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Complaint against Mesquite ISD for Failure to Provide Truancy Prevention and Intervention Measures Prior to Filing Court Referral

INTRODUCTION

In 2015, the Texas legislature passed HB 2398, a reform bill aimed at decriminalizing truancy and prioritizing preventing and intervening with students who were chronically absent rather than relying on court interventions.¹ While much of the media attention focused on the changes to court practice that the bill required, the authors and sponsors of the bill clearly indicated their desire to see prevention and intervention start early, at the child's school.²

HB 2398 included language requiring schools to provide prevention and intervention well before a child's absences would trigger a court referral.³ It further required those prevention and intervention measures to be listed in any complaint subsequently filed against the student in truancy court, in an effort to ensure that schools were actually providing prevention and intervention prior to court referral.

HB 2398 also required the Texas Education Agency (TEA) to draft minimum standards for prevention measures and establish a set of best practices.⁴ It directed TEA to adopt rules providing for sanctions for any district found not to be in compliance with the minimum standards the agency establishes. Because TEA had not yet developed either the minimum standards or the sanction process, the agency created an informal complaint process for raising concerns related to a district's failure to comply with the prevention and intervention measures outlined in the bill.⁵ This complaint is being filed against the

¹ H.B. No. 2398, Enrolled Version, <http://www.legis.state.tx.us/tlodocs/84R/billtext/html/HB02398F.HTM> (2015).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

Mesquite Independent School District (“Mesquite ISD”) pursuant to this complaint process.

Mesquite ISD’s failure to provide appropriate prevention and intervention, as required by HB 2398, are evident both in the district’s response to complainant, B.H., but also in the documents provided in response to Texas Appleseed’s open records request. While B.H.’s experience vividly illustrates the problems associated with Mesquite ISD’s failure to implement appropriate prevention and intervention services, their responses to the open records request show that these failures are systemic and district-wide in nature. Mesquite ISD’s current practices reflect a continuation of its truancy practices prior to the passage of HB 2398, practices that failed to accommodate students with disabilities, failed to intervene to prevent student absences, and needlessly referred students to court when their barriers to attendance could have been addressed by the school.⁶ Rather than changing its practices to reflect the requirements and intent of HB 2398, Mesquite ISD has continued to fail in its obligations to students who have barriers to attendance.

FACTS

I. Mesquite ISD Failed to Provide Appropriate Prevention and Intervention Services to Complainant B.H.

B.H. is student with Attention Deficit Hyperactivity Disorder (“ADHD”) and depression at Mesquite High School in Mesquite ISD. He qualifies as a student with disabilities for accommodations under Section 504 of the Rehabilitation Act of 1973 (“504”). His school health records document diagnoses of asthma, ADHD, anxiety, and sleep disturbance. *See, e.g.*, Appendix A, at 1-18.

On November 10, 2015, B.H.’s mother received a truancy warning letter threatening to file a Failure to Attend and Parent Contributing to Non-Attendance complaints against her and B.H. The warning letter alleges 13 unexcused absences from September 2, 2015 to November 9, 2015. The letter failed to specify the so-called prevention and interventions methods that were utilized and failed. *Id.*, at 19.

On December 8, 2015, a petition was filed against B.H. and his mother in Truancy Court. The Petition alleges 13 unexcused absences from October 30, 2015 to December 7, 2015. The Truant Conduct Referral filed by Mesquite ISD Truancy Officer Pam Bell failed to specify any prevention measures that were utilized and failed. In addition, the referral failed to identify B.H. as a student with mental health disabilities or who receives 504 accommodations. *Id.*, at 20-21.

⁶ *See, e.g.*, Letter to Anurima Bhargava, Chief, Educational Opportunities Section, Civil Rights Division, U.S. Dep’t of Justice, from Disability Rights Texas, Texas Appleseed, and the National Center for Youth Law (June 12, 2013), *available at* http://youthlaw.org/wp-content/uploads/2015/01/Final_DOJ_Complaint_061113_846_MV_.pdf.

On January 11, 2016, B.H.'s mother provided Mesquite ISD with copies of the Mesquite Children's Clinic medical referrals for psychological and psychiatric evaluations for depression and Post-Traumatic Stress Disorder. *Id.*, at 22.

