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Articles

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The Problem of Justifying Student Absences and the Validation of Absence Excuse Letters under Polish Law

Problematyka usprawiedliwiania nieobecności ucznia w szkole i weryfikacji usprawiedliwień w świetle przepisów prawa polskiego

ABSTRACT

The article aims to examine the issue of justifying absences from compulsory classes by both parents of minor students and adult students themselves. The issue was brought forward in light of the lack of definitive legislative direction on the matter. It frequently gives rise to incorrect interpretations and non-compliant practices within the field of education. Given the foregoing, the main thesis of the article calls for clear and unambiguous legal solutions, in particular addressing the following questions: Who is authorised to justify a student's absence and in what form? Can submitted excuse letters be validated? Who, and based on what criteria, can conduct such validation? What tools should be used to make it happen? The article is a scientific and research work. The research on this subject is original, which permits the assumption that the text may offer substantial contributions to both scholarly discourse and educational practice. Although the impact of the findings is chiefly national

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in scope, the absence of legal mechanisms for validating students' excuse letters is a widespread issue across numerous EU member states. As such, the solutions proposed in the article may be of value within European educational contexts.

Keywords: education law; school head; educational obligations; verification of absences

INTRODUCTION

Among the many challenges faced by contemporary schools, which are a core element of the education system, one of the most pressing concerns is the significant absenteeism of students from compulsory classes. Moreover, legal ambiguities exist that surround the rules of justifying absences and validating relevant excuse letters. In examining this matter, it is crucial to keep in mind that parents and students of age have the right to provide justifications for absences from compulsory items of school programmes. Still, attention must be drawn to the legitimacy of the justification procedure, or the absence thereof, as well as the necessity to validate it properly.

The article aims to examine the issue of justifying absences from compulsory classes by both parents of minor students and adult students themselves. It is worth noting that this issue has recently sparked increasingly widespread discussions, both within the educational community and among parents, and cases of misinterpretations and legally inconsistent rulings have become commonplace.

Given the foregoing, the following questions call for deeper consideration: What are the consequences of fulfilling or failing to fulfill educational duties? Who is authorised to justify a student's absence and in what form? Can submitted excuse letters be validated? Who, and based on what criteria, can conduct such validation? What tools should be used to make it happen?

The text relies upon applicable legal acts and the literature on the subject. The doctrinal legal method and the analytical method have been used.

EDUCATION DUTIES

Education duties are specified in the Act of 14 December 2016 – Education Law.[1] The said law introduces two types of them.[2] The provision of Article 35 (1) EL mandates compulsory school attendance until the age of 18. In accordance with

[1] Consolidated text, Journal of Laws 2024, item 737, as amended, hereinafter: EL.

[2] For more, see M. Wolanin, *Podobieństwa i różnice między obowiązkiem szkolnym a obowiązkiem nauki w art. 70 ust. 1 Konstytucji Rzeczypospolitej Polskiej*, "Przegląd Prawa Publicznego" 2023, no. 2, pp. 48–55. It is important to note that, as schools are administrative institutions and students are the users of the institution, education duties represent an administrative relationship governed by the institution's authority. See J. Zimmermann, *Prawo administracyjne*, Warszawa 2014, pp. 156–157.

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Article 35 (2) EL, compulsory education begins at the start of the school year in the calendar year in which the child turns seven and continues until the completion of elementary school, but no longer than until the student turns 18. The student fulfils his or her education obligation by attending a public or non-public elementary school. After completing elementary school, compulsory school attendance continues at a public or non-public secondary school or by pursuing vocational training with an employer.[3] Failure to fulfil educational duties is subject to enforcement following a relevant enforcement procedure under administrative law.[4]

Considering that the aforesaid duties are to be fulfilled by minors, the legislator has placed a number of obligations on students' parents or legal guardians. These obligations include: to complete the necessary procedures to enrol the child in school; to ensure the child's regular attendance at school classes; to provide the child with conditions that enable preparation for classes; to notify – by 30 September each year – the headmaster or mistress of the child's elementary school from his or her catchment area about the fulfilment of the compulsory education requirement by attending a school located abroad or one operating within a diplomatic mission (Article 40 EL).

The provision cited above, in the part covering the parents' obligations to ensure the child's regular attendance at school (Article 40 (1) (2) EL), implies that the scope of the obligations also includes the right to justify the child's absence from compulsory classes.

CONSEQUENCES OF FAILURE TO MEET EDUCATION DUTIES

Article 42 (2) EL sets out the circumstances in which education duties should be considered not fulfilled. According to the cited provision, failure to fulfil education duties embraces as unexcused absence over a period of one month over at least 50% of: preschool days in a kindergarten, a kindergarten unit in an elementary school, another form of preschool education, school days in elementary school, secondary school or institution and over at least 50% of classes in the case of fulfilling the compulsory school attendance obligation in the manner specified in Article 36 (9) (2) EL[5] and in prescriptive acts issued pursuant to Article 36 (16) EL.[6]

[3] Cf. K. Piech, *Obowiązek szkolny i obowiązek nauki jako realizacja konstytucyjnego prawa do nauki*, "Ogrody Nauk i Sztuk" 2016, no. 6, pp. 14–36.

[4] Act of 17 June 1966 on administrative enforcement proceedings (consolidated text, Journal of Laws 2023, item 2505, as amended).

[5] By pursuing vocational training with an employer in accordance with separate regulations.

[6] It pertains to the provisions outlining cases in which a person aged 16 can be admitted to a public or private adult school; for participants of the Voluntary Labour Corps and individuals incarcerated in correctional institution or in custody, the age is reduced to 15. It also covers situations

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In the case of compulsory education of children residing within an elementary school catchment area, the fulfilment of the obligation is monitored by the governance of respective schools. On the other hand, a local municipality (local government unit) oversees the performance of the same obligation within the municipal boundaries (Article 41 (1) EL).

The consequence of failure to meet education duties is an administrative enforcement procedure. Obviously, it concerns the student's parents or guardians and not the schoolgoer. The means of enforcing the school attendance obligation is a fine as a coercive measure.[7] In accordance with Article 120 § 2 of the Administrative Enforcement Proceedings Act, the fine is imposed on the student's legal guardian, thereby enforcing the parental obligation to ensure the child's regular school attendance. In accordance with Article 121 § 2 of the Administrative Enforcement Proceedings Act, a one-off fine imposed on a natural person may not exceed PLN 10,000. However, it may be imposed multiple times, yet the total fines cannot exceed PLN 50,000. The value of the aforesaid amounts should be regarded as objectively high, and with the consistent application of administrative enforcement in cases of evading education duties, this measure should be regarded as a deterrent to such practices.

Another consequence of evasion of education duties by a student is that it may be recognized as a manifestation of his or her moral degradation. In the provision of Article 4 (1) of the Act of 9 June 2022 on the support for and social rehabilitation of minors,[8] the legislator recognizes evading compulsory school attendance or education duty as testifying, among other factors, to the moral corruption of a minor.[9] According to the referenced regulation, anyone who identifies circumstances indicating the moral degradation of a minor, particularly evasion of compulsory education or education duties, has a social responsibility to take appropriate countermeasures and, above all, to notify the parents or legal guardian of the minor, the school institution, the family court, the police, or any other competent authority.

It should be emphasised that the list provided in Article 4 (1) ASSRM is not closed. Also, the legislator did not decide to define the concept of "moral degradation". The legislator argued for this type of wording because it does not raise

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where a person who has completed elementary school (eight years) may pursue compulsory education by enrolling in a vocational programme – particularly allowing for delays in the educational cycle, unforeseen events that prevent or significantly hinder school attendance, or the facilitation of fulfilling the education duties for those held in correctional institution or in custody.

[7] Cf. R. Hauser, M. Wierzbowski, *Postępowanie egzekucyjne w administracji. Komentarz*, Warszawa 2024; M. Darmosz, *Zagadnienie egzekucji administracyjnej obowiązku edukacyjnego*, "Przegląd Prawa Publicznego" 2020, no. 2, pp. 38–54.

[8] Consolidated text, Journal of Laws of 2024, item 978, as amended, hereinafter: ASSRM.

[9] Cf. D. Wojnicz, D. Mościcka, *Demoralizacja i czyny karalne według ustawy o wspieraniu i resocjalizacji nieletnich – wybrane zagadnienia*, "Civitas et Lex" 2023, vol. 39(3), pp. 40–41.

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any doubts either in the doctrine or in the case law.[10] According to the literature on the subject, the concept of moral degradation can be understood as a minor's departure from generally accepted social standards which are appropriate for their age and mental development, including behaviours such as corruption or a lack of discipline.[11] It is therefore important to highlight that categorizing the evasion of education duties as one of the grounds for the moral degradation of a minor underscores the societal significance of this issue.

A new solution in the aforesaid law is to provide school authorities with a corrective (parental) measure. In accordance with Article 4 (4) ASSRM, if a minor exhibits signs of moral corruption or has committed an offence on school premises or in relation to the fulfilment of their compulsory school attendance requirement or education duty, the school governance may, with the consent of the minor's parents or guardian and the minor him or herself,[12] apply, if deemed appropriate, a corrective measure in the form of a warning, either oral or written, an apology to the injured party, restoration to the previous state, or performance of specific housekeeping tasks on school premises.[13] It is important to note that the imposition of a corrective measure does not preclude the application of a penalty provided for in the school's internal regulations. The cited provision does not apply if a minor has committed a prohibited act that meets the criteria of an offence prosecuted *ex officio* or a fiscal offence.

The consequences of a student's excessive absenteeism from compulsory classes also affect his or her end-of-term credit. In accordance with Article 44k (1) of the Act of 7 September 1991 on the education system,[14] a student may not receive credit for one, several or all classes if there is no basis for assigning a mid-year or final grade due to the student's absence from these classes, exceeding half of the total allocated class time during the credited period. In accordance with Article 44k (2) of this Act, a student who has been denied credit due to excused absences may take an end-of-term credit exam. Therefore, in the case of an excused absence, a student may be admitted to the next grade upon passing relevant credit exams, irrespective of the number of classes missed.

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[10] Cf. Sejm of the Republic of Poland, 9th term, Justification for the Government Draft Law on the Support for and Social Rehabilitation of Minors, print no. 2183, https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=2183 (access: 10.3.2025), p. 4.

[11] A. Balicki, [in:] *Ustawa o wspieraniu i resocjalizacji nieletnich. Komentarz*, eds. P. Drembkowski, G. Kowalski, Warszawa 2023, p. 37.

[12] As the authors of the article aptly put, "whether it is appropriate to hinge the use of the competencies granted to the school authorities upon the consent of the parents or guardian and the student is still debatable" (D. Wojnicz, D. Mościcka, *op. cit.*, p. 41).

[13] It is worth noting that the referenced provision has generally been met with a positive feedback from legal authors. As P. Kobes (*Komentarz do projektu ustawy o wspieraniu resocjalizacji nieletnich z 20 lipca 2021 r. – wybrane zagadnienia*, "Zeszyty Naukowe Collegium Witelona" 2022, no. 42, p. 112) stresses, "the need to restore the educational character of the school was finally acknowledged".

[14] Consolidated text, Journal of Laws 2024, items 750, 854, 1473, and 1933, as amended.

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A student who is refused credit due to an unexcused absence may take a credit exam with the consent of the staff meeting. Consequently, the absence of excused absences may result in a situation where a student is not permitted to sit credit exams and, as a result, will not be admitted to the next grade or will not graduate. Therefore, given the above, it is particularly important to effectively justify the student's absence.

Unexcused absences also affect the student's conduct grade. Under the current legislation, this grade does not have an impact on student's admission to the upper level or graduation, but it is recorded on the school certificate and may be viewed, e.g., by future employers. A poor conduct assessment may undoubtedly have an adverse effect on the student's standing on the labour market.

JUSTIFICATION OF SCHOOL ABSENCES AND VALIDATION OF EXCUSE LETTERS

Under the current legal framework, the provisions of EL do not lay down detailed guidelines concerning the methods and forms of justifying the absences of minor or adult students. The provision of Article 99 (2) EL says that the terms of justifying a student's absence from compulsory classes must be addressed in the school statutes. Pursuant to the aforesaid provision, the student's duties are set out in the school statutes. The same document also covers the requirement to justify absences from classes within a specified time limit and in a prescribed format, and also lays down the procedure of justifying absences by students of age.

Considering the above, it should be noted that this provision grants the school the discretion to determine the method and form of justifying students' absences from classes. At the same time, it must be kept in mind that the rules incorporated into the school statutes must not be in conflict with other laws, nor infringe upon the rights of parents or students.[15] What is more, they should be highly transparent.

For minor students, it is the parents' responsibility to justify their absence. It must be noted that, pursuant to Article 92 of the Family and Guardianship Code,[16] a child remains under the parental authority until the age of majority, and this authority is shared by both parents. Pursuant to Article 98 § 1 FGC, parents act as the legal representatives of the child who remains under their authority. When both parents share parental authority, either parent is entitled to represent the child independently. It follows that both parents, as well as either one of them individually, are entitled to justify their child's absence from school.

[15] On the principles of drawing up school statutes, see E. Czechowicz, L. Zientecka, *Statut szkoły i placówki po zmianie ustroju szkolnego*, Warszawa 2017, pp. 19–25.

[16] Act of 25 February 1964 – Family and Guardianship Code (consolidated text, Journal of Laws 2023, item 2809, as amended), hereinafter: FGC.

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Pursuant to Article 94 § 1 FGC, if one parent is deceased or deprived of full legal capacity, parental authority is vested in the other parent. The same applies if one parent has been deprived of parental authority or if their parental authority has been suspended. However, if neither parent possesses this authority, or if the parents are unknown, guardianship is appointed for the child. Should this be the case, the guardian will also inherit the rights and responsibilities associated with the fulfilment of education duties.

It is reasonable to assert that no violation of laws occurs if the parents authorize a third party to justify the child's absence from school. A solution that would clearly be unlawful is one that permits a student lacking legal capacity to justify their absence from school on their own. In accordance with the provisions of Article 14 § 1 of the Civil Code,[17] a legal act performed by a person without capacity to do so is invalid. Article 12 CC provides that persons under 13 and legally incapacitated individuals do not have the capacity to transact acts at law. What follows, until the child reaches the said age, the only parties entitled to justify their absence from school are the parents or individuals empowered by them.

Upon reaching the age of 13, minors acquire limited legal capacity (Article 15 CC). In the case of such individuals, pursuant to Article 17 CC, the validity of legal acts performed by a person with limited legal capacity requires the consent of their legal representative. For students with limited legal capacity, the right to justify absences from classes is vested in their parents, who remain their legal representatives.

Speaking of justifying students' absences, Article 97 § 2 FGC is particularly relevant, as it stipulates that parents are required to make joint decisions on significant matters concerning their child; in the event of disagreement between them, decisions are made by the guardianship court.[18] However, the legislator did not specify what significant matters concerning the child are. This notion is not well defined because it is not possible to create a closed list of such matters. The criterion that determines their role is significance in terms of guarding the child. The above-mentioned matters may concern both the child and his or her property.[19]

Matters concerning education are undoubtedly ranked among significant matters concerning the child.[20] When the exercise of parental authority pertains to such matters, the student's parents are obligated to make joint decisions. However, this

[17] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2024, item 1061, as amended), hereinafter: CC.

[18] A. Pośpiech, *Komentarz do art. 97*, [in:] *Kodeks rodzinny i opiekuńczy. Komentarz aktualizowany*, eds. M. Fras, M. Habdas, LEX/el. 2023.

[19] J. Słyk, *Komentarz do art. 94*, [in:] *Kodeks rodzinny i opiekuńczy. Komentarz*, eds. M. Domański, J. Słyk, Legalis 2024.

[20] Cf. judgment of the Voivodeship Administrative Court in Warsaw of 7 March 2018, II SA/Wa 785/17, LEX no. 2746048.

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does not imply that action implementing an agreed decision must be taken jointly.[21] Given that, it appears reasonable to assert that it would be unjustified to require a declaration of will from both parents to excuse every absence of a minor student.

The situation of students changes when they come of age. Pursuant to Article 11 CC, upon reaching the age of 18, a person acquires full legal capacity. Consequently, they can perform these types of activities on their own behalf. The same also applies to the right to justify absences from classes. Given that independent justification of absences by students of age creates various ambiguities in educational practice, the Commissioner for Human Rights raised this matter in the Letter to the Minister of National Education of 5 December 2017.[22]

The Commissioner indicated that EL fails to lay down detailed provisions on how adult students may justify their own absences from school and missed classes. As this matter concerns the rights and duties of students, it should fundamentally be governed by the school statutes. The Commissioner also pointed out that school statutes often contain clauses that prohibit adult students from justifying their own absences. He further stressed that the legal status of a person of age is substantially different from that of a minor, as once an individual reaches adulthood, they are entitled to independently determine their legal situation. Consequently, the parents of a student who turns 18 actually lose the right to act as his or her representative before public authorities. They also lose the right to make declarations of will on behalf of the child unless he or she authorizes them to do so.[23]

In the Commissioner's view, there is no legal grounds for including in the school statutes such provisions that require, for the effective justification of absence of an adult student, the submission of such a declaration by the parents or parents' confirmation of the justification provided by their adult child. As a school by-law, the school statutes cannot determine the issue of legal capacity in a manner that contradicts higher-tier legislation, such as the Civil Code.[24]

While acknowledging the right of parents of minor students to justify their absences and the right of adult students to do the same on their own, it should be noted that these entitlements should not preclude the school from validating such justifications. This issue is worth raising, especially that the law does not prohibit the school authority from requesting a parent or an adult student to state the cause of an absence. Thus, the form teacher, or headmaster or mistress who is to be appealed to against the form teacher's decision in the matter, is not obliged to accept any explanation of the student's absence from classes.

[21] J. Słyk, *op. cit*.
[22] VII.7037.116.2017.KD.
[23] *Ibidem*.
[24] *Ibidem*.

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Validation of excuse letters submitted by the parents of minor students or by adult students themselves is well-founded and even necessary. Allowing absences to be justified without prior assessment by the school could result in students evading their education duties, with no consequences for either themselves or their parents. Assuming the legislator's rational intent in establishing these obligations and specifying the conditions under which they may be breached, it can be reasonably concluded that the legislator did not intend to limit the school's role to a mere technical approval of excused absences without being able to validate them. The opposite situation would provide an opportunity, which happens to be the case in practice, to circumvent education duties.[25]

The fact that parents enjoy the right to justify the child's absence, and the school is obligated to accept the parent's excuse, leads to a situation where, despite the student's absence and failure to fulfil his or her education duties, there is no formal breach of the law. This can be explained by the fact that in the current legal setting, there are no provisions in place specifying which circumstances of absence may be considered justifiable and which not.[26]

A solution to prevent the evasion of education duties would be to close the legal loophole mentioned earlier. However, it would be challenging for the legislator to draw up an exhaustive list of cases that would either justify or invalidate an absence. Given the significance of education duties, such circumstances should be those that, on the one hand, prevent the student from attending classes and, at the same time, cannot be rescheduled to another time or date.

Labour law regulations regarding employee leaves could be helpful in assessing such cases. For example, Article 148[1] of the Labour Code provides grounds for granting an employee time off work due to a force majeure event. Under the referenced regulation, such a force majeure event can be an urgent family matter linked to illness or accident, where the employee's presence is required without delay.

Such provisions should, of course, be considered only auxiliary when evaluating an excused absence and must take into account the character of the school, as well as the student's age and level of mental and physical development. These

[25] For example, going on a trip with parents during the school year, extending summer holidays over the first weeks of the new school year, trivial reasons for absence.

[26] In the opinion of the Personal Data Protection Office, validation of excuse letters is not necessary. Instead, the office suggests that frequent absences of students should be reported to their parents. This, however, seems rather unreasonable as there are numerous cases where parents are fully aware of their children's absence from school, or the absence had been approved beforehand. If this approach fails to resolve the issue, as the office predicts, the school should consider reporting suspected non-compliance with the education duty to the family court. Cf. M. Kowalski, *UODO: nie można żądać podania przyczyny nieobecności ucznia*, 16.12.2022, https://www.portaloswiatowy.pl/wazne-wydarzenia-dla-szkol-i-przedszkoli/uodo-nie-mozna-zadac-podania-przyczyny-nieobecnosci-ucznia-22769.html (access: 25.3.2025).

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grounds should rather be approached only for broader interpretation (*interpretatio extensiva*). However, having acknowledged that it is unrealistic to establish a closed list of criteria justifying a student's absence from school and to embed it within the framework of EL, which is a generally applicable piece of legislation, it would be highly advisable to adopt regulations that at least indicate the direction for designing solutions that could then be integrated in internal school regulations.

After all, the provisions of generally applicable law permit school institutions to set the time limits for justifying absences within school statutes, as stipulated in Article 99 (2) EL. If the time limit is not observed, the form teacher may leave the relevant absences unexcused.

CONCLUSIONS

While the currently applicable provisions of EL impose on both students' parents and students themselves specific obligations stemming from compulsory education, they still offer schools some latitude to establish the terms, procedures, forms, and time limits for justifying students' absences from classes within their integral regulations. These school regulations may not contradict the provisions of generally applicable law. The right to justify the absence of minor and – having obtained the relevant consent – adult students rests with their parents or legal guardians.

Although the law does not provide a list of events that would justify a student's absence, the form teacher, headmaster, or mistress should be empowered to validate submitted justifications. This issue generates numerous concerns among both education professionals and parents. It should be noted that the school's inability to validate the cause of absence may result in the evasion of regulations concerning the fulfilment of education duties. Given the legal and societal implications of unexcused absences from schools, it seems entirely reasonable to advocate that the legislator fill the legal loophole regarding the school's role in validating excuse letters. It would be reasonable to introduce provisions at the level of generally applicable law that point to grounds for justifying students' absences from classes. No less important is to determine the general framework of the justification procedure.

Given the increasingly burning issue of student absenteeism from school institutions and, to some extent, the lack of prompt response from parents, the school governance should be equipped with specific and legally valid tools to verify excuse letters. On the other hand, it is essential that parents and students themselves have a clear understanding of their rights and obligations related to compulsory education.

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Act of 14 December 2016 – Education Law (consolidated text, Journal of Laws 2024, item 737, as amended).
Act of 9 June 2022 on the support for and social rehabilitation of minors (consolidated text, Journal of Laws of 2024, item 978, as amended).

Case law

Judgment of the Voivodeship Administrative Court in Warsaw of 7 March 2018, II SA/Wa 785/17, LEX no. 2746048.

ABSTRAKT

Celem artykułu jest analiza problematyki usprawiedliwiania nieobecności uczniów na zajęciach obowiązkowych przez rodziców uczniów oraz przez uczniów pełnoletnich. Temat został podjęty z uwagi na brak jasnych rozstrzygnięć legislacyjnych w tym względzie. Doprowadza to niejednokrotnie do błędnych interpretacji oraz sprzecznych z prawem działań w praktyce oświatowej. Główna teza zagadnienia sprowadza się do postulatu o konieczność wprowadzenia jasnych i niebudzących wątpliwości rozwiązań prawnych, a w szczególności ma dać odpowiedź na pytania: Kto może dokonywać usprawiedliwienia ucznia i w jakiej formie? Czy dopuszczalna jest weryfikacja przedstawianych usprawiedliwień? Kto i w oparciu o jakie kryteria powinien ją przeprowadzać? Jakich narzędzi należy użyć? Artykuł ma charakter naukowo-badawczy. Badania w tym przedmiocie są oryginalne, co pozwala założyć, że tekst będzie miał znaczną wartość dla nauki oraz praktyki oświatowej. Zasięg efektów w głównej mierze ma charakter krajowy, ale z uwagi na to, że problematyka braku prawnych narzędzi weryfikujących nieobecności ucznia dotyczy większości krajów unijnych, zawarte w artykule propozycje rozwiązań mogą służyć szkolnictwu europejskiemu.

Słowa kluczowe: prawo oświatowe; dyrektor szkoły; obowiązki edukacyjne; weryfikacja nieobecności