SJC-13151

LEXINGTON PUBLIC SCHOOLS vs. K.S.

Middlesex. November 3, 2021. - March 18, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Child Requiring Assistance. Unauthorized Practice of Law. Statute, Construction. School and School District.

Petition filed in the Middlesex County Division of the Juvenile Court Department on April 7, 2021.

A motion to dismiss was heard by Kenneth J. King, J.

The Supreme Judicial Court granted an application for direct appellate review.

Michael F. Kilkelly for the child.
Kay H. Hodge (John M. Simon also present) for the petitioner.
Maria L. Remillard for the mother.

GEORGES, J. In this case we are asked to decide whether an employee of a school district who is not an attorney, here an assistant school principal, may on behalf of a school district file and advocate for a petition under G. L. c. 119, § 39E,

asserting that a child requires assistance, where the child has been "habitually truant" from school, see G. L. c. 119, § 21, and other efforts to encourage the child's attendance have been unsuccessful. We conclude that the assistant principal, who was also the supervisor of attendance, see G. L. c. 76, § 19, of a middle school in the Lexington public schools did not engage in the unauthorized practice of law in filing and pursuing such a petition. Accordingly, we affirm the Juvenile Court judge's order denying the child's motion to dismiss the petition on the ground that the assistant principal had engaged in the unauthorized practice of law.

1. Background. In April of 2021, an assistant principal and attendance supervisor of a middle school in the Lexington public schools filed a petition under G. L. c. 119, § 39E, the child requiring assistance (CRA) statute, in the Juvenile Court, asserting that the twelve year old child needed assistance because he had "excessive absences" and willfully had failed to attend school for forty-eight days that school year. The petition asserted that in addition to his absences from school, the child had not attended two meetings the school undertook with his parents by audio-visual conference, and the child and his family had not participated in a truancy prevention program.

At a preliminary hearing later that month,[1] a Juvenile Court judge accepted the petition pursuant to G. L. c. 119, § 39E, and concluded that a fact-finding hearing was necessary. The child subsequently moved to dismiss the petition on the ground that, by pursuing the petition on behalf of the school district, the assistant principal, a nonattorney, was engaging in the unauthorized practice of law.

A remote hearing on the child's motion to dismiss was conducted in May of 2021, prior to the previously scheduled fact-finding hearing. See G. L. c. 119, § 39E. The assistant principal, the probation officer who had conducted the initial, statutorily mandated inquiry, a social worker with the Department of Children and Families (DCF) who had been involved with the family, the child and his attorney, and the child's mother and father were present electronically.

During the hearing, counsel for the child presented the child's position that "a liquid entity such as a school district . . . is required to be represented by an attorney." The judge then asked the assistant principal whether she "wish[ed] to speak [with] respect to that." The assistant principal responded:

"General Laws [c. 119, § 39G,] actually does allow me, as a

[1] General Laws c. 119, § 39E, requires that a preliminary hearing be conducted no more than fifteen days after the filing of the petition.

> petitioner, to file, and throughout . . . the statute it particularly refers to the school district representative. It does not say attorney or counsel. Almost implying that the legislature when they created the law knew that requiring an attorney for every CRA would almost deter us from filing them and helping children."

Observing that "historically . . . school officials have been authorized to file and that's been the way these petitions have been handled,"[2] the judge denied the motion to dismiss.

At the ensuing fact-finding hearing, which followed immediately upon the judge's ruling, the assistant principal testified as the sole witness for the school, and also represented the school district. By that point, the child had eighty-three absences from school, seventy-four of which were unexcused, and approximately six weeks of which were because his father had not enrolled him in school until mid-October. The assistant principal testified that the father had "worked very hard" to get the child enrolled in school, over obstacles; the father then had worked with the school to develop a plan to ensure the child's attendance; and "it went well for a little while and then it started to go down hill, again." The school then met with the mother, the child, the social worker, and the

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[2] See G. L. c. 76, § 20 (providing that supervisors of school attendance "may apply for petitions under the provisions of [G. L. c. 119, § 39E]"); Juvenile Court Standing Order 3-21(a) commentary ("supervisors of school attendance may file applications [on behalf of the school district] alleging that the child is truant").

school counselor, forming another plan that worked briefly and then "went south." School social workers and school counselors also had "reached out multiple times trying . . . multiple different plans," including having a social worker go with the child to school, "even to just get [the child] in for a portion of the day," but none had succeeded. Early in the school year, the child was to have attended school in a hybrid fashion, partly in person and partly through remote learning, due to the COVID-19 pandemic. When the school returned to full-time, in-person classes on April 28, 2021, the child did not return to class.

Eventually, after the child was tested and found not to have any learning disabilities that might require an individual education plan, the school psychologist conducted a "school refusal assessment" to identify the reasons for the child's excessive absences. The assessment revealed that the child experienced school as stressful in part because of all the schooling he had missed. In addition, when the child was not in class, "he [was] allowed to play video games, ride his bike and do things that he really enjoy[ed] doing."

DCF had been involved with the family beginning in approximately November of 2020, apparently due to the child's absences from school. According to DCF, the fraught relationship between the child's parents, and their lack of

communication, contributed heavily to the child's negative emotions toward attending school. The family's DCF worker had reported that the child required therapy and was experiencing emotional issues; therapy had begun but had been discontinued. DCF had sent a family intervention specialist to the child's home multiple times a week, "without any result."

