Class, Not Court

Reconsidering Texas' Criminalization of Truancy

Texas
APPLESEED

TEXAS APPLESEED
1609 Shoal Creek, Suite 201
Austin, TX 78701
512-473-2800
www.texasappleseed.net
www.facebook.com/texasappleseed
@TexasAppleseed

March 2015

Report Team

Deborah Fowler, *Executive Director*
Mary Schmid Mergler, *Director*, SCHOOL-TO-PRISON PIPELINE PROJECT
Kelli Johnson, *Communications Director*
Morgan Craven, *Staff Attorney*, SCHOOL-TO-PRISON PIPELINE PROJECT

Texas Appleseed Mission

Texas Appleseed's mission is to promote social and economic justice for all Texans by leveraging the skills and resources of volunteer lawyers and other professionals to identify practical solutions to difficult systemic problems.

Acknowledgements

We are very grateful to our team of staff and interns for their significant contributions to this report, including Texas Appleseed Pro Bono and New Projects Director **Gabriella McDonald**, former Staff Attorney **Jacques Ntonme**, former Staff Attorney **Karla Vargas**, former Interim Staff Attorney **Meredith Takahashi**, as well as interns **Megan Randall**, **Maxwelle Sokol** and **Nkemjika Okafor**.

We are also particularly grateful to **Dustin Rynders**, Supervising Attorney of Education Team, Disability Rights Texas, for his contributions to the report. We are also grateful to the advocates, attorneys, and others who have worked alongside Texas Appleseed in addressing the problem of truancy in Texas and whose work and ideas have informed this report, including **Meredith Parekh** (Disability Rights Texas), **Mani Nezami** (Earl Carl Institute, Thurgood Marshall School of Law), **Sarah Guidry** (Earl Carl Institute, Thurgood Marshall School of Law), **Hannah Benton** (National Youth Law Center), **Michael Harris** (National Youth Law Center), **John Kreager** (Texas Criminal Justice Coalition), **Jennifer Carreon** (Texas Criminal Justice Coalition), **Derek Cohen** (Texas Public Policy Foundation), **Marc Levin** (Texas Public Policy Foundation), **Peter McGraw** (Texas RioGrande Legal Aid), **Kathryn Newell** (Texas RioGrande Legal Aid), **Margaret Clifford** (University of Texas School of Law), and **Patricia Arthur**. We would also like to thank the many attorneys who have represented students charged with truancy on a pro bono basis, including those from **The Vernon Law Group, PLLC, Hunton & Williams LLP,** and **Vinson & Elkins LLP**.

Finally, we are deeply appreciative of the students, parents, and community members who have shared their stories with Texas Appleseed and with the public. Many have also determinedly worked to change the way truancy is handled in their own schools and school districts.

Texas Appleseed's School-to-Prison Pipeline Project is generously supported by **Atlantic Philanthropies**; **Public Welfare Foundation**; **The Brown Foundation, Inc.**; **Simmons Foundation**; and **Houston Endowment**.

The reforms last Session did not extend to truancy and attendance laws, which, while intended to keep kids in school, often operate to keep them out. The theory is that the threat of punishment will incentivize attendance. **But when almost 100,000 criminal truancy charges are brought each year against Texas schoolchildren, one has to think, this approach may not be working.** Playing hooky is bad, but is it criminal? A better, more effective solution may be for schools and courts alike to provide prevention and intervention services for at-risk children to actually achieve the goal: getting them back in school. This has led the Texas Judicial Council, a policy-making body for the Judiciary, to call for decriminalizing the failure to attend school. The stakes are high. Our children are our most precious treasures and our future. Education is the key to their success.

CHIEF JUSTICE **NATHAN L. HECHT**

THE STATE OF THE JUDICIARY IN TEXAS
PRESENTED TO THE 84TH LEGISLATURE

FEBRUARY 18, 2015

Class, Not Court:
Reconsidering Texas' Criminalization of Truancy

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Texas Appleseed has studied, reported, and advocated for reform on many facets of the school-to-prison pipeline, including suspension and expulsion practices, school-based arrests, and ticketing for minor, school-based offenses. The school-to-prison pipeline refers to the policies and practices of schools and law enforcement that unnecessarily funnel children away from school through disengagement and dropout, and increase the likelihood that students will become involved in the juvenile and adult criminal justice systems. This report—*Class, Not Court: Reconsidering Texas' Criminalization of Truancy*—continues Texas Appleseed's school-to-prison pipeline work by delving into how Texas' approach to truancy is driving more children away from school and into the adult criminal courts. The report explores causes of truancy, evaluates the current approaches to addressing truancy, highlights the disproportionate impacts of truancy charges on certain groups of students, and makes recommendations for ways that the Texas Legislature, the Texas Education Agency (TEA), and school districts can increase attendance and help children in a meaningful way.

