

Wednesday, June 12, 2013

Complaint Filed Against: Dallas County School Districts (Dallas ISD, Garland ISD, Mesquite ISD, Richardson ISD) and Truancy Courts

Submitted to: U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section

COMPLAINANTS: Seven Dallas County students

Counsel for Complainants: Texas Appleseed, National Center for Youth Law, Disability Rights Texas

Summary:

This federal civil rights complaint is being filed with the **U.S. Department of Justice, Civil Rights Division's Educational Opportunities Section**, on behalf of seven Dallas county students whose constitutional and statutory rights are being violated in the pursuit of court referrals and prosecution for truancy.

The complaint, filed by **Texas Appleseed, National Center for Youth Law, and Disability Rights Texas**, focuses on the Dallas County truancy courts and the four school districts—Dallas, Garland, Mesquite, and Richardson ISDs—that feed into this specialized court system. The system was created in 2003 to handle Class C misdemeanor cases brought against students for “Failure to Attend School.” The Dallas County truancy courts are criminal courts that hear cases for students as young as 12, but fail to provide the privacy protections or right to appointed counsel available in civil juvenile courts. With no access to an attorney and little understanding of their rights and remedies, Dallas County students are almost guaranteed a criminal conviction.

Texas is one of only two states (along with Wyoming) that prosecute truancy as a crime in adult courts. In FY 2012, Texas adult courts (municipal, justice of the peace, and the Dallas truancy courts) prosecuted about 113,000 truancy cases—or more than double the number pursued in all other states combined.¹

Dallas County operates the largest truancy court system in Texas. In FY 2012 it prosecuted over 36,000 truancy cases—more than any other Texas county and nearly three times more than Harris County, home to the state's largest school district (Houston ISD). The Dallas truancy courts collected \$2.9 million in fines from students and parents in FY 2012, all of which was applied to court costs that year.² The state and national law centers, acting as legal counsel in this complaint filing, attribute the ease of filing truancy complaints electronically for the rapid expansion of the truancy court system in Dallas County.

¹ This figure does not include cases prosecuted by the State's only other specialized truancy court system in Fort Bend County.

² Dallas County reports that it cost \$4.2 million to operate the truancy courts in FY 2012.

Only 41% of all students filed on for truancy appeared for their initial hearing in FY 2012—and of the students who did appear, an even smaller percentage (28%) complied with the truancy court’s order by their scheduled review hearing.³ Nearly 9,000 cases required two or more review hearings. While the Dallas County truancy court staff cites a “90% graduation rate” as an indicator that truancy courts are making a positive impact, that statistic only includes students eligible to graduate the same year that they appear in truancy court and only those students who are motivated enough to appear in court after a truancy complaint is filed. With these limitations, the “90% graduation rate” claim cannot be fairly compared to Dallas ISD’s overall 74.6% graduation rate. National research indicates that School-Wide Positive Behavioral Interventions and Supports, a model recommended in the complaint, is more successful in changing student behavior, including improving school attendance.

How the Dallas County Truancy System Works

Schools must file Class C misdemeanor charges for Failure to Attend School if a student misses 10 or more unexcused days within a six-month period—but can exercise *discretion* to file truancy charges if students miss three or more unexcused days within a four-week period.

Dallas, Mesquite, Garland, and Richardson school districts have adopted broad attendance policies, while giving individual schools in these districts the latitude to adopt their own rules. Each school, for example, can set its own deadlines for when the school will accept a doctor’s or parent’s note to excuse an absence. Individual schools can create a policy to pursue truancy charges against children who are frequently tardy. And, each campus can specify how students and parents are to interact with the school to account for an absence or correct an attendance record. Teachers in some Dallas County schools are permitted to set their own classroom tardy policies, which in turn can impact school truancy filings against students.

The complaint alleges that the layers of “rigid” and inconsistent truancy policies—only available at the school and classroom level in English—contribute to the confusion for students and their families surrounding the truancy process. Many parents are not even aware of their child’s truancy problems until it is too late to address them outside of court.