The child did not offer any documentary evidence or present any witnesses. At the close of the evidence, the judge determined that the allegations in the CRA petition had been proved "beyond a reasonable doubt." Specifically, he found that the child was between the ages of seven and seventeen, the child had missed more than eight days of school in the current quarter, and the child's refusal to attend school was willful. The judge therefore ruled that the child required assistance.

At the time of the hearings, the child's parents were separated. They shared legal custody of the child and his younger sibling, but the child's father had physical custody, and the child resided with his father in Fitchburg; his mother lived in Lexington. The child continued to be enrolled in the Lexington public schools through the provisions of the McKinney-Vento Homeless Education Assistance Act, because "he [was] considered homeless under those provisions and his last

residence was in Lexington."[3] The probation officer characterized the parents' relationship as "fractured" and having "a lasting impact on [the child] and the behaviors."

At various times in the past, the child's father had refused to communicate with the child's mother, putting the child and his younger sibling in the middle of their parents' relationship and causing emotional issues for both children. As stated, a DCF worker cited the fraught relationship between the child's parents, and their lack of communication, as being specifically detrimental to the child, as well as to his younger sibling, and as contributing heavily to the child's aversion to attending school.

The parents' vitriolic relationship, and their hostility towards each other, is abundantly evident in their statements to

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[3] The McKinney-Vento Homeless Education Assistance Act was enacted to "ensure the enrollment, attendance and the opportunity to succeed in school for homeless children and youth." Department of Elementary and Secondary Education, https://www.doe.mass.edu/sfs/mv [https://perma.cc/25KK-MGFJ]. Homeless children who are covered under the McKinney-Vento provisions are allowed to stay in their "school of origin for the duration of homelessness and until the end of the academic year in which they obtain permanent housing, if it is in their best interest." SchoolHouse Connection, McKinney-Vento Act: Quick Reference, https://schoolhouseconnection.org/mckinney-vento-act/?gclid=EAIaIQobChMI1b_zmqPs8wIV4QmICR0l_AP2EAAYASAAEgK_WvD_BwE#_edn18 [https://perma.cc/K5PF-5JA6]. Both State educational agencies and local education agencies "must develop, review, and revise policies to remove barriers to the identification, enrollment, and retention of homeless students in school, including barriers due to fees, fines, and absences." Id.

the judge, often about each other. At one point during the fact-finding hearing, the judge asked the child to leave the room so that he could address the adults, and then he told the parents, repeatedly and in no uncertain terms, that, based on his observations of their interactions during the two hearings, their continual "sniping" with each other and inability to speak civilly to one another, or to communicate at all, was "absolutely destructive to [their children's] emotional well being and their ability to grow up and mature."

According to DCF records, the child's father reported that the child would not "listen to him" and would not go to school. DCF records also indicated that the child was reported to "sneak[] out of the house when dad turns his back" and "refuse[] to comply with his [father's] rules." Although she was not called as a witness, the child's mother told the judge that the child attended school and did his homework when he was staying with her, which he had done apparently for approximately one month. The mother also said that, during the time that he was with her, the child had begun to refuse to attend school, at which point she said that she would "push[] forward [the] CRA just so he knows that this is a serious thing." The mother maintained that the child was "absolutely 110 percent responsible for himself," and urged that the child be placed in DCF custody, in the apparent belief that, thereafter, DCF

immediately would return the child to her custody. It appeared to have been difficult for both parents to monitor the child's school attendance, particularly when the child was attending school remotely. Even when the child did attend classes, he did not engage in class discussions or produce any written assignments.

The probation officer who had conducted the initial inquiry recommended that the child be placed in DCF custody. Once this recommendation was made, the judge informed the child's parents that they had the right to counsel at any hearing at which custody may be at issue, and he inquired whether they wished to be appointed counsel; they both responded affirmatively. The mother again asserted that she supported placing the child in DCF custody. The child's attorney objected to placement in DCF custody before the final hearing on disposition, and the child agreed that he would attend school prior to the hearing on disposition, without the need for DCF intervention.

The judge scheduled a hearing on disposition for the following week. The judge then admonished the child, "I'm very close to placing you in the custody of DCF. I'm going to give you the week to show us that you're good to your word." The child sought relief from the denial of his motion to dismiss from a single justice of the Appeals Court, pursuant to G. L. c. 119, § 39I, and G. L. c. 231, § 118. The single justice

allowed the appeal to proceed before a panel of the Appeals Court, and we allowed the child's petition for direct appellate review.

2. Statutory provisions governing CRA proceedings. The Legislature has enacted a comprehensive scheme mandating the attendance of children at school and requiring school districts to enforce their attendance and to investigate every case where a child living in the district is not enrolled in or attending school. School districts or attendance supervisors also are required to make detailed reports on each child in the city or town's registration and attendance.

The school attendance provisions in G. L. cc. 72, 76, and 119[4] mandate that the school committee of each municipality is responsible for enforcing the attendance at school of "all children" who reside in that municipality, G. L. c. 76, § 1;[5] define the roles and responsibilities of the supervisor of attendance, G. L. c. 76, § 19; authorize the supervisor of attendance to file CRA petitions where children are not complying with attendance requirements; and, if the court so orders, authorize that supervisor of attendance to have

[4] See G. L. c. 119, §§ 21, 39E-39I; G. L. c. 72, §§ 2, 2A, 3; G. L. c. 76, §§ 1, 19, 20.