Texas Appleseed's research for this report included analysis of truancy data collected from courts, TEA, and the state's largest school districts, as well as countless interviews and conversations with families and stakeholders involved in Texas' current system. The report was also informed by more than two years of court observations by Texas Appleseed attorneys in urban, suburban, and rural counties all over the state. Among the problems our research uncovered:

- **Texas currently prosecutes more than twice the number of truancy cases prosecuted in all other states combined.** These students are sent to *adult criminal* courts, unlike almost all other states, which send them to civil juvenile courts.
- While some Texas school districts have implemented effective school- and community-based programs to address truancy, these approaches are not the norm. Children rarely get the individualized attention that research suggests is most effective in intervening with truant youth.

- Four in five children sent to court for truancy are economically disadvantaged, according to TEA—yet fines are the most common sanction for children charged with truancy.
- Due process protections are often ignored in the courts where these cases are prosecuted, with children (who are rarely represented by counsel) pleading guilty or no contest to charges they often do not understand, even when they may have a valid defense.
- In some jurisdictions, judges order children charged with truancy to withdraw from school and take the GED; this resulted in 6,423 court-ordered dropouts who failed the test over a three-year period—a number likely to grow significantly in the face of plunging passage rates for the GED.
- African-American and Hispanic students are overrepresented in truancy cases statewide, as are special education students. Finding more effective ways to intervene with these youth is critical, since these students are among those most vulnerable to poor educational outcomes.

Another major concern revealed by Texas Appleseed's research was that many school districts do not report their truancy data to TEA, though they are required to do so, and some do not even track this data themselves. This calls into question whether schools are keeping data and information most helpful to determining how to target prevention and intervention efforts.

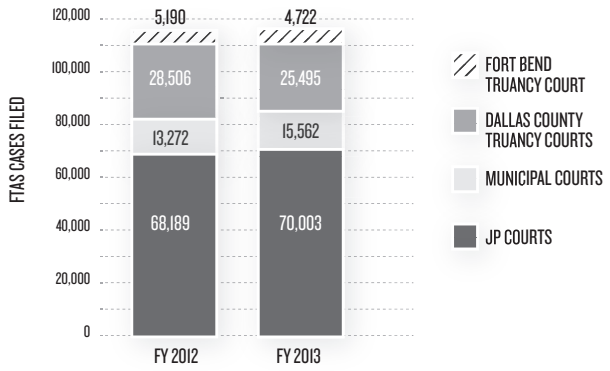
Texas is a leader in other areas of juvenile justice and education reform, and can lead the way when it comes to prioritizing effective alternatives to its over-reliance on criminal courts to intervene with students who may be disconnected from school. This report outlines policy recommendations at the state and local levels that will get Texas back on track to utilizing effective responses, while also highlighting promising programs in Texas and other states that have proven successful in addressing truancy. The importance of changing Texas' current practices cannot be overstated.

FREQUENTLY ASKED QUESTIONS ANSWERED BY THIS REPORT

What is truancy?

> Truancy is the accumulation of unexcused absences in excess of those allowed by state law. Texas' compulsory school laws require children to attend school from the age of six until their 18th birthday. When a child accumulates unexcused absences for three days or parts of days within a four-week period, the school may refer the child to court for truancy. When a child accumulates unexcused absences for 10 days or parts of days within a six-month period, the school must file a complaint in juvenile or adult criminal court regardless of any ongoing intervention.
>
> Though truancy charges may be filed in juvenile court as a "Conduct in Need of Supervision" (CINS) offense, they are more often filed in justice (JP) or municipal courts, which are adult criminal courts, as "Failure to Attend School" (FTAS), the Class C misdemeanor offense named in the Education Code. While approximately 1,000 cases were filed in juvenile courts for the CINS offense of truancy in 2013, more than 115,000 FTAS cases were filed in adult criminal court forums in the same year. This high number of filings makes Texas an outlier—fewer than 50,000 truancy cases were filed in the juvenile courts of all other states combined.

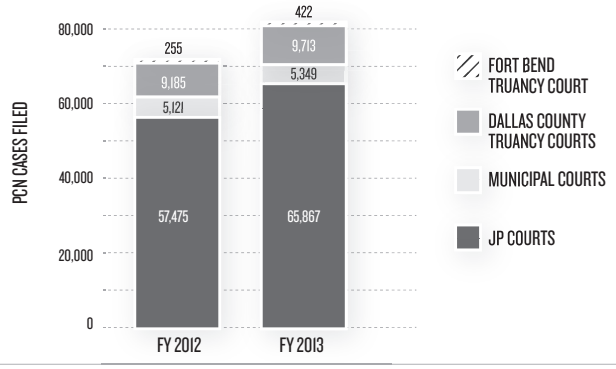
TOTAL STATEWIDE FTAS CASES IN ALL COURTS, FY 2012 & FY 2013



Can charges also be filed against a parent?

The school also has the option of filing against one or both parents for Parent Contributing to Nonattendance (PCN), also a Class C misdemeanor, either in lieu of or in addition to filing against a student. Texas Appleseed's research shows that while charges are more often filed against students, a large number of cases are also filed against parents. In many jurisdictions where Texas Appleseed attorneys observed court, charges were filed against one or both parents *in addition to* charges against the student.

TOTAL STATEWIDE PCN CASES IN ALL