



# TEXAS RIOGRANDE LEGAL AID



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## **DEFENDING AGAINST A FAILURE TO ATTEND SCHOOL CHARGE**

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

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**A GUIDE FOR YOUTH & PARENTS**



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A GUIDE FOR YOUTH & PARENTS

Texas RioGrande Legal Aid, Inc. (TRLA) provides free legal assistance to students from low-income households. To apply for our services, call 1-888-988-9996 or apply on-line at [www.trla.org](http://www.trla.org). TRLA cannot accept all cases. Even if we cannot represent you, we may be able to provide you with advice.

In Texas, Failure to Attend School cases (also known as “truancy” cases) are heard in Justice of the Peace (JP) or municipal courts. These courts will not automatically provide you with a free lawyer, but you can ask the court to appoint one to you. You can use the Child Defendant’s Pro Se Motion for Appointment of Counsel and Order on Child Defendant’s Pro Se Motion for Appointment of Counsel in this guide to ask the court to appoint you a lawyer. The judge may appoint you an attorney if you ask them to.

Failure to Attend School laws are complicated, and convictions have serious consequences. Never ignore an order to appear in court! A “no-show” can lead to a second charge for Failure to Appear in court.

This guide provides basic information to help you to understand the laws, your options, and defenses.

In this guide, you will find answers to the following questions:

1. What are possible charges for too many unexcused absences?
2. What is “Failure to Attend School?”
3. What are some defenses I might have for an individual absence?
4. What are some of my rights as a defendant?
5. What are some of my options to fight the charge against me?
6. Are there any other ways to get the charges against me dropped?
7. What strategies can I use for meeting with the prosecutor?
8. How should I talk to the judge?
9. What can I bring to court to help my case?
10. What if I missed school because of a major issue in my life?
11. What if the prosecutor does not dismiss the case or makes me a bad offer?
12. What happens if I plead guilty or no contest?
13. What is Deferred Disposition?
14. How do I avoid a fine or court costs that I cannot afford to pay?
15. How do I avoid being ordered to do community service I cannot complete?
16. If I am found guilty, can I get the conviction off of my record?
17. How do I prevent future Failure to Attend School charges?

## **1) What are possible charges for too many unexcused absences?**

- You can be charged with Failure to Attend School;
- Your parents (or guardians) can be charged with Parent Contributing to Nonattendance if they acted with “criminal negligence”; or
- Both you and your parents (or guardians) can be charged.

## **2) What is “Failure to Attend School?”**

In general, you violate the law if you fail to attend school three or more days or parts of days within a four-week period in the same school year. You also violate the law if you fail to attend 10 or more days or parts of days within a six-month period in the same school year. Generally, a tardy should not be counted as an absence. You can find the law for Failure to Attend School in the Texas Education Code under section 25.094.

Some students do not realize they can earn unexcused absences for missing part of a school day. For example, even if you have a doctor’s appointment in the morning and turn in a doctor’s note, you can receive an unexcused absence if you do not return to school in the afternoon.

## **3) What are some defenses I might have for an individual absence?**

- You are younger than 12 years old, or age 18 or older.
- The State’s complaint against you is incomplete, because it did not include a statement from your school saying the school tried truancy prevention steps and that those steps failed to meaningfully address your attendance. A school **MUST** take these measures before a school files charges against you. Examples may include offering counseling to help with the problem that is causing you to miss school, conducting a home visit, or calling your parent if you are not in school.
- The State’s complaint against you is incomplete, because it did not say whether you are eligible for or you receive special education services
- You were not actually absent on the day or part of day the school claims you were.
- A school official has excused your absence.
- Your unexcused absence was not voluntary (for example, because your absence was related to your disability).
- You were visiting a doctor, psychologist or other health care professional.
- You did not go to school because you had an appointment in court.
- You did not go to school because you were suspended or expelled.
- You were observing a religious holy day.
- You had an appointment at a government office to become a U.S. citizen.
- You were participating in a naturalization oath ceremony.

It is important to raise these defenses even if they apply to only one or some of your unexcused absences and even if your unexcused absences are over the legal limit.

These defenses could provide a better understanding of your situation, which could matter in discussions with a prosecutor or in court.

