



December 4, 2013

Texas Commission on Law Enforcement
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Delivered via facsimile

Dear Commissioners and Director Vickers,

In light of the tragic news that police use of a Taser severely injured a Cedar Creek High School student just two weeks ago, as well as similar incidents involving less-than-lethal force in school districts statewide, the undersigned organizations call on the Texas Commission on Law Enforcement to develop and implement standards relating to the use of force by school law enforcement officers, and barring the use of less-than-lethal weapons like Tasers, stun guns, and pepper spray on students. Media accounts of the November 20 incident at Cedar Creek High School indicate police tased a student while police broke up a fight in which he was not involved. The student was rushed to the hospital and remains in a coma as a result of being tased.

The Texas Commission on Law Enforcement has authority under the Occupations Code to develop and implement minimum standards for licensing and training of police officers in our state. *See* Tex. Occ. Code §1701.151 et seq. This authority could not be more appropriately used than to promulgate standards for use of force by school police, and limit the use of dangerous weapons in public schools.

Texas families deserve to send their children to school without fear, knowing they can trust their schools to be safe havens. All of us want safe schools. However, incidents like the one in Cedar Creek High School remind us that very little statewide regulation exists limiting the use of dangerous, so-called less-than-lethal weapons on students. Packing a shock of up to 50,000 volts, Tasers are designed to restrain adults. They simply should not be used on children. Medical

professionals have begun to raise concerns that the misuse of such weapons can cause cardiac arrest and death when used on adults.¹ The use of such weapons on children is unconscionable.

The agency should also ban the use of pepper spray on students. The use of oleoresin capicum (OC) spray, pepper spray, or other chemical agents to restrain or incapacitate youth has been widely condemned across the country. Chemical restraints pose real physical dangers to targeted youth, as well as students, teachers, and school resource officers who aren't targets but are exposed to the harsh chemicals.² Experts also condemn the use of chemical restraints, because such brutal conduct towards youth is counterproductive and undermines the relationship between youth and the adults with whom they interact.³ Where alternatives to traditional law enforcement methods have been used in a school setting, they have been proven to increase trust between school police and students, leading students to report serious threats before an incident occurs.

In recent years, media accounts of incidents like the one in Cedar Hill abound, leading us to conclude that this is, unfortunately, not a problem isolated to a single school district. In fact, in just the last six years, multiple incidents involving the use of either pepper spray or Tasers in Texas public schools have been documented statewide.⁴ The suit filed against Bastrop ISD in the wake of the tragedy involving Noe Nino De Rivera is not the first to be filed against a Texas school district alleging an SRO used excessive force.⁵ Because there is no state-level reporting mechanism for use of force by school police officers, we can only assume these media reports

¹Douglas P. Zipes, *Sudden Cardiac Arrest and Death Associated with Application of Shocks from a TASER Electronic Control Device*, available at <http://circ.ahajournals.org/content/early/2012/04/20/CIRCULATIONAHA.112.097584.abstract>

² See Texas Criminal Justice Coalition, *Pepper Spray in the Texas Youth Commission: Research Review and Policy Recommendations* (2007).

³ Smith, M. & Bowman, K.M.. *The Restraint Spiral: Emergent Themes in the Perceptions of the Physical Restraint of Juveniles*, *Child Welfare* 88: 57-83 (2009).

