

IN THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA

IN RE: TRUANCY PETITIONS

Administrative Order
NO: 8.8

APR 10 2013
LEE CO. FLORIDA
CLERK OF COURTS
D.C.

FILED

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In addressing Truancy Petitions filed pursuant to Florida Statute § 984.151, counties in the Twentieth Judicial Circuit have historically and primarily utilized procedures, policies, and forms, derived and based upon the model policies, procedures and forms originally established in Escambia County. The Escambia County model was acknowledged and promoted by the Florida Department of Education in its Technical Assistance Paper dated December 2000, Paper Number: FY 2001-02, and procedures, policies and forms based upon the Escambia County model were recommended and utilized by School Boards of counties within the Twentieth Judicial Circuit.

By opinion filed December 28, 2012, the Second District Court of Appeal has commented on its belief as to the original legislative intent in creating Florida Statute § 984.151, and the propriety of using some aspects of the policies, procedures, and forms based upon the Escambia County model. Sockwell v. State, 38 Fla. L. Weekly D69 (Fla. 2d DCA, Dec. 28, 2012). The Second District Court of Appeal has opined that, as it relates to truancy proceedings in Florida, “[a] disconnect exists between the goals of the statutes and our normal approaches to due process,” and that truancy proceedings are not intended to be criminal or quasi-criminal in nature:

“Truancy court was intended to be a precursor to a child-in-need-of-services proceeding. It was not a precursor to a juvenile delinquency proceeding or an adult county court criminal proceeding.”

Id.

The Twentieth Judicial Circuit acknowledges and respects the direction and guidance offered by the Second District Court of Appeal, and for the purpose of consistency throughout

the counties of the Twentieth Judicial Circuit, and by the authority vested in the Chief Judge of the Twentieth Judicial Circuit pursuant to Fla. R. Jud. Admin. 2.215, it is ordered as follows:

1. Truancy Petitions authorized by Florida Statute § 984.151 shall be filed by the Superintendent of Schools with the Juvenile Dependency Division of the Circuit Court of the respective county of the Twentieth Judicial Circuit in which the student is enrolled in school. In accordance with Florida Statute § 984.151(1), the Petition must allege sufficient facts demonstrating that the student is subject to compulsory school attendance and:

(a) has had at least five unexcused absences, or absences for which the reasons are unknown, within a calendar month, or ten unexcused absences, or absences for which the reasons are unknown, within a 90-calendar-day period pursuant to Fla. Stat. § 1003.26(1)(b), or

(b) has had more than fifteen unexcused absences in a 90-calendar-day period.

2. As noted by the Second District Court of Appeal in its Sockwell opinion, Florida Statute § 984.151 provides that the petition is to be filed by “the superintendent of schools.” The statute does not give explicit authority for a designee of the Superintendent to file a Truancy Petition or appear on behalf of the Superintendent. Accordingly, the Superintendent, or legal counsel representing the Superintendent, must file the petition and appear at all truancy proceedings.

3. In accordance with Florida Statute § 984.151(5), the Trial Court is required to hear the Petition within thirty (30) days. Accordingly, an initial hearing shall be scheduled to take place within thirty (30) days of the filing of the Petition, and the Clerk shall issue a summons to the parent, guardian, or legal custodian of the student, as identified in the petition, directing that the parent, guardian, or legal custodian and the student appear for the hearing at the time and place specified.

4. At the initial hearing, the allegations of the Petition shall be read to the student and parent, guardian, or legal custodian. If the student and parent, guardian, or legal custodian do not

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contest the allegations of the Petition, the Trial Court may make findings of fact based upon such admissions and enter a final disposition order as provided for by subsection (7) of Florida Statute § 984.151, and as further described below in paragraph six.

5. If, at the initial hearing, the student and parent, guardian, or legal custodian elect to contest the allegations of the Petition, the matter shall be scheduled for an evidentiary hearing, at which time all parties will have the opportunity to present evidence and testimony as it relates to the allegations of truancy, after which the Trial Court will make a determination as to whether the student qualifies as truant or habitually truant.