If they miss a court hearing, students charged with Failure to Attend School can be arrested, handcuffed, and taken to truancy court. They miss class time and their parents miss work to attend initial court and review hearings. This Class C misdemeanor can result in a maximum \$500 fine, \$80 court costs, community service hours, and tutoring hours. Students who fail to fully comply with the truancy court’s order can be arrested, handcuffed, and transferred to the Truancy Enforcement Center for contempt. Those who do not pay their fines may be jailed once they turn 17. Moreover, students convicted of truancy receive a criminal record, which can impact their applications to college and for a job.

Violations of Students’ Constitutional and Statutory Rights in Dallas Truancy Courts

The complaint alleges that Dallas County truancy courts are violating students’ constitutional rights by:

³ Outcome Measures Summary Report for FY 2012, Dallas County.

- Prosecuting truancy – a status offense that may only be committed by a child – as a crime .
- Issuing warrants to arrest students at school, handcuff, and transport them to truancy court;
- Prosecuting youth on truancy misdemeanor charges with no appointed counsel (even for indigent students) and no accommodation determination for disabilities;
- Inappropriately restraining some students in handcuffs in court as a blanket rule that fails to determine, on an individual case basis, whether students pose a flight or safety risk; and
- Inadequately advising students of their legal rights and the consequences of guilty pleas, which results in students’ waiving their legal rights when it is not in their best interest.

Judges in Dallas County truancy courts routinely refuse to hear evidence documenting errors in students’ school attendance records or substantiating a medical or other excuse for a student’s absence from school, according to the complaint. Instead, judges instruct students and parents to convince the school to change the attendance record, which schools may refuse to do. The schools often claim a parent or doctor’s note was submitted too late, or that the parent failed to notify the proper school personnel about a medical condition or meet with the attendance officer in person as required by school policy. As a result, the complaint alleges, many students are prevented from offering valid defenses against a truancy charge, in violation of their legal rights.

Violations of Students’ Civil Rights in Truancy Filings by Dallas County Schools

The complaint further alleges that Dallas, Mesquite, Garland, and Richardson school districts (all in Dallas County) employ “inconsistent and inflexible” attendance policies and practices that violate the civil rights of students with disabilities (under **Title II of the American with Disabilities Act**) by failing to provide them with appropriate services and supports, and failing to take into account how their disability affects attendance and being tardy to class. The complaint also charges the schools with violating the civil rights of students with limited English proficiency (under the **Equal Educational Opportunities Act of 1974**) by failing to provide school or classroom attendance and tardy policies in languages other than English.

Finally, Dallas ISD is targeted separately in the complaint for allegedly violating the civil rights of students who are pregnant or who have been pregnant (under **Title IV and IX of the Civil Rights Act of 1964**) by pursuing truancy charges against students absent from school for medical reasons related to their pregnancy.

Individual Student Cases Cited in the Complaint

Seven students attending school in Dallas County are represented in the complaint by the three state and national law centers, serving as legal counsel. The following is a brief summary of their cases:

- B.B. began missing classes, and was subsequently charged with three criminal truancy cases, after her high school stopped adequately accommodating her learning disability and assigned her to complete a self-directed credit recovery program on computer. Her mother informed her daughter’s school that B.B. was frustrated, depressed, and not wanting to attend because she

could not do the work independently, but the school refused to make any accommodation. B.B. transferred to a charter school, where she has completed high school. However, she must continue to attend monthly review hearings on her outstanding truancy charges and, now that she is 17, faces the risk of incarceration until her truancy fines are paid.