⁴Stella M. Chavez, *Duncanville School Officer Used Pepper Spray on Teen*, *Aunt Says*, *Dallas Morning News*, September 5, 2007 (Duncanville ISD); Rhiannon Meyers, *50 Ball Students Treated for Pepper Spray*, *The Daily News*, September 21, 2007 (Galveston ISD); Rhiannon Meyers, *Schools Pick Weapons to Battle Brawling*, *KUOU.com*, October 1, 2007 (Houston area schools); KTRK News, *Student Shocked by School Officer's Taser*, October 12, 2007 (Houston ISD); Kevin Quinn, *Texas High School Student Tased by School Police*, *Katy Times*, October 27, 2008 (Katy ISD); Staff Reports, *Police Use Pepper Spray on Students*, *The Daily News*, January 22, 2009 (Galveston ISD); KPRC News, *Pepper Spray Used During Food Fight*, *Click2Houston.com*, February 6, 2009 (Spring ISD); KVUE News, *Deputies: Westwood Student Hit with Taser*, *KVUE.com*, February 17, 2009 (Austin ISD); Tawnell D. Hobbs, *Pepper Spray Prompts Evacuation in Hillcrest High*, *Dallas Morning News*, April 21, 2009 (Dallas ISD); KWTX News, *Texas Teacher Uses Pepper Spray to Break Up School Fight*, *KWTX.com*, October 1, 2009 (Ft. Worth Charter School); Melissa B. Taboada & Mark Lisher, *10 Manor High Students Detained after Brawls*, *Austin American Statesman*, October 20, 2009 (12 students treated for pepper spray used to break up fights)(Manor ISD); Erin Cushing, *Chemical Agent Used in Disturbance at Cushing Graduation*, *The Daily Sentinel*, June 1, 2010 (Cushing ISD); CBS 11 News, *Student Hit with Stun Gun in School Cafeteria*, September 22, 2010 (Grand Prairie ISD); Felicia Frazar, *SPD: Teen subdued with Taser at SHS*, September 1, 2011 (Seguin ISD); Nick Lawton, *Pepper Spray Controversy at MISD*, September 2011 (Midland ISD); Staff Writer, *Pepper Spray Used in High School Fight*, November 10, 2011 (Spring ISD); KHOU.com Staff, *CyFair students subdued by pepper spray at school after altercation with officers*, October 19, 2012 (Cypress Fairbanks ISD); KTRK-TV, *Six Pasadena HS students treated for pepper spray exposure*, September 6, 2012 (Pasadena ISD).

⁵ See Samica Knight, *Student Says She was Assaulted by School Cop*, *KXXV News*, June 2008, available at <http://www.kxxv.com/Global/story.asp?S=6067517&clienttype=printable>; Justin Cox, *Case Continues against KISD Police Officer*, *Killeen Daily Herald*, August 15, 2012; Francisco Vara-Orta, *Northside ISD to pay mother of boy its officer killed*, *mysanantonio.com*, October 2, 2013.

reflect a small fraction of the total incidents involving the use of less-than-lethal weapons on Texas students.

Reports published by Texas Appleseed and the ACLU of Texas document wide variations in use-of-force policies for the 18 public school districts that allowed us to review their police department policies.⁶ Both organizations noted that pepper spray was a common component in most policies. At the start of this school year, two Houston-area school districts were reported to become the first in the country to have school police carry “pepper guns,” reported to be “twice as powerful as pepper spray.”⁷ If school police arsenals are to include weaponry that can be harmful—and even fatal—the commission must place restrictions on their use with students.

Whether as part of its training protocol for all officers, Crisis Intervention Training (Chap 1701.253(j)), weapons proficiency requirements, or licensing requirements for officers in schools, **the Texas Commission on Law Enforcement should take affirmative steps to delineate standards related to use of force by school police officers, and end the use of Tasers and pepper spray on students.** More effective alternatives exist, as has been shown by juvenile justice agencies that have successfully eliminated use of this type of weaponry in their facilities.⁸

We hope the Commission will consider our proposal carefully and will not hesitate to reach out to our organizations to assist in updating current regulations.

Sincerely,

American Civil Liberties Union of Texas
Texas Appleseed
Disability Rights Texas
Mexican American Legal Defense and Educational Fund
National Alliance on Mental Illness Texas
Texans Care for Children
Texas Criminal Justice Coalition

⁶American Civil Liberties Union of Texas, *The Use of Force in Texas Public Schools: The Case for Transparency, Accountability, and Decriminalization* (2011); Texas Appleseed, *Texas’ School to Prison Pipeline Ticketing, Arrest & Use of Force in Schools* (2010).

⁷ Click 2 Houston, *School district police first in country to carry pepper guns*, June 21, 2013 (Spring & Humble ISDs).

⁸ See Center for Children’s Law and Policy, *Chemical Agents in Juvenile Facilities* (2012) (noting that several states, including Florida and Louisiana, prohibit use of OC spray in juvenile facilities); Council of Juvenile Correctional Administrators, *Issue Brief Pepper Spray in Juvenile Facilities* (2011) (listing states that prohibit use).