6. If, at the initial hearing, based upon admissions of the student and parent, guardian, or legal custodian, or at a subsequent evidentiary hearing, the Trial Court determines that the student did, in fact, miss any of the alleged days, the Trial Court shall, as per Florida Statute § 984.151(7), order the student to attend school and the parent, guardian, or legal custodian to ensure that the student attends school. The Trial Court may further order participation in programs, services, or alternative sanctions, as delineated under subsection (7) of Florida Statute § 984.151, which are as follows:

(a) that the student participate in alternative sanctions to include mandatory attendance at alternative classes to be followed by mandatory community services hours for a period up to six (6) months;

(b) that the student and the student's parent or guardian participate in homemaker or parent aide services;

(c) that the student or the student's parent or guardian participate in intensive crisis counseling;

(d) that the student or the student's parent or guardian participate in community mental health services if available and applicable;

(e) that the student and the student's parent or guardian participate in services provided by voluntary or community agencies as available;

(f) that the student or the student's parent or guardian participate in vocational, job training, or employment services.

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7. If the Trial Court finds that Petitioner has failed to meet its burden of demonstrating that the student qualifies as truant, the Trial Court shall enter an order dismissing the petition.

8. The Second District Court of Appeal has opined in its Sockwell opinion that, in granting the Petition, the Trial Court's written order to attend school, as provided for in paragraph six above, is intended to be the final appealable order, and, therefore, the order shall be treated as such. To the extent that the Trial Court's written order to attend school is to be treated as the final appealable order, follow-up review hearings for monitoring purposes shall not be automatically scheduled by the Trial Court. The responsibility for monitoring compliance is that of the Petitioner, as further described below. To the extent that Petitioner finds non-compliance, Petitioner shall resort to the three options set forth below in paragraph 12.

9. Subsection (8) of Florida Statute § 984.151 was included as part of the originally enacted 1999 law, Ch. 99-398, Laws of Florida, and explicitly provides that "[i]f the student does not successfully complete the sanctions ordered in subsection (7), the case shall be referred to the case staffing committee under s. 984.12 with a recommendation to file a child-in-need-of-services petition under s. 984.15." (emphasis added).

10. Subsection (9) of Florida Statute § 984.151 was added in 2000, Ch. 2000-235, Laws of Florida, and explicitly provides that "[t]he parent, guardian, or legal custodian and the student shall participate, as required by court order, in any sanctions or services required by the court under this section, and the court shall enforce such participation through its contempt power." (emphasis added).

11. In its Sockwell opinion, the Second District Court of Appeal acknowledges the Trial Court's contempt power both for the purpose of addressing participation in sanctions and services, and for the purpose of enforcing its order to attend school. However, the Second District Court of Appeal further emphasizes that a truancy proceeding is intended to be informal

and the precursor to a Child-in-Need-of-Services Petition in the event that the student does not comply with the court-ordered sanctions.

12. Accordingly, it shall be the responsibility of Petitioner to monitor compliance by the student and parent, guardian, or legal custodian, and in the event of non-compliance with any portion of the Trial Court's order, the Petitioner may, if applicable:

(a) refer the matter to the case staffing committee under Florida Statute § 984.12 with a recommendation to file a child-in-need-of-services petition under Florida Statute § 984.15; or

(b) refer the matter to the Office of the State Attorney for consideration of prosecution under Florida Statute § 1003.27(7)(a)1; or

(c) bring the matter before the Trial Court through the filing of an appropriate motion for contempt, alleging sufficient facts which, if true, demonstrate a willful disregard of the Trial Court's order. Any motion for contempt shall be filed by the Superintendent as Petitioner, or by counsel representing the Superintendent as Petitioner. If the motion is legally insufficient in that it fails to allege sufficient facts demonstrating a willful violation, the motion will be dismissed, without the necessity of a hearing. If the motion is legally sufficient, it will be set for hearing. Counsel for Petitioner shall appear at any contempt hearing, shall be responsible for prosecuting the charge of contempt, and shall be responsible for meeting Petitioner's burden of demonstrating, beyond a reasonable doubt, a willful violation of the Trial Court's earlier order.