On February 11, 2016, the truancy court dismissed the December 8, 2015 petitions. *Id.*, at 23.

On February 11, 2016, Ms. Bell immediately filed another truant conduct referral alleging unexcused absences from January 15, 2016 to February 9, 2016. This referral fails to specify any prevention measures utilized. In addition, no warning letter specific to the alleged absences was sent prior to this referral. *Id.*, at 24-28.

On March 17, 2016, the truancy court dismissed the petitions "due to mental illness." *Id.*, at 29-30.

Mesquite ISD never scheduled a 504 meeting to address attendance or B.H.'s needs prior to the truancy court referrals. In addition, school records show that B.H.'s mother diligently communicated with Mesquite ISD and had provided documentation for several of the dates alleged in the referrals and petitions including:

- On September 2, 2015, B.H.'s mother picked him up early from school for an appointment with Dr. Steven Berkey, Podiatrist.
- On September 24, 2015, B.H.'s mother called to request assistance from the school. She had not been able to convince B.H. to get out of bed.
- On October 8, 2015, B.H.'s mother called again to request assistance because B.H. was refusing to attend school.
- On October 15, 2015, B.H.'s mother picked him up early from school for a medical appointment.
- On October 21, 2015, B.H.'s mother picked him up early from school for a medical appointment.
- On November 4, 2015, B.H. had surgery.
- On November 9, B.H. had a medical appointment with Dr. Steven Berkey.
- On November 13, 2015, B.H.'s mother picked him up early from school for a medical appointment at the Mesquite Children's Clinic.
- On November 16, 2015, B.H. had a medical appointment at Quest Diagnostics.
- On January 15, 2016, B.H.'s mother called to request assistance because B.H. was crying and refusing to leave his bed.
- On February 8, 2016, B.H. accompanied his mother to the Dallas Regional Medical Center emergency room.
- On February 9, 2016, B.H. had a psychiatrist appointment with Dr. Hodges at the Child & Family Guidance Center.

See, e.g., id., at 31-53.

II. Mesquite ISD has Systemically Failed to Implement HB 2398

On April 9, 2016, Texas Appleseed filed an Open Records Request with Mesquite ISD, requesting:

1. Any written communications to students and parents about changes in Board of Education attendance policies that affected provisions of the 2015-2016 student handbook.
2. Any written communications to staff about changes in Board of Education attendance policies that affected provisions of the 2015-2016 student handbook.
3. Any written material from any training received by students, parents or staff about changes in Board of Education attendance policies that affected provisions of the 2015-2016 student handbook.
4. Any information related to truancy prevention and intervention programs adopted by Mesquite ISD for the 2015-16 school year.
5. The total number of complaints filed against students for truant conduct pursuant to section 65.003 of the Texas Family Code, disaggregated by:
 - * Race/ethnicity;
 - * Special Education status.
6. The total number of students who were given a behavior improvement plan pursuant to section 25.0915(a-1)(1)(A) of the Texas Education Code.
7. The total number of students given community service pursuant to section 25.0915(a-1)(1)(B) of the Texas Education Code.
8. The total number of students referred to counseling pursuant to section 25.0915(a-1)(2) of the Texas Education Code.
9. The total number of students diverted from truancy court pursuant to:
 - * Section 25.0915(a-3)(1) of the Texas Education Code;
 - * Section 25.0915(a-3)(2) of the Texas Education Code;
 - * Section 25.0915(a-3)(3) of the Texas Education Code;
 - * Section 25.0915(a-3)(4) of the Texas Education Code.

Appendix B.

Mesquite ISD's response to this Open Records Request, as well as other publicly available documents regarding Mesquite ISD's handling of truancy cases during the 2015-2016 and 2016-2017 school years suggests that B.H.'s experience is not isolated. Rather, these documents suggest that Mesquite ISD is failing to provide appropriate prevention and intervention services to students who are absent from school; failing to train staff on what prevention and intervention services may be necessary for these students; and failing to engage students and families to identify and address root causes of truancy. These documents reflect a one-size-fits-all approach to intervene in student absences that both violates HB 2398 while also failing to successfully improve student attendance.