#### **4) What are some of my rights as a defendant?**

- Right to be informed of the charges against you – It is a good idea to ask the clerk at the court for a copy of your case file before your court date so that you can be prepared. The court file should state the dates the school says you were absent.
- Right to be considered innocent until proven guilty beyond a reasonable doubt.
  - o To prove you are guilty, the State must present evidence to the court. You can ask the prosecutor to see that evidence before your hearing.
  - o Examples of “evidence” could include:
    - A statement from you admitting your guilt.
    - Your attendance records.
    - An attendance contract that you signed with the school.
    - An attendance officer’s notes.
    - A statement from an attendance officer.
    - A statement from the school saying it tried truancy prevention steps to improve your attendance, but they did not work.
- Right to have an attorney represent you.
- Right to a trial by a jury or judge.
- Right to choose a plea – 1) not guilty; 2) guilty; or 3) no contest
  - o Not guilty – Pleading not guilty means you deny guilt, and that you want to exercise your right to a trial. (You can later change your plea if you want to.)
  - o Guilty or No Contest – By pleading guilty, you give up your right to a trial and accept the conviction. A NO CONTEST PLEA IS VERY SIMILAR TO A GUILTY PLEA, because both result in a conviction.

#### **5) What are some of my options to fight the charge against me?**

As soon as you are charged, you can ask your principal to hold an Attendance Committee meeting, or you can speak with your school’s attendance officer. You can explain your side of the story to the school official and ask if they are willing to write a letter to the court or prosecutor to drop the charges against you. Take your parent with you. Make sure you let your school know if you have any defenses. If you speak with a school official about your case, BE POLITE. Always keep in mind that the school official could become a witness against you, so think carefully about what you want to say before your meeting. For advice about what statements may be self-incriminating (statements that you make to a witness that could later be used against you), contact TRLA.

If your school does not agree to drop the charges and you believe you are innocent or have a good defense, plead not guilty at your court date and let the court know you wish to speak with a prosecutor. The prosecutor is not the same person as the truancy officer. The prosecutor is an attorney who represents the state of Texas. The prosecutor does not work for the school district. If you ask to speak with a prosecutor and the court tells you that you may only speak with the truancy officer, please call TRLA. To apply for our services, call 1-888-988-9996 or apply on-line at <http://www.trla.org>.

Pleading not guilty means the court will set a date for trial in your case, but that does not necessarily mean you will go to trial. Before your trial court date, you should talk with a prosecutor to ask if he or she will dismiss your case. Find out from the court clerk when prosecutors are available to meet with you. If you plan to talk to a prosecutor, then it is best to plead not guilty. You can always change your plea later if you want to make an agreement with the prosecutor.

### **6) Are there any other ways to get the charges against me dropped?**

Yes. If you graduate from high school or get a GED after you are charged but before your case is resolved, bring proof of graduation (for example, a diploma) or a GED to the court. Then, the court must dismiss your pending case.

### **7) What strategies can I use when meeting with a prosecutor?**

- Arrive Early – Plan on having time to park and find the specific courtroom.
- Dress Appropriately – Dress like you work in an office (Males: slacks and tucked-in shirts with a collar – no hats! Females: blouse and slacks or a dress or skirt to the knees.)
- Prepare, in advance, what you are going to say. Keep your presentation short and focus on the important facts. Be honest, but keep in mind that you do not have to answer every question that the prosecutor asks. In some cases, it may be best not to admit to wrongdoing since your statement could be used against you in court. Practice and get feedback.
- Be polite, even if you disagree with the prosecutor. You will not help yourself if you argue or are rude.
- Remember to let the prosecutor know if you have any defenses.

### **8) How should I talk to a judge?**

- Speak Confidently – Speak loudly enough to be heard. Look people in the eye.
- Do Not Lie – If you do not know the answer to a question, say “I don’t know.”
- Be Respectful – Address the judge as “Your Honor.” Use “sir” and “ma’am.”

## **9) What can I bring to court to help my case?**

If you have a good reason for your absences, bring proof (for example, medical records). Also, tell the prosecutor or judge if the situation at school or home has changed in a way that will positively impact your attendance in the future, and bring any written proof that you may have of this change. For example, if you missed school because your family's car was not working, bring proof that the car repairs have been made.

Prosecutors will be more open to negotiate, and judges will be more open to dismiss your case, if it is the first time you have been charged with a crime or if you present evidence of your good character. You can bring letters of support from a teacher, community leader or employer and copies of good grades and any awards.

## **10) What if I missed school because of a major issue in my life?**

Explain that to a prosecutor or judge and bring proof, if possible. The following are examples of such issues:

- You are a victim of bullying at school.
- You are a survivor of domestic violence.
- You have unreliable transportation.
- You are homeless or have unstable housing.
- You have a disability. (See the TRLA guide called "Defending Children with Disabilities")

Just because one of these issues is relevant to your case does not mean a prosecutor or judge will choose to dismiss your case.