- S.M. missed a month of school on doctor's orders due to complications after delivering her baby; however, the school filed truancy charges because she did not submit a doctor's note immediately after leaving the hospital and waited until she returned to school. S.M. asked the school to send her school assignments to complete during her month home stay but, because she had not notified the school nurse of her pregnancy, the school refused.
- K.W. has made her school aware that she is the primary caretaker of her seriously ill mother and must miss school when her mother's condition worsens. After working with the family for several years, the school began prosecuting K.W. for truancy.
- I.J. has been sent to truancy court multiple times, once due to an administrative error when her class schedule did not match the school's attendance record and she was counted absent for classes she was not assigned to attend. When I.J. became aware of the problem and attempted to correct the attendance record, she was told she had waited too long to reverse all but two of the absences, and truancy charges were filed. She was also charged with truancy for being tardy to class.
- J.D. has asthma and chronic respiratory problems, which can sometimes keep her out of school for several days at a time which, her mother says, makes J.D. cry in frustration. Her school prosecuted J.D. for truancy because she forgot to turn in a note from her mother to the school attendance office within the required three days.
- Truancy charges were filed against L.P. after she missed school with the flu, and her mother failed to return a doctor's note in time. The court assessed L.P. \$200 in combined fines and court costs. L.P. is a special education student who has never been assigned a Behavior Intervention Plan or assessed to see whether her disability affects her behavior.
- A.B. was suspended from school for being tardy and the days she missed were erroneously counted as unexcused absences. Her mother convinced the school to correct the record, but only after she and A.B. missed time from school and work to go to court.

Remedies Proposed in the Complaint

Texas Appleseed, Disability Rights Texas, and the National Center for Youth Law are asking the U.S. Department of Justice, Civil Rights Division's Educational Opportunities Section to **declare the practice of criminally prosecuting children as adults for truancy to be a violation of their Eighth Amendment constitutional rights.**

The law centers also urge the Justice Department to require that the Dallas, Garland, Mesquite, and Richardson school districts modify their policies and practices related to student attendance and referrals to the Dallas County truancy courts—*making court referrals for truancy "a last resort."* The complaint asks the Justice Department to work with Dallas County and the school districts to identify and assist in creating a system of school and community-based programs that can be used as interventions in lieu of court referrals.

According to the complaint, where a court referral is unavoidable, courts hearing truancy cases should:

- Refrain from arresting students at school for truancy and using handcuffs to transport them to or from court or during truancy proceedings;
- Ensure that all children involved in truancy proceedings have access to legal counsel;
- Provide translators at all truancy court hearings for parents and students who need them;
- Train judges and all court personnel in pertinent topics such as adolescent brain development, mental health issues in children, special education requirements, and common causes of truancy and effective responses; and
- Evaluate court forms to ensure they are easily understood by young people and make any needed changes.

Counsel for the complainants are also asking DOJ's Civil Rights Division, Equal Education Opportunities Section, to require Dallas County schools to rewrite attendance policies so **that exclusionary discipline (suspension, expulsion, or other out-of-classroom referral) is not allowed for truant or tardy behavior except under limited circumstances and after at least three documented separate interventions,** such as parent conferences, changing class schedules and locker locations, or social service interventions.

The DOJ is also urged to require the Dallas County school districts to take the following steps to address alleged violations of students' civil rights in truancy proceedings (see complaint for additional requested remedies):

- Modify district, school, and classroom attendance policies to ensure that disability-related absences are properly excused and do not lead to court referral. Any requirement for having absences excused should include accommodations for students with disabilities, including additional time and reminders—and these students should not be required to miss school to attend truancy court;
- Require teachers and administrators to consider reasonable explanations for class tardies or absences, and assign temporary or permanent accommodations where possible;
- Make all district, school, and classroom attendance policies and procedures accessible to Limited English Proficient (LEP) students and their parents in languages commonly spoken in each district and provide interpreters as needed to communicate with students and parents on attendance issues;
- Train all school personnel in Title IV and IX requirements for pregnant and parenting students and in support services available to these students. Each Dallas County school district should have a designated Title IX coordinator;
- Provide students with information about available homebound services during medical leaves and the process for getting assignments for days missed due to pregnancy or child birth;
- Evaluate, devise, and implement strategies to eliminate disparities in the representation of minority, ESL, or special education students in classroom tardies and/or truancy complaints; and
- Implement evidence-based practices, such as school-wide Positive Behavior Interventions and Supports, to address chronic tardiness as well as school climate and academic achievement.

FOR MORE INFORMATION, CONTACT:

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