In response to requests 5 through 9, Mesquite ISD was unable to provide any data, stating that the District would have to request this data from each individual school. Appendix C. The District's lack of oversight of this data, including court filings, reinforces what is apparent from all records provided by the District: Mesquite ISD has made no systemic

efforts to ensure that its students receive appropriate prevention and intervention services to address attendance problems.

1. Mesquite ISD Fails to Provide Appropriate Prevention and Intervention Services

In response to the Open Records Request, Mesquite ISD provided almost no documentation of prevention and intervention services provided to students during the 2015-2016 school year. Mesquite ISD did produce a document titled “Mesquite ISD Student/Parent Attendance Contract” and a document titled “Truancy Prevention Worksheet.” Appendix D, at 10-12. While it is not clear how these documents are used within Mesquite ISD, the language of these documents suggests how Mesquite ISD is undermining the intent of HB 2398.

First, the “contract” is, just as its title reads, solely a contract between the student and the parent. The signature lines are prefaced by “As student/parent/guardian, we understand and agree to the terms and conditions of this attendance contract and agree to support this plan.” Although there is a line for a school administrator’s name, no Mesquite ISD representative signs this contract. In short, Mesquite ISD accepts no responsibility under this “contract” because Mesquite ISD is not a party to this “contract.”

Second, the responsibilities stated by Mesquite ISD—though it does not commit to fulfill any of these responsibilities through the “contract”—provide little suggestion that Mesquite ISD will do anything to address the root causes of a student’s attendance difficulties. Rather, Mesquite ISD starts its list of responsibilities with three tasks that involve monitoring attendance. Mesquite ISD does list that it will “[u]tilize truancy prevention measures to assist in improving your child’s school attendance[;] [s]eek to provide assistance to you in resolving any circumstances make [sic] it difficult for your child to be at school each day[; and] [u]tilize the Attendance Review Committee as per policy FEC (Local).” However, these statements are so vague as to be meaningless for the vast majority of families. Moreover, the Attendance Review Committee established by Mesquite ISD Board Policy FEC (Local) is not authorized by the Board to provide prevention and intervention services. Appendix E.

Third, the “Truancy Prevention Worksheet” additionally emphasizes Mesquite ISD’s limited approach to providing prevention and intervention services. Only three possible “truancy prevention measures” are listed and many of the “additional truancy measures” are not services that would actually intervene in truancy. For example, one of the “additional truancy measures” listed is “attendance guidelines on campus website.” Given the faulty information available on Mesquite ISD’s websites about Texas law regarding truancy, *see* Section II.2 *infra*, it is implausible that this could serve as a sufficient intervention to help address truancy. Notably, given B.H.’s experience, this worksheet makes no mention of convening a 504 team and no mention of referral to evaluations to determine if a student is a student with a disability. Appendix D, at 11-12.

Finally, the “Truancy Prevention Worksheet” shows that Mesquite ISD still defaults to court referral even when its paltry truancy prevention measures are successful. Though the form includes an area for the administrator to indicate whether “truancy measures are succeeding,” the form additionally instructs the attendance administrator that “the truancy referral MUST be filed 10 school days after the student’s 10th absence within the 6 month period.” There is no mention of delaying filing when truancy prevention measures are succeeding as intended by HB 2398. *Id.*, at 12.

2. Mesquite ISD Fails to Engage Students and Families to Identify and Address Root Causes of School Absences

The paltry prevention and intervention services offered by Mesquite ISD are further hampered by Mesquite ISD’s failure to engage students and families to identify and address the root causes of school absences. Without such engagement, Mesquite ISD has no way to identify efficacious prevention and intervention services, even had Mesquite ISD developed such services. However, rather than engaging students and families to try to improve attendance, Mesquite ISD fails to provide students and families with accurate information about the truancy law and the services students should receive to prevent truancy. This failure is seen clearly in: the attendance policy listed on the Mesquite High School website; the attendance provisions in the Student handbook; and the letters provided to families throughout the 2015-2016 school year.