13. In accordance with the suggestion of the Second District Court of Appeal in its Sockwell opinion, the use of the Trial Court's contempt power as it relates to truancy proceedings is to be used sparingly. If the Trial Court denies a Petitioner's motion for contempt, but still finds non-compliance with the Trial Court's prior order, whether willful or otherwise, the Trial Court may, alternatively and on its own, refer the matter to the case staffing committee under Florida Statute § 984.12 with a recommendation that a child-in-need-of-services petition be filed under Florida Statute § 984.15.

14. Attached hereto are forms which the Trial Court may use, in the Trial Court's discretion, as it relates to truancy proceedings.

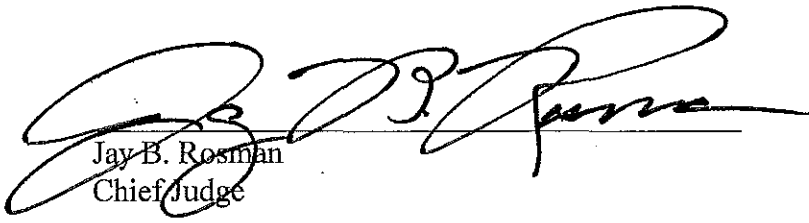
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15. In light of the entry of this Administrative Order, all prior Administrative Orders entered as it relates to "Truancy Court" within the Twentieth Judicial Circuit are hereby vacated as no longer being necessary. Noting that prior Administrative Orders establishing "Truancy Courts" may include or attach copies of truancy program manuals created and adopted by each counties' respective School Board, it should be noted that vacating these prior Administrative Orders does not serve to necessarily vacate or impact those programs or manuals under the control of each respective School Board. This Court only has authority and jurisdiction over procedures related to the filing of Truancy Petitions as permitted by statute, or other court events. The establishment by the local School Boards of any other policies or procedures designed to ensure school attendance are within the province of the local School Boards pursuant to Florida Statute Chapter 1003, Part II. However, any portions of the local School Boards' current policies or procedures involving the filing of Truancy Petitions or other court events, to the extent that they may be in conflict, are superseded by this Administrative Order.

16. To the extent that this Administrative Order may be in conflict with any statute, law, or rule, the statute, law, or rule shall prevail.

DONE AND ORDERED in chambers at Ft. Myers, Lee County, Florida, this 5th day of April, 2013.


Jay B. Rosman
Chief Judge

History. Order Establishing Truancy Night Court for Charlotte County (Feb. 27, 2002); Order Establishing Truancy Night Court for Hendry County (Oct. 1, 2003); Order Establishing Truancy Court for Collier County (Jan. 15, 2008).

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA
JUVENILE DEPENDENCY DIVISION**

In the Interest of:

_____ /
a Minor Child, DOB: _____
and _____
(Parent or Legal Guardian)

Case No. _____

FINAL ADJUDICATION AND DISPOSITION JUDGMENT
(After Admission to Allegations of Truancy)

THIS MATTER comes before the Court on the Truancy Petition filed by the Superintendent of Schools pursuant to Fla. Stat. 984.151.

The petition is legally sufficient in that it alleges either:

- _____ the minor child has had at least 5 unexcused absences, or absences for which the reasons are unknown, within a calendar month; or
- _____ the minor child has had at least 10 unexcused absences, or absences for which the reasons are unknown, within a 90-calendar-day period; or
- _____ the minor child has had more than 15 unexcused absences within a 90-calendar-day period.