## **11) What if the prosecutor does not dismiss my case or makes me a bad offer?**

You can go to trial. For help, call TRLA at 1-888-988-9996 or apply online at [www.trla.org](http://www.trla.org). If you plan to ask TRLA for help, do so sooner rather than later. TRLA usually cannot help at the last minute.

## **12) What happens if I plead guilty or no contest?**

There can be many consequences if you plead guilty or no contest. Some possible consequences are:

- Fines up to \$500 – you have a right to ask the court to waive the fine and other costs if they would cause hardship to you.
- Court costs – these are separate from the fine.
- Requirement to perform community service.
- Requirement to attend truancy- and dropout-prevention programs.
- Requirement of a parent to "check-in" with the school each week to make sure you

are attending school.

- Deferred Disposition, which cannot extend beyond 180 days or the end of the school year, whichever period is longer.

### **13) What is Deferred Disposition?**

If your case is not dismissed right away, the prosecutor might offer you “Deferred Disposition.” Deferred Disposition allows you to resolve your case without a final conviction on your record. It is a form of dismissal that first requires you to meet certain conditions like community service or payment of a fine. You will have a deadline to complete these conditions. If you complete the conditions, the judge dismisses your case. You may then say you were not convicted of the charge.

Sometimes the court will give you extra time to complete the conditions of your Deferred Disposition. If you need extra time, you should ask the court for an extension before your deadline has passed.

If you fail to complete the conditions, a judge may hold a hearing where you will have an opportunity to show good cause why you could not complete the conditions. The judge may decide to give you more time. If not, he or she may order a punishment (for example, a fine, community service, or both).

### **14) How do I avoid a fine or court cost that I cannot afford to pay?**

You may request a waiver of the fine, court cost, or both, by talking with a prosecutor or judge. To show that you cannot afford to pay, you can fill out and bring to court a Request for Waiver of Fines and Costs to show the prosecutor or judge. You can use the Request for Waiver of Fines and Costs at the end of this guide. You can also offer to perform community service instead of paying fines.

You should tell the prosecutor or judge if there are good reasons why you cannot pay a fine or court costs. Some good reasons might be that you or your family members:

- are unemployed or make minimum wages.
- have a health problem and need expensive medical care.
- have a lot of debt.

The court may allow you to pay at a later date or waive the fine or court costs if your family is unable to pay. If the court orders you to pay a fine or court cost and you do not pay, the court can treat your failure to pay as a violation of a court order. You have options if this happens. Call Texas RioGrande Legal Aid at 1-888-988-9996 or apply online at [http:// www.trla.org](http://www.trla.org).



### **15) How do I avoid being ordered to do community service that I cannot complete?**

You should tell the prosecutor or judge if there are good reasons why you cannot complete community service. Some good reasons might be that:

- You do not have time because you care for your siblings or others.
- You do not have reliable transportation to get you to a community service site.
- You are currently involved in several extracurricular or volunteer activities, and community service would take away from the work you already do. (If this applies to you, bring in letters of support from an adult supervisor.)

### **16) If I am found guilty, can I get the conviction off of my record?**

Yes. In Failure to Attend School cases, the court MUST erase the conviction from your record if you:

- Graduate or earn a GED and present proof (for example, a diploma) to the court before you turn 21; OR
- Meet all conditions set by the court, for example, pay your fine or complete your community service requirement.

Even if you do not meet these conditions, you may still be able to clear your record. For help, call TRLA at 1-888-988-9996 or apply online at [www.trla.org](http://www.trla.org).

### **17) How do I prevent future Failure to Attend School charges?**

Do not miss school unnecessarily. Get organized! Keep a file of your absences and all related documentation, for example, notes from a doctor. Ask the school to sign and date your note and make you a copy for your file. If you are worried about too many absences, immediately check with the attendance office or ask for a copy of your attendance records. If the school's records are inaccurate, ask the school to fix them.

If you have good reason to be absent, tell the school before or immediately after your absence. If you are absent because you were sick, but you did not see a doctor, make sure you provide a note signed by your parent describing why you were absent. Make sure you know whether the school excused your absence or not.

Follow up! Find out if your school district allows you or your parents to track your absences online. If not, you can use a chart like the one in this guide to track your absences.