A. Mesquite ISD has Failed to Update School Websites to Reflect the Passage of HB 2398

As of October 7, 2016, Mesquite ISD had made no consistent effort to update school websites to reflect the passage of HB 2398. For example, the Mesquite High School, West Mesquite High School and Poteet High School Websites still made reference to truancy laws before the effective date of HB 2398, including informing families that a student’s truancy charges in court were a Class C Misdemeanor. These websites made no reference to any of Mesquite ISD’s required prevention and intervention efforts or any of the circumstances under which students should not be referred to court. Appendix F.

B. Mesquite ISD’s Student Handbook Has Not Been Updated to Reflect HB 2398

As of October 7, 2016, the Mesquite ISD Student Handbook (“handbook”) had not been updated to reflect the passage of HB 2398 and its changes to the truancy system. Notably, the handbook still describes an “offense” under the repealed Texas Education Code Section 25.094. Appendix G, at 3. Similarly, the handbook states that students are “subject to prosecution under Section 25.094.” *Id.*, at 4. The handbook never mentions that the school is required to provide prevention and intervention services before referring to court, and never mentions that a court referral cannot be based on absences due to pregnancy, homelessness, being in foster care or being the primary income earner for their family.

The handbook mentions that changes in state law which are effective after its printing supersede the information in the handbook. *Id.*, at Welcome Page (unnumbered). However, given that HB 2398 became effective in September 2015 and the title of the handbook reflects that it is a handbook for the 2016-2017 school year, the handbook should include a description of the accurate law. Moreover, Mesquite ISD has made no adequate attempt to inform families of the change in the law, through either its websites, as discussed above, or its other communications to families, as discussed below.

C. Mesquite ISD's Letters to Families Undermine the Intent of HB 2398

In response to the Open Records Request, Mesquite ISD produced a letter that appears to have been sent to parents at the start of the 2015-2016 school year. This letter refers to the student "commit[ing] an offense of the law" and being "subject to prevention measures under section 25.0915 of the Texas Education Code." The letter further states that:

It is the parent's duty to monitor the student's school attendance and require the student to attend school. In the event that the parent or student is found in violation of the Texas Compulsory Attendance Law, they would be subject to prosecution under the Texas Education Code.

Appendix D, at 4.

Mesquite ISD also provided a series of letters that appear to be sent to all parents of students who are struggling with attendance.

The first of these letters reiterates the language about a student being subject to prevention measures and subject to prosecution under the Texas Education Code. It further states that "Mesquite ISD will accept a note from a doctor or other relevant authority prior to the 10 unexcused absences in order to excuse a student's absence. Mesquite ISD will consider extenuating circumstances in determining whether absences should be excused." *Id.*, at 6.

The second of these letters states that:

The school applied the truancy prevention measures after 3 or more unexcused days or parts of days within a four week period or prior to the child having 10 or more unexcused days or parts of days within a 6 month period and the truancy measures failed to meaningful [sic] address the student's school attendance. So upon the next unexcused absence we will file a truancy complaint with the Dallas County Juvenile Truancy Court.

Id., at 8. This letter provides no other verification that any prevention measures were attempted.

The second letter reiterates that Mesquite ISD will only accept notes from "a doctor or other relevant authority... prior to the 10th unexcused absence or the court filing." *Id.*

The very language used in these letters belies the intent of HB 2398. Rather than informing the parent that the District’s duty is to provide prevention and intervention measures to support the student’s attendance, the District instead informs parents that “the student is subject to prevention measures,” language that most parents would interpret to suggest that prevention measures were a form of student discipline. Indeed, the first letter uses the same language to refer to prevention measures as to refer to the student being “subject to prosecution.” Clearly, both the general connotation of this language and the language within the letter supports the idea that Mesquite ISD views “prevention measures” as punitive measures, rather than as supports for students to help them improve attendance.

Additionally, the prohibition on accepting excuse notes after the tenth absence or the court filing similarly undermines the intent of HB 2398. Rather than addressing the root causes of attendance problems, a prohibition like this will only shuttle students to court unnecessarily. Even if Mesquite ISD might make exceptions to this prohibition, parents who read this letter will not seek those exceptions.