A hearing was held on _____, 20____, with the following parties present:

- _____ Parent(s)/Legal Guardian(s)
- _____ Minor Child
- _____ Superintendent of Schools
- _____ Counsel for Superintendent of Schools

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The Parent(s)/Legal Guardian(s) and Minor Child having **ADMITTED** at the hearing to the allegations of Truancy as set forth in the Petition, it is **ORDERED AND ADJUDGED** as follows:

1. The Court finds that the above-named minor child did miss the school days as alleged in the Petition.
2. The minor child **SHALL** attend school each and every day and the Parent(s)/Legal Guardian(s) **SHALL** ensure that the minor child attends school each and every day. The minor child shall have no unexcused tardies or absences.
3. In addition the Court orders the following, if checked:

_____ a. the minor child shall attend alternative classes to be followed by mandatory community services hours for a period of up to 6 months, specifically: _____

_____ b. the minor child and Parent(s)/Legal Guardian(s) shall participate in homemaker or parent aide services, specifically: _____

_____ c. the _____ minor child and/or _____ Parent(s)/Legal Guardian (s) shall participate in intensive crisis counseling, specifically: _____

____ d. the ____ minor child and/or ____ Parent(s)/Legal Guardian (s) shall participate in community mental health services, specifically: _____

____ e. the minor child and Parent(s)/Legal Guardian(s) shall participate in services provided by voluntary or community agencies, specifically: _____

____ f. the ____ minor child and/or ____ Parent(s)/Legal Guardian (s) shall participate in vocational, job training, or employment services, specifically: _____

4. Failure to comply with all terms of this order may result in a referral to the case staffing committee under Fla. Stat. § 984.12 with a recommendation to file a child-in-need-of-services petition under Fla. Stat. § 984.15.
5. Failure to comply with all terms of this order may also result in the issuance of an order directing that the Parent(s)/Legal Guardian(s) show cause as to why the Parent(s)/Legal Guardian(s) should not be held in contempt of court.
6. This order is a final appealable order.

DONE AND ORDERED at _____, _____ County, Florida, this _____ day
of _____, 20 ____.

Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished this _____ day of _____, 20 _____, to:

- ____ Parent(s)/Legal Guardian(s)
- ____ Minor Child
- ____ Superintendent of Schools
- ____ Counsel for Superintendent of Schools
- ____ Other _____

By: _____

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA
JUVENILE DEPENDENCY DIVISION

In the Interest of:

Case No. _____

_____ a Minor Child, DOB: _____

and _____
(Parent or Legal Guardian)

FINAL ADJUDICATION AND DISPOSITION JUDGMENT
(After Evidentiary Hearing on Allegations of Truancy)

THIS MATTER comes before the Court on the Truancy Petition filed by the Superintendent of Schools pursuant to Fla. Stat. 984.151.

The petition is legally sufficient in that it alleges either:

- _____ the minor child has had at least 5 unexcused absences, or absences for which the reasons are unknown, within a calendar month; or
- _____ the minor child has had at least 10 unexcused absences, or absences for which the reasons are unknown, within a 90-calendar-day period; or
- _____ the minor child has had more than 15 unexcused absences within a 90-calendar-day period.

A hearing was originally held on _____, 20_____, at which time the Parent(s)/Legal Guardian(s) and Minor Child DENIED the allegations of Truancy as set forth in the Petition. Accordingly, an evidentiary hearing was scheduled and held on _____, 20_____, with the following parties present:

- _____ Parent(s)/Legal Guardian(s)
- _____ Minor Child
- _____ Superintendent of Schools
- _____ Counsel for Superintendent of Schools

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The Court having fully considered the evidence, testimony and argument presented, and upon due consideration, it is **ORDERED AND ADJUDGED** as follows:

1. The Court finds that the above-named minor child did miss the school days as alleged in the Petition.
2. The minor child SHALL attend school each and every day and the Parent(s)/Legal Guardian(s) SHALL ensure that the minor child attends school each and every day. The minor child shall have no unexcused tardies or absences.
3. In addition the Court orders the following, if checked:

_____ a. the minor child shall attend alternative classes to be followed by mandatory community services hours for a period of up to 6 months, specifically: _____

_____ b. the minor child and Parent(s)/Legal Guardian(s) shall participate in homemaker or parent aide services, specifically: _____

_____ c. the _____ minor child and/or _____ Parent(s)/Legal Guardian (s) shall participate in intensive crisis counseling, specifically: _____

____ d. the ____ minor child and/or ____ Parent(s)/Legal Guardian (s) shall participate in community mental health services, specifically: _____

____ e. the minor child and Parent(s)/Legal Guardian(s) shall participate in services provided by voluntary or community agencies, specifically: _____

____ f. the ____ minor child and/or ____ Parent(s)/Legal Guardian (s) shall participate in vocational, job training, or employment services, specifically: _____

4. Failure to comply with all terms of this order may result in a referral to the case staffing committee under Fla. Stat. § 984.12 with a recommendation to file a child-in-need-of-services petition under Fla. Stat. § 984.15.