**CHART: TRACKING MY ABSENCES**

<b>Date of absence</b> <i>Examples</i>	<b>Times missed (all day? one period?)</b>	<b>Reason for absence</b>	<b>Information on my absence provided to my school (phone call, parent letter, doctor’s note)</b>	<b>Did the school excuse my absence?</b>
09-25-12	1st-3rd periods	I had a dentist appointment	I have a note from the dentist. I gave it to my first period teacher.	Yes
02-28-13	All day	I was sick with a fever.	None	No
03-01-13	1st period	I could not get out of bed because of a bad reaction to my new medication	I have a letter my mother wrote to the Principal. I left it with the assistant at the front office.	I am not sure. I need to check with the attendance officer.

Now, take a deep breath. You can do this. Good luck with your case!

**Texas RioGrande Legal Aid, Inc. (TRLA)** is a non-profit organization that provides free legal services to low-income residents in 68 counties of Southwest Texas. The TRLA Youth Guide Series is an initiative of TRLA’s Juvenile Justice Team and supported by a grant from the Texas Bar Foundation. Please note that the TRLA Youth Guide Series is not meant as legal advice and the information it contains is subject to change as new laws are passed.

CASE NO. \_\_\_\_\_

STATE OF TEXAS

v.

\_\_\_\_\_  
*Child Defendant*

§  
§  
§  
§  
§  
§

IN \_\_\_\_\_ COURT  
[court name and number]

OF

\_\_\_\_\_ COUNTY, TEXAS

**CHILD DEFENDANT’S PRO SE MOTION FOR APPOINTMENT OF COUNSEL**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES \_\_\_\_\_, the Child Defendant in the above-styled and numbered criminal cause, and moves this Court to appoint me legal counsel pursuant to Texas Code of Criminal Procedure Article 1.051.

In support of this motion, I would respectfully show the Court as follows:

I.

- A. I am a \_\_\_ year old minor child and not able to represent myself in a criminal matter because I am not an attorney.
- B. My parents cannot afford to hire an attorney to represent me. If additional information is needed to verify my inability to retain an attorney, I request that the Court provide me with a hearing to determine whether I am indigent.

II.

In accordance with Texas Code of Criminal Procedure Article 1.051, an indigent criminal defendant is entitled to be appointed legal representation when such an appointment would be in the interests of justice. Due to my inability to represent myself, or to afford an attorney, it is in the interests of justice for me to be appointed legal representation.

Respectfully submitted,

\_\_\_\_\_  
CHILD DEFENDANT, *PRO SE*

Address \_\_\_\_\_

Telephone \_\_\_\_\_

CASE NO. \_\_\_\_\_

STATE OF TEXAS

v.

Child Defendant

§  
§  
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§  
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IN \_\_\_\_\_ COURT  
[court name and number]

OF

\_\_\_\_\_ COUNTY, TEXAS

**ORDER ON CHILD DEFENDANT’S PRO SE MOTION FOR APPOINTMENT OF COUNSEL**

On this day came to be heard the Child Defendant’s Pro Se Motion for Appointment of Counsel, pursuant to Texas Code of Criminal Procedure Article 1.051.

**IT IS THEREFORE ORDERED, ADJUDGED AN DECREED** that the Child Defendant’s Pro Se Motion for Appointment of Counsel be

\_\_\_\_\_ GRANTED, and that legal counsel be appointed to the Child Defendant in accordance with this county’s procedures for representation of indigent parties and applicable law. This Court finds that the Child Defendant is a minor and Child Defendant’s parents do not have the financial resources to hire an attorney to represent the child in the above-styled and numbered criminal matter.

\_\_\_\_\_ DENIED to which the Child Defendant excepts. The Court finds that it does not have the discretion to appoint Child Defendant legal counsel in this case.

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
JUDGE PRESIDING

CASE NO. \_\_\_\_\_

STATE OF TEXAS

§  
§  
§  
§  
§  
§

IN \_\_\_\_\_ COURT  
[court name and number]

v.

OF

\_\_\_\_\_  
*Child Defendant*

\_\_\_\_\_ COUNTY, TEXAS

**REQUEST FOR A WAIVER OF FINES AND COSTS**

TO THE HONORABLE JUDGE OF SAID COURT:

I \_\_\_\_\_ make this Request for a Waiver of Fines and Costs. This Court may waive fines and costs if it finds that I am indigent and discharging fines and costs would impose financial hardship on me. I am indigent, and I am unable to pay a fine or court costs.

I declare under penalty of perjury that the foregoing is true and correct.

I ask that the Court grant this request and waive all fines and court costs.

Executed in \_\_\_\_\_ County, State of Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Respectfully,

\_\_\_\_\_  
*Signature of Child Defendant*

# NOTES

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