on their face;
- Fails to make stenographic or other verbatim recordings of any proceedings, despite the fact that the Family Court is a court of record;
- Fails to provide interpreters for parents and guardians who do not speak or understand English with sufficient fluency;
- Arraigns and issues orders against students, parents, and guardians who are not properly before it;
- Fails to provide students, parents and guardians with adequate notice of their due process rights at arraignments;
- Coerces students, parents and guardians into waiving procedural due process protections, including the right to counsel, in a manner that is neither voluntary nor knowing; and
- Engages in *ex parte* communications with prosecuting school officials to determine whether students are complying with the terms and conditions of the Truancy Court program.

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<sup>10</sup> Arditi, *supra* note 8.

A copy of the complaint is attached to this letter.<sup>11</sup>

A number of our named plaintiffs are students whose absences were the result of learning disabilities or medical conditions. Though none of our named plaintiffs were incarcerated, all juveniles participating in the Truancy Court program must sign a waiver acknowledging the possible sanction of detention at the Training School, and at least one of the plaintiffs was so threatened.

The Family Court defendants have moved to dismiss the lawsuit, claiming, among other things, that they are immune from suit. The action is currently on appeal before the Rhode Island Supreme Court.

In addition, defendants issued an administrative order last fall, attempting to remedy some, but not all, of the procedural deficiencies at issue in our lawsuit. The order is vague and ambiguous and does not address defendants' adjudication of legally insufficient truancy petitions; their failure to provide students, parents, and guardians with adequate notice of their procedural due process rights; their efforts to coerce students, parents, and guardians into waiving those rights; and their *ex parte* conversations with school officials to determine whether students are complying with the terms and conditions of the program. The Family Court has refused to respond to our repeated requests for clarification. A copy of the order is attached.

Finally, it appears that Rhode Island is not keeping or reporting accurate statistics on the detention of status offenders. The state initially reported only 26 overnight truancy detentions to the *Providence Journal*, but the newspaper obtained records of two additional detentions and advocates who work in the Family Court contend that many more have been jailed.

The *Providence Journal* reports that "detentions have gone largely unnoticed because the state has failed to report them to the federal justice officials who monitor state compliance with federal regulations." If this is true, the state is also in violation of the reporting requirements under JJDP.

For the reasons stated above, we respectfully request that OJJDP investigate the Rhode Island Truancy Court's detention of status offenders, use of the "valid court order" exception, and failure to keep and report accurate data on detentions. We hope in that process, OJJDP asks the state to provide a public written response clarifying practices and policies regarding detention orders stemming from Truancy Court.

Thank you in advance for your attention to this important matter. If you have any questions, please contact ACLU Senior Staff Attorney Robin Dahlberg at 212-549-2682 or rdahlberg@aclu.org.

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<sup>11</sup> The complaint has been amended twice to reflect that fact that plaintiffs have settled with some of the school districts and have added others as defendants.

Sincerely,



Robin L. Dahlberg  
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Racial Justice Program  
American Civil Liberties Union



Steven Brown  
Executive Director  
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American Civil Liberties Union

Enc.:

Lynn Arditi, *R.I. Truants who Offend Magistrates are Sent Straight to Jail*, Providence Journal, Dec. 11, 2010;

Second Amended Complaint, *Boyer v. Bedrosian*, No. 2010-1858 (R.I. Super. Ct. filed Nov. 2, 2010);

Rhode Island Family Court Administrative Order 2010-2 (J. Bedrosian, Sept. 10, 2010).

Cc: VIA E-MAIL

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