5. Failure to comply with all terms of this order may also result in the issuance of an order directing that the Parent(s)/Legal Guardian(s) show cause as to why the Parent(s)/Legal Guardian(s) should not be held in contempt of court.

6. This order is a final appealable order.

DONE AND ORDERED at _____, _____ County, Florida, this _____ day
of _____, 20 ____.

Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished this _____ day of _____, 20 _____, to:

- ____ Parent(s)/Legal Guardian(s)
- ____ Minor Child
- ____ Superintendent of Schools
- ____ Counsel for Superintendent of Schools
- ____ Other _____

By: _____

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA
JUVENILE DEPENDENCY DIVISION

In the Interest of:

_____ /
a Minor Child, DOB: _____

Case No. _____

and _____ /
(Parent or Legal Guardian)

ORDER DISMISSING TRUANCY PETITION

THIS MATTER comes before the Court on the Truancy Petition filed by the Superintendent of Schools pursuant to Fla. Stat. 984.151. Upon consideration, the Court finds:

_____ The petition is legally insufficient.

_____ Having conducted an evidentiary hearing on _____, 20____, the Court finds that Petitioner, the Superintendent of Schools, has failed to present sufficient evidence or testimony demonstrating that the Minor Child has missed some or all of the school days as alleged in the Petition.

Accordingly, it is **ORDERED AND ADJUDGED** that the Truancy Petition is DISMISSED.

DONE AND ORDERED at _____, _____ County, Florida, this _____ day
of _____, 20____.

Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished this _____ day of _____, 20____, to:

- _____ Parent(s)/Legal Guardian(s)
- _____ Minor Child
- _____ Superintendent of Schools
- _____ Counsel for Superintendent of Schools
- _____ Other _____

By: _____

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA
JUVENILE DEPENDENCY DIVISION

In the Interest of:

_____ a Minor Child, DOB: _____

Case No. _____

and _____
(Parent or Legal Guardian)

ORDER TO SHOW CAUSE

THIS MATTER comes before the Court on the Motion for Contempt filed by Petitioner, the Superintendent of Schools, alleging that the Parent(s)/Legal Guardian(s) have willfully failed to comply with this Court's prior Final Adjudication and Disposition Judgment.

Having reviewed the motion and finding it to be legally sufficient in that it alleges facts that, if proven to be true, would serve to demonstrate a willful disregard of this Court's prior Final Adjudication and Disposition Judgment, it is

ORDERED AND ADJUDGED that the Parent(s)/Legal Guardian(s) shall appear on _____, 20____, at _____: _____ a.m./p.m., at _____ for the purpose of showing cause as to why the Parent(s)/Legal Guardian(s) should not be held in contempt of court.

The Parent(s)/Legal Guardian(s) shall be arraigned at the hearing. The Parent(s)/Legal Guardian(s) is advised that he/she is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, testify in his/her own defense, refuse to testify, to have the offense proven beyond a reasonable doubt, and, if found guilty, to present mitigating circumstances.

Punishment, if imposed, may include a fine and incarceration. Should the court determine, based on the evidence presented at the hearing, that the conduct of the Parent(s)/Legal Guardian(s) warrants sanctions for civil contempt in addition to or instead of indirect criminal contempt, the court reserves the right to find the Parent(s)/Legal Guardian(s) guilty of civil contempt and impose appropriate civil sanctions.

The Sheriff of this County shall serve this Order to Show Cause by delivering copies to the Parent(s)/Legal Guardian(s), with proof of Sheriff's service.

DONE AND ORDERED at _____, _____ County, Florida, this _____ day of _____, 20____.

Circuit Judge

- Copies to:
- _____ Parent(s)/Legal Guardian(s)
 - _____ Minor Child
 - _____ Superintendent of Schools
 - _____ Counsel for Superintendent of Schools
 - _____ Other _____

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact _____, whose office is located at _____, and whose telephone number is _____, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA
JUVENILE DEPENDENCY DIVISION

In the Interest of:

_____ /
a Minor Child, DOB: _____

Case No. _____

and _____
(Parent or Legal Guardian)

ORDER DISMISSING MOTION FOR CONTEMPT AS LEGALLY INSUFFICIENT

THIS MATTER comes before the Court on the Motion for Contempt filed by Petitioner, the Superintendent of Schools, alleging that the Minor Child and Parent(s)/Legal Guardian(s) have willfully failed to comply with this Court's prior Final Adjudication and Disposition Judgment.

Having reviewed the motion and finding it to be legally insufficient in that it fails to allege facts that, if proven to be true, would serve to demonstrate a willful disregard of this Court's prior Final Adjudication and Disposition Judgment, it is

ORDERED AND ADJUDGED that the Motion for Contempt is DISMISSED.

DONE AND ORDERED at _____, _____ County, Florida, this _____ day
of _____, 20____.

Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the above order has been furnished this _____ day of _____, 20____, to:

- _____ Parent(s)/Legal Guardian(s)
- _____ Minor Child
- _____ Superintendent of Schools
- _____ Counsel for Superintendent of Schools
- _____ Other _____

By: _____

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA
JUVENILE DEPENDENCY DIVISION

In the Interest of:

Case No. _____

a Minor Child, DOB: _____

and _____
(Parent or Legal Guardian)

ORDER DENYING MOTION FOR CONTEMPT AFTER HEARING

THIS MATTER comes before the Court on the Motion for Contempt filed by Petitioner, the Superintendent of Schools, alleging that the Minor Child and Parent(s)/Legal Guardian(s) have willfully failed to comply with this Court's prior Final Adjudication and Disposition Judgment. Having entered an Order to Show Cause and having conducted a hearing, the Court finds and Orders as follows:

_____ The Petitioner has failed to meet its burden of demonstrating a willful failure to comply with this Court's prior Final Adjudication and Disposition Judgment, and the Motion is DENIED.

_____ The Petitioner has demonstrated a failure to comply with this Court's prior Final Adjudication and Disposition Judgment, though did not demonstrate that such failure was willful. Accordingly, the Motion is DENIED. However, this matter is hereby referred to the case staffing committee under Florida Statute § 984.12 with a recommendation that a Child-In-Need-Of-Services petition be filed under Florida Statute § 984.15.

DONE AND ORDERED at _____, _____ County, Florida, this _____ day
of _____, 20____.

Circuit Judge

Certificate of Service

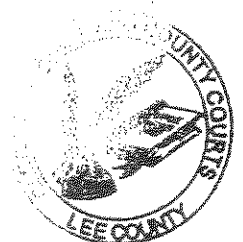
I HEREBY CERTIFY that a true and correct copy of the above order has been furnished this _____ day of _____, 20____, to:

- _____ Parent(s)/Legal Guardian(s)
- _____ Minor Child
- _____ Superintendent of Schools
- _____ Counsel for Superintendent of Schools
- _____ Department of Juvenile Justice
- _____ Department of Children and Family Services
- _____ Other _____

By: _____

STATE OF FLORIDA, COUNTY OF LEE
FILED FOR RECORD
This 10 Day of APRIL 2013 Recorded in CIRCUIT
Book 57 Page 40-53 and Record Verified.
LINDA DOGGETT By Due M.
Clerk Circuit Court Deputy Clerk

I certify this document to be a true and correct copy of the record on file in my office, Linda Doggett, Clerk Circuit/County Court, Lee County, FL
Dated: 4-10-13
By Am
Deputy Clerk



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