Finally, these letters provide no information to parents about the types of absences for which Mesquite ISD cannot refer students to court. The letters solely mention that “Mesquite ISD will consider extenuating circumstances in determining whether absences should be excused” but the term “extenuating circumstances” is never defined for parents. Consequently, parents have no way to know that they should identify for the school if their students’ absences were a result of pregnancy, being in foster care, homelessness, or being the principal income earner for the family. As described above, none of the information about attendance policies provided to parents through the school website, student handbook or these letters provides that information.

3. Mesquite ISD Fails to Train Staff on Identifying Necessary Prevention and Intervention Services

In response to the Open Records Request, Mesquite ISD only provided an agenda for one training on August 11, 2015. Appendix D, 3. It is unclear what staff attended this training, though the similar training the prior year appears to have only been attended by assistant principals. *Id.* at 2. At the training on August 11, 2015, only half an hour was allocated to “Truancy Prevention Measures/ Court Filings.” *Id.* at 3. The limited amount of time provided to cover this topic suggests a cursory training on prevention measures at best, for whatever staff attended this training. Other than this document, Mesquite ISD provided no other record of any staff training about changes in Board of Education attendance policies, and no record of any written communication to staff about changes in Board of Education attendance policies.

REMEDIES SOUGHT

A. District-wide Remedies

Based on the ongoing violations of HB 2398 by Mesquite ISD, the Complainant respectfully request that TEA protect students in the district from further violations by requiring Mesquite ISD to:

1. Identify District staff responsible for monthly tracking of data from each school site regarding referral to court for Truant Conduct, disaggregated by race/ethnicity and special education status; provision of behavior improvement plans pursuant to section 25.0915(a-1)(1)(A) of the Texas Education Code; referral to community service pursuant to section 25.0915(a-1)(1)(B) of the Texas Education Code; referral to counseling pursuant to section 25.0915(a-1)(2) of the Texas Education Code; and diversion from a referral to court for Truant Conduct pursuant to Section 25.0915(a-3) of the Texas Education Code;
2. Report this data to TEA each month, along with the steps the District has identified and implemented to reduce the number of students referred to court for Truant Conduct;
3. Subject to approval by TEA, update all Student Handbooks, School Websites, Attendance Policies and form communications to students and families to accurately explain HB 2398; to explain when students must be diverted from truancy court referral; and to explain what prevention and intervention services students must receive prior to truancy court referral;
4. Provide written notification to parents, students, and District staff of these changes;
5. Provide all district attendance staff and administrators training on the requirements of HB 2398, as well as training on best practices to prevent and intervene in truancy, and legal requirements to accommodate students with disabilities in attendance policies;
6. Create a new "Attendance Contract," subject to approval by TEA, that clearly outlines Mesquite ISD's responsibilities under HB 2398 and explains what students must be diverted from truancy court referrals;
7. Create a new "Truancy Prevention Worksheet," subject to approval by TEA, that clearly informs administrators and staff that filing a court referral is not necessary if truancy prevention measures are succeeding and that provides administrators and staff with suggestions for efficacious truancy prevention measures; and
8. Accept notes excusing absences due to medical appointments or for a disability-related reason at any time to ensure that students with disabilities are not unnecessarily referred to court for absences related to their disability.

The Complainants further request that TEA provide Mesquite ISD with technical assistance and guidance on:

1. Ensuring that students with disabilities are not referred to court for absences related to their disabilities;
2. Assessing barriers to students' attendance through functional behavioral assessments and creating positive behavior intervention plans to address students absences before referral to court; and

3. Implementing other evidence-based interventions to prevent student absences before a court referral is made.

B. Specific Remedies for B.H.

Mesquite ISD should offer B.H.:

1. accommodations to their attendance policy for B.H.'s disability including an evidence-based functional behavior assessment that addresses B.H.'s barriers to attendance and is the basis of a positive behavioral intervention plan which incentivizes attendance rather than punishing B.H. for his disability;
2. appropriate counseling; and
3. opportunities for credit recovery for days missed due to disability.

CONCLUSION

This complaint details the harm to students caused by Mesquite ISD's indifference to its legal obligations under HB 2398 and its failure to implement both the plain language of the law as well as its intent. Disability Rights Texas, the National Center for Youth Law, and Texas Appleseed stand ready to assist TEA in whatever way possible to support the investigation and to provide advice about appropriate resolution of this complaint.

Respectfully submitted,

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