[5] General Laws c. 76, § 1, requires "[t]he school committee of each town [to] provide for and enforce the school attendance of all children actually residing therein."

"oversight" over such children, G. L. c. 76, § 20.

To facilitate its duty to enforce school attendance, each school committee "shall appoint . . . one or more supervisors of attendance." See G. L. c. 76, § 19. "Supervisors of attendance, under the direction of the committee and superintendent of schools, shall have charge of the records required by [G. L. c. 72, § 2], shall be responsible for their completeness and accuracy, and shall receive the co-operation of principals, teachers and supervisory officers in the discharge of their duties hereunder." G. L. c. 72, § 2. Among other required reports, supervisors of attendance, under the direction of the school committee, must maintain a record of all school-age children residing in the town and must "examine carefully into all cases where children of school age are not enrolled in, and attending school, as required by [G. L. c. 76, § 1]." G. L. c. 72, § 2.

The school committee of each town is charged with enforcing the legislative mandate that children attend school "during the number of days required by the board of education in each school year." G. L. c. 76, § 1. Supervisors of attendance "shall inquire into all cases" where a child is habitually absent from school and "may apply for petitions under the provisions of [G. L. c. 119, § 39E]." G. L. c. 76, § 20. Pursuant to G. L. c. 119, § 39E,

> "A school district may initiate an application for assistance in [the Juvenile Court] stating that said child is not excused from attendance in accordance with the lawful and reasonable regulations of such child's school, has willfully failed to attend school for more than [eight] school days in a quarter or repeatedly fails to obey the lawful and reasonable regulations of the child's school. The application for assistance shall also state whether or not the child and the child's family have participated in the truancy prevention program, if one is available, and a statement of the specific steps taken under the truancy prevention program to prevent the child's truancy; and if the application for assistance states that a child has repeatedly failed to obey the lawful and reasonable regulations of the school, a statement of the specific steps taken by the school to improve the child's conduct."

Moreover, G. L. c. 76, § 20, provides that, "if the court so orders," supervisors of attendance shall

> "have oversight of children placed on probation . . . and of children admitted to or attending shows or entertainments in violation of [G. L. c. 140, § 197]. They may apprehend and take to school without a warrant any truant or absentee found wandering in the streets or public places."

When a CRA petition is presented for filing, the statute encourages attempting to resolve the matter without proceeding with the filing, and requires the clerk to "inform" the petitioner that "the petitioner may delay filing the request and choose to have the child and the child's family referred to a family resource center, community-based services program or other entity designated by the secretary of health and human services to provide community-based services . . . and return to court at a later time to file an application for assistance, if needed." G. L. c. 119, § 39E. The statute also mandates that

the clerk "prepare, publish and disseminate to each petitioner educational material relative to available family resource centers, community-based services programs and other entities designated by the secretary of health and human services." Id.

Upon the filing of an application under G. L. c. 119, § 39E, the clerk "shall request the chief probation officer or a designee to conduct an immediate inquiry to determine whether in the officer's opinion the best interest of the child require that assistance be given." A preliminary hearing must be held "as soon as possible," and no later than fifteen days after the filing "to determine whether assistance is needed." Id. At the preliminary hearing, a Juvenile Court judge "shall receive the recommendation of the probation officer" who conducted the inquiry. Id. The judge then may

> "(i) decline to accept the application for assistance because there is no probable cause to believe that the child and family are in need of assistance; (ii) decline to accept the application for assistance because it finds that the interests of the child would best be served by informal assistance, in which case the court shall, with the consent of the child and the child's parents or guardian, refer the child to a probation officer for assistance; or (iii) accept the application for assistance and schedule a fact-finding hearing."

Id.

If, after a fact-finding hearing, a judge determines that the statements in the petition have been proved beyond a reasonable doubt, the judge may deem the child to be in need of

assistance. G. L. c. 119, § 39G. The judge then must convene a conference to receive recommendations "as to the best disposition" of the matter from the probation officer who conducted the initial inquiry, the child and the child's attorney, a representative from DCF if DCF is involved with the family, a representative of any community-based services program that is involved with the family, a representative from the child's school, the petitioner, the child's parent or legal guardian, and "any other person who may be helpful in determining the most effective assistance available to be offered to the child and family." Id. See G. L. c. 119, § 39F. The judge may decide to allow the child to remain with his or her parents or legal guardian, place the child in the care of another adult or private organization qualified to care for the child, or place the child in the custody of DCF. G. L. c. 119, § 39G.

The child has the right to counsel at all hearings, must be present at the fact-finding hearing and the subsequent conference on disposition, and has the right to be heard. G. L. c. 119, §§ 39F, 39G. The parents or legal guardians of the child have the right to notice and to be heard and the right to counsel if custody of the child is at issue. Id. A judge may allow a motion to dismiss upon a filing by one of the parties or the probation officer if the judge determines that dismissal

would be in the best interests of the child, or by agreement of the parties. G. L. c. 119, § 39G.

3. Discussion. The child argues that the CRA adjudication should be vacated and the matter remanded to the Juvenile Court with instructions to dismiss because the school district was represented by a nonlawyer, the assistant principal, who engaged in the unauthorized practice of law. The crux of the child's argument is that a school district is a corporation under G. L. c. 71, § 16, and therefore is required, under G. L. c. 221, § 46, and the common law, to be represented in court by an attorney. Both statutory interpretation and determinations under common law are legal questions that the court reviews de novo. See Concord v. Water Dep't of Littleton, 487 Mass. 56, 60 (2021).

The child maintains that, regardless of whether the CRA statute permits a school district to be represented in court by a supervisor of attendance who is not an attorney, "[t]he assistant principal does not have the legal authority to . . . prosecute an action on behalf of the Lexington School Department." Although the child acknowledges that G. L. c. 119, § 39E, on its face permits a "school district" to "initiate" a CRA petition, in his view either G. L. c. 221, § 46, or the common law, preclude a supervisor of attendance from pursing a

CRA petition in court, because to do so would constitute the unauthorized practice of law.

a. Unauthorized practice of law. As the child argues, the consequences of nonlawyers engaging in the practice of law are well known and have been discussed in detail in our prior decisions. "Long experience has demonstrated that such activities [i.e., those that constitute 'practicing law'] cannot be carried on with fairness to the persons whose rights are involved . . . except by those who have specially fitted themselves for the task by long study and preparation, who are subject to professional discipline . . . ." Matter of the Shoe Mfrs. Protective Ass'n, 295 Mass. 369, 372 (1936) (Matter of Shoe). The ultimate purpose of the prohibition against nonlawyers practicing law is to protect the public welfare, so that people are not "advised and represented in legal matters by incompetent and unreliable persons, over whom the judicial department could exercise little control." See Lowell Bar Ass'n v. Loeb, 315 Mass. 176, 180 (1943) (Loeb).

"The judicial department is necessarily the sole arbiter of what constitutes the practice of law." Id. We have long recognized that "[i]t is not easy to define the practice of law," as members of other professions engage in many of the same, or similar, activities as lawyers. Id. See Real Estate Bar Ass'n for Mass. v. National Real Estate Info. Servs., 459

Mass. 512, 518 (2011). For instance, "accountants routinely provide advice to their clients that requires knowledge and understanding of the law and that also has legal ramifications." Real Estate Bar Ass'n for Mass., supra at 518 n.9. Similarly, "[p]olice prosecutors, who normally are not members of the bar, customarily prosecute offenses . . . in the District and Municipal Courts of the Commonwealth." Furtado v. Furtado, 380 Mass. 137, 148 (1980). Thus, "[w]hether a particular activity constitutes the practice of law 'must be decided upon its own particular facts' because 'it is impossible to frame any comprehensive and satisfactory definition' of the term." Real Estate Bar Ass'n for Mass., supra at 517, quoting Matter of Shoe, 295 Mass. at 372.

While "[c]ourts are the ultimate arbiters of who may practice law before them, . . . we give substantial deference to the views of the Legislature on such a subject." Furtado, 380 Mass. at 147-148. Here, the Legislature has determined that a school district "may initiate an application for assistance in [the Juvenile Court] stating that [a] child is not excused from attendance in accordance with the lawful and reasonable regulations of such child's school, [and] has willfully failed to attend school for more than [eight] school days in a quarter." G. L. c. 119, § 39E. Similarly, a school supervisor

"may apply for [CRA] petitions under the provisions of [G. L. c. 119, § 39E]." G. L. c. 76, § 20.

The child does not address the specific statutory provisions under G. L. c. 76, § 20, and G. L. c. 119, § 39E, giving school supervisors authority to file CRA petitions, nor does he acknowledge that the Legislature may abrogate the common law. "[A] statutory repeal of the common law will not be lightly inferred," see Passatempo v. McMenimen, 461 Mass. 279, 290 (2012), "[b]ut a common-law rule may be replaced or amended by the Legislature even where 'there is no indication of legislative intent to preempt the common law' if the enacted statute preempts the common law by 'necessary implication'" (citation omitted), Chelsea Hous. Auth. v. McLaughlin, 482 Mass. 579, 591 (2019).

Because the Legislature has expressly authorized both a school district, G. L. c. 119, § 39E, and a supervisor of attendance, G. L. c. 76, § 20, to apply for CRA petitions, we turn to consideration of the statutory provisions governing CRA proceedings to determine whether they purport to allow a supervisor of attendance to engage in the unauthorized practice of law by doing so.

b. Statutory authority to pursue a CRA petition. "A fundamental principle of statutory interpretation 'is that a statute must be interpreted according to the intent of the

Legislature ascertained from all its words construed by the ordinary and approved use of the language, considered in connection with the cause of its enactment . . . and the main object to be accomplished . . . ." Harvard Crimson, Inc. v. President & Fellows of Harvard College, 445 Mass. 745, 749 (2006), quoting Hanlon v. Rollins, 286 Mass. 444, 447 (1934). Where the language of a statute is "clear and unambiguous," the plain meaning of the language must be given effect, as the key insight into legislative intent. See Cohen v. Commissioner of the Div. of Med. Assistance, 423 Mass. 399, 409 (1996), cert. denied sub nom. Kokoska v. Bullen, 519 U.S. 1057 (1997). See also Furtado, 380 Mass. at 147-148. The plain meaning of words is to be derived from "their use in other legal contexts and dictionary definitions." Commonwealth v. Zone Book, Inc., 372 Mass. 366, 369 (1977). "Only if the legislative history compelled a different conclusion might we depart from the plain meaning of the statute." Cohen, supra. If the statutory language is ambiguous, however, then a court turns to external sources, particularly the legislative history, to derive legislative intent. See Telesetsky v. Wight, 395 Mass. 868, 872 (1985).

We begin with the observation that the CRA statute, G. L. c. 119, § 39E, provides an avenue for a school district to address the root causes of a child's excessive absences from

school. The initiation of CRA proceedings in the Juvenile Court facilitates a family's access to community resources and services, and ultimately may allow the Juvenile Court to "intervene in the custody arrangements" of the child. See Millis Pub. Sch. v. M.P., 478 Mass. 767, 781 (2018) (Millis); G. L. c. 119, § 39E. The Legislature's decision to allow a school district to pursue a CRA petition without counsel was made in furtherance of the Commonwealth's strong interest in ensuring the education of children through their consistent attendance at school. See Care & Protection of Charles, 399 Mass. 324, 334 (1987) (discussing "the substantial State interest in the education of its citizenry"); Attorney Gen. v. Bailey, 386 Mass. 367, 377, 380-381, cert. denied, 459 U.S. 970 (1982) (State's interest in compulsory education is "compelling"). The language of G. L. c. 119, § 39E, and G. L. c. 76, § 20, is clear and unambiguous as to the authority of the school district and the supervisor of attendance to apply for CRA petitions, and consistent with this purpose.

Nothing in the statutory language, however, suggests that pursuing a CRA petition in the Juvenile Court requires the practice of law. To the contrary, the Legislature plainly intended that individuals other than attorneys may apply for such petitions, and that the court should provide materials to help them during their appearance in court. In addition to a

school district or attendance supervisor, the Legislature authorized a parent, custodian, or legal guardian to file a CRA petition. See G. L. c. 119, § 39E; G. L. c. 76, § 20. "If the petitioner is a parent, legal guardian or custodian the clerk shall provide to the petitioner informational materials, prepared by the court that explain the court process and shall include the types of orders that the court may issue and the possibility of changes in the custody of the child and may include an explanation of the services available through the court process, including language translation services and the manner in which those services are delivered." G. L. c. 119, § 39E. For all petitioners, when a petition is presented, the clerk is obligated, before accepting it for filing, to notify the petitioner "that the petitioner may delay filing the request and choose to have the child and the child's family referred to a family resource center, community-based services program or other entity designated by the secretary of health and human services . . . and return to court at a later time to file an application for assistance, if needed." Id. In addition, for all petitioners, the clerk is to "prepare, publish and disseminate to each petitioner educational material relative to available family resource centers, community-based services programs and other entities designated by the secretary of health and human services. Id.

CRA proceedings are intended to be relatively informal. In 2012, the Legislature replaced the children in need of services (CHINS) statute, which it had adopted in 1973, with the CRA statute, with the goal of making such proceedings "less adversarial." See Millis, 478 Mass. at 778-779; An Act regarding families and children engaged in services, St. 2012, c. 240. Among other modifications, the Legislature removed the requirement of a jury trial and replaced it with a fact-finding hearing by a judge, if the judge determines that such a hearing is in the best interests of the child. See Millis, supra at 779 n.13, citing R.L. Ireland & P. Kilcoyne, Juvenile Law § 4.1 (Supp. 2017); G. L. c. 119, § 39E. The determinations the judge must make at such hearings are heavily fact-intensive: whether the child is between six and eighteen years of age (exclusive), whether the child has had more than eight unexcused absences in a quarter, and, if so, whether those absences were willful. G. L. c. 119, § 39E.

The Juvenile Court has adopted and promulgated a short and simple form to be used by a school district in initiating a CRA petition, titled "School District Application for Child Requiring Assistance"; the school superintendent here used such a form to submit her petition. See Juvenile Court Standing Order 3-21, "Child Requiring Assistance Proceedings" ("This new standing order sets forth a standard statewide process in the

Juvenile Court for child requiring assistance [CRA] proceedings that is in keeping with the mission of the Juvenile Court to assist children and strengthen families"). The fact-finding hearing on an accepted petition is described in the standing order as "flexible" in nature, and the order states that, due to this flexibility, hearsay evidence should be admitted. See id. Consequently, a school official representing a school district in CRA proceedings need not possess a "thorough familiarity with procedural and substantive rules of law." See Varney Enters., Inc. v. WMF, Inc., 402 Mass. 79, 81 (1988).

Moreover, while the child must be represented by an attorney at all CRA proceedings, and the parent or legal guardian is entitled to an attorney if the question of custody arises, a school district may "initiate" a CRA application and "may be represented by counsel" (emphasis added), but, as a petitioner, a school district "shall" be present at the proceedings (emphasis added). See G. L. c. 119, § 39E, 39G; Juvenile Court Standing Order 3-21. Neither the statutory provisions nor the Juvenile Court order states that a school district "must" be represented by counsel at such proceedings. The judge's comment at the fact-finding hearing that "historically . . . school officials have been authorized to file and that's been the way these petitions have been handled" is consistent with these provisions.

This practice furthers the legislative purpose to ensure that children attend school for the mandatory number of days each year. Interpreting the filing of a CRA petition otherwise, as the practice of law, would require school districts instead to retain attorneys to represent them at CRA proceedings, and would disrupt this established practice in a manner that likely would be detrimental to children. "[C]ustom and practice may play a role in determining whether a particular activity is considered the practice or law." Real Estate Bar Ass'n for Mass., 459 Mass. at 518.

We have, in other circumstances, approved the prosecution of complaints by individuals who are not members of the bar, particularly where the individual acts "pursuant to his statutory duties." See Furtado, 380 Mass. at 147. In Furtado, for example, we held that a probation officer permissibly could appear in the Probate and Family Court to pursue a contempt proceeding for nonpayment of child support without engaging in the unauthorized practice of law. We noted that a probation officer is statutorily mandated to "bring into court when necessary . . . all persons who are delinquent in making payments ordered or decreed by the court" and possesses full power to "do each and every[thing] necessary, including initiating contempt proceedings, to collect any and all delinquent payments." Id., quoting G. L. c. 276, §§ 85A, 85B.

Because "[t]he State's interest in compliance with support orders is substantial," and probation officers are charged with ensuring that support payments are made, we concluded that it would not be improper for a probation officer to prosecute a contempt complaint. Furtado, supra at 147-148. Similar reasoning supports a conclusion that the assistant principal did not engage in the unauthorized practice of law by filing the CRA petition and pursuing it in the Juvenile Court.

In filing a CRA petition, a supervisor of attendance is undertaking the enforcement actions that are statutorily mandated for the position. A supervisor of attendance is obligated to monitor the enrollment of children in school and their daily school attendance, see G. L. c. 72, § 2 ("Supervisors of attendance . . . shall have charge of the records [of school registration]" and "shall be responsible for their completeness and accuracy"); G. L. c. 76, § 20 (supervisor of attendance "shall inquire into all cases arising under" statutory sections pertaining to school registration and daily attendance). Thus, the Legislature reasonably expected that a supervisor of attendance often would be the one to pursue a CRA petition.[6]

[6] Prior to the 2012 overhaul of the CHINS system, G. L. c. 119, § 39E, provided that "[a]ny supervisor of attendance" could initiate a CRA petition alleging habitual truancy or school disobedience. See St. 1973, c. 1073, § 5. The current

We have recognized the difficulty in providing a precise definition of the practice of law, because members of other professions engage in many of the same, or similar, activities as lawyers, such as making "legally binding obligations and commitments." Real Estate Bar Ass'n for Mass., 459 Mass. at 518. A determination whether an individual's actions constitute "practicing law" is a fact-specific inquiry. Matter of Shoe, 295 Mass. at 372. An action "generally [must] fall 'wholly within' the practice of law" in order for nonlawyers to be prohibited from engaging in it (citation omitted). See Real Estate Bar Ass'n for Mass., supra.

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version, by contrast, provides that "a school district" may initiate a CRA petition for such reasons. See G. L. c. 119, § 39E. Notably, the Legislature in 2012 made no changes to the language of G. L. c. 76, § 20, which was enacted in 1973 along with the original G. L. c. 119, § 39E. General Laws c. 76, § 20, continues to permit a supervisor of attendance to "apply for" CRA petitions. See St. 1973, c. 1073, § 1. Thus, the Legislature's use of the words "school district" in place of "supervisor of attendance" in the text of G. L. c. 119, § 39E, was not meant to revoke the power of supervisors of attendance to file and pursue CRA petitions. To the contrary, the language appears to authorize other school officials, in addition to the supervisor of attendance, to represent a school district at CRA proceedings.

It is reasonable for the Legislature to have authorized other school officials to represent a school district in CRA proceedings. There may be another individual at a school who has worked more closely with the child and is more familiar with the child's circumstances than the supervisor of attendance. It would make sense for this individual to participate in CRA proceedings instead of the supervisor of attendance, as this individual would likely have a better understanding of the child and family's needs.

For instance, "[f]illing out standard government forms for others is not necessarily the practice of law." Id. at 525, citing Loeb, 315 Mass. at 185. See LAS Collection Mgt. v. Pagan, 447 Mass. 847, 850 (2006) ("there are circumstances where the mere preparing of forms is not the practice of law"). Here, as the school district asserts, all that the assistant principal did to apply for the CRA petition was "complet[e] a simple form provided by the Trial Court's Juvenile Court Department." See Furtado, 380 Mass. at 147 (filing complaint is not unauthorized practice of law where it is done "pursuant to . . . statutory duties"). See also Real Estate Bar Ass'n for Mass., 459 Mass. at 525, and LAS Collection Mgt., supra (simple act of filing form is not necessarily unauthorized practice of law).

Although her claim was filed on a form explicitly created for that purpose, in filing the CRA petition, the outcome of which affects the rights of the child and his parents, and in representing the school district at the hearing, the assistant principal indeed did "direct[] and manag[e] the enforcement of legal claims" and "draft[] documents by which such [legal] rights are created, modified, surrendered or secured." See Matter of Shoe, 295 Mass. at 372. "[I]n general the practice of directing and managing the enforcement of legal claims and the establishment of the legal rights of others, where it is necessary to form and act upon opinions as to what those rights

are and as to the legal methods which must be adopted to enforce them, . . . and the practice . . . of drafting documents by which such rights are created, modified, surrendered or secured are all aspects of the practice of law." Id. At the same time, the assistant principal's conduct at the fact-finding hearing involved only presenting information about the child's attendance and the efforts that the school had undertaken to ameliorate his ongoing absence from school, and responding to questions from the judge and the child's attorney. As the school district maintains, these actions do not constitute "the type of legal representation and/or prosecution activity reserved for members of the bar." See LAS Collection Mgt., 447 Mass. at 849-851; Loeb, 315 Mass. at 183. Because the assistant principal's actions did not fall "'wholly within' the practice of law," Real Estate Bar Ass'n for Mass., 459 Mass. at 518, her conduct cannot be described as the unauthorized practice of law.

Fundamentally, a CRA proceeding is not a legal proceeding where the parties necessarily are on opposing sides of a legal outcome. All sides are to be guided by what services are available to best meet the needs of the child, to allow a child to obtain an education, G. L. c. 119, § 39E, and thereby be positioned to become a contributing member of society. Indeed, the Legislature clearly contemplated that such petitions often will be filed by parents or legal guardians themselves, seeking

assistance for their child. Recommendations submitted by social workers, mental health professionals, parents, and teachers pursuant to G. L. c. 119, § 39E, which a judge may consider in reaching a disposition, are decidedly not suggestions of legal strategies to follow in order to prevail in a complaint. The provisions of G. L. c. 119, § 39E, permit those who know the child best to offer their guidance as to how best to help the child attend school. They are suggestions that the judge may accept and consider in his or her discretion. Nothing in this type of proceeding indicates that a petitioner filing and pursing a CRA petition is practicing law.

The child argues that a nonlawyer would be less likely to "understand and present to the court the custody status of the child," and therefore less able to comply with the requirement of G. L. c. 119, § 39E, that a description of the child's custody status be provided. The statute also requires, however, that a probation officer be assigned as soon as a petition is filed, to conduct an inquiry and provide a recommendation to the court. See G. L. c. 119, § 39E. In addition, the statute mandates that DCF, if it is involved with the child, be present at the hearing to determine whether the child is in need of services, as well as at the hearing on disposition, and DCF, the school, and the probation officer all have a right to present recommendations as to disposition. See id. Thus, the judge

would have access to reports and recommendations from all of the experts who have been involved with the child, and also could call on "any other person" whose information might "be helpful in determining the most effective assistance available to be offered to the child and family." See G. L. c. 119, § 39G. Otherwise put, any risks attendant to nonlawyers filing and pursing a CRA petition are mitigated by express statutory provisions. Moreover, the statute also requires that a petitioner file with a petition all of the steps that the school took to ameliorate the situation and have the child present in school. G. L. c. 119, § 39E. A school official from the child's school likely would be in the best position to have that knowledge and to be able to provide it cogently to the judge, whereas parents filing such petitions might experience emotional burdens that could detract from an accurate and objective presentation of the relevant facts.

Although the child goes to great lengths to point out the "complexity" of the legal and factual issues that arise at such proceedings, CRA proceedings are specifically designed not to be adversarial. See Millis, 478 Mass. at 778-779; St. 2012, c. 240. As this court emphasized in Millis, supra at 784, "a finding of wilfulness is a fact-based inquiry that will depend on the circumstances of each case. . . . Each child's purpose or reasons for missing school should be examined individually in

order to determine whether the absences are wilful beyond a reasonable doubt." A CRA proceeding on truancy is relatively straightforward and requires little by way of legal argument; the sole determination to be made, by the judge, is whether the child is in need of assistance as the statute defines it and, if so, what disposition, including remaining with the parents, would be in the child's best interests. See G. L. c. 119, § 39E. A determination of the child's best interests is made without reference to any other case or any specific guidelines. The individuals who may be present at the hearing, and who may recommend the appropriate disposition, are clearly nonlawyers. In addition to the child and the parents, legal guardian, or custodian, they include a DCF social worker or representative, the school district, and the probation officer who conducted the mandatory initial inquiry. Moreover, as stated, "any other person" may be asked to make a recommendation, or, as happened at this hearing, the parents may request that another individual be present and make a recommendation as to disposition. See G. L. c. 119, §§ 39F, 39G.

The child also argues that having an attorney at a CRA fact-finding proceeding would help to ensure that "the court has better evidence because lawyers know how to operate within the rules of court, producing more reliable evidence," and that "[h]aving legal counsel could also promote settlement of cases

outside of court." With respect to the efforts that have been attempted to bring the child into school, and the reasons that those have not been successful, the school representatives who engaged in the efforts will be familiar with the efforts undertaken by the school district and will be able to present them straightforwardly as facts on the ground, rather than as an advocate. Additionally, the statute contains multiple provisions encouraging not filing a CRA petition at all, and requirements that the court clerk advise the parties of alternatives and the possibility of a delay in filing; nothing in this shows that having an attorney would be more likely to allow the parties to reach a "settlement" outside of court. In any event, the child's arguments are policy suggestions that the Legislature could have, but did not, choose to implement.

The child also argues that the petitioner's representation by an attorney "would help to ensure" that the constitutional requirements of notice, such as to the parents, are met. Under the plain terms of G. L. c. 119, § 39E, however, parents and guardians, as well as the child, are entitled to notice at each stage of the proceeding, notice that presumably is sent by the clerk upon the filing of the petition and the scheduling of hearings, just as the clerk must ask the chief probation officer or designee to conduct the relevant investigation. See id.

The conclusion that filing a CRA petition and pursuing it in the Juvenile Court is not the practice of law comports with the legislative purpose in enacting the CRA provisions. The school district argues in its brief that "requiring a lawyer for every CRA Application may very well deter the filing of such applications and would allow parents and children to miss school without consequence." The assistant principal testified at the fact-finding hearing that a requirement that an attorney represent a school in a CRA proceeding could discourage school districts from filing such petitions due to the time and expense involved, as well as potential unwelcome publicity.

Public school districts, as the Legislature undoubtedly is aware, do not have unlimited funding, and retaining an attorney to prosecute every CRA petition would be prohibitively costly for many districts. For example, in 2019, school districts in Suffolk County alone filed 503 CRA petitions related to truancy. See Juvenile Court & Probation Service, Child Requiring Assistance Periodic and Annual Report, January 1, 2019 -- December 31, 2019 (Jan. 28, 2021).[7] As the mother argues, an interpretation of G. L. c. 119, § 39E, that resulted in such deterrence ultimately would be inconsistent with the

[7] Available at https://www.mass.gov/doc/2019-child-requiring-assistance-court-report/download [https://perma.cc/N4AM-VFZ8].

Commonwealth's "clear public policy that highlights the importance of a child's education and attendance at school, which is reflected in the compulsory attendance law." See Care & Protection of Charles, 399 Mass. at 335; Bailey, 386 Mass. at 377, 380-381. Because the Legislature has concluded that obtaining an education is in a child's best interests, and because the best interests of the child are a guiding factor in CRA proceedings, an interpretation requiring attorney representation of petitioning schools at such proceedings, and the consequent potential deterrent effect, could result in harm to the very students the Legislature sought to protect.

c. School district as corporation. In addition to his implicit argument that G. L. c. 119, § 39E, improperly attempts to extend the practice of law by allowing school districts and supervisors of attendance to initiate and pursue CRA petitions, the child contends that, as a corporation, the school district was statutorily precluded from appearing in court without being represented by an attorney. See G. L. c. 221, § 46. The child also relies on the common-law rule that a corporation "must appear and be represented in court, if at all, by attorneys." See Varney Enters., Inc., 402 Mass. at 82.

Because we have concluded that a supervisor of attendance who files and pursues a CRA petition under G. L. c. 119, § 39E, does not engage in the unauthorized practice of law, we need not

reach these arguments. Nonetheless, a few observations are in order.

A school district, under G. L. c. 70, § 2, is defined as, inter alia, "the school department of a city or town" or "a regional school district." Pursuant to G. L. c. 40, § 1, cities and towns are deemed "bodies corporate, and, except as otherwise expressly provided, shall have the powers, exercise the privileges and be subject to the duties and liabilities provided in the several acts establishing them and in the acts relating thereto." Moreover, as defined in G. L. c. 71, § 16, "[a] regional school district established under the provisions of the preceding section shall be a body politic and corporate with all the powers and duties conferred by law upon school committees."

Thus, while a school district indeed is a corporate body, it is first and foremost a municipal corporate body. Municipal bodies are governed by an entire chapter of law that is distinct from the statutory provisions governing corporations. See G. L. c. 39, "Municipal Government." There are sound reasons for different requirements to apply to "public or municipal corporations" and to "private or moneyed corporations." See O'Donnell v. North Attleborough, 212 Mass. 243, 245-246 (1912). The school district notes that "each of the cases [the child] cites deals with private, commercial enterprises and

activities," entities that are subject to different statutory provisions from municipal corporations.[8]

General Laws c. 221, § 46, provides that "[n]o corporation or association shall practice or appear as an attorney for any person other than itself in any court in the commonwealth" (emphasis added). In filing the CRA petition, the school district performed its statutorily mandated duty to enforce school attendance, part of "its lawful business." See G. L. c. 221, § 46. Even if there were any doubt whether the provisions applicable to legal representation with respect to for-profit corporations also are applicable to municipal corporations, the more specific CRA statutes, G. L. c. 76, § 20, and G. L. c. 119, § 39E, would control over the more general corporate statute. See Pereira v. New England LNG Co., 364 Mass. 109, 118 (1973) ("If a general statute and a specific

[8] LAS Collection Mgt., 447 Mass. at 847, involved a property management company; Loeb, 315 Mass. at 177, involved tax preparation services for individuals; and Matter of Shoe, 295 Mass. at 370, involved a business in the collection and adjustment of commercial accounts for goods sold, mainly on behalf of wholesale merchants and manufacturers in the shoe business. Real Estate Bar Ass'n for Mass., 459 Mass. at 513-514, involved certain real estate settlement services to mortgage lenders. Rental Prop. Mgt. Servs. v. Hatcher, 479 Mass. 542, 543 (2018), involved a property manager who brought a summary process action in the Housing Court in the name of his sole proprietorship, which was not the owner or lessor of the property. Varney Enters., Inc., 402 Mass. at 80, involved a small claims action between two corporations.

statute cannot be reconciled, the general statute must yield to the specific statute").

Most significantly, as O'Donnell, 212 Mass. at 245-246, makes clear, given the distinction between "private or moneyed corporations" and "public . . . municipal corporations," a statutory requirement that applies to the former is applicable to the latter only where such a requirement is "express[ly] enact[ed]" by the Legislature. See, e.g., Mrugala v. Boston, 330 Mass. 707, 708 (1953); New Bedford v. New Bedford, Woods Hole, Martha's Vineyard & Nantucket S.S. Auth., 329 Mass. 243, 250 (1952). Nothing in the language of G. L. c. 221, § 46, provides that it is applicable to municipal corporations, in addition to private, moneyed corporations.

Order denying motion
to dismiss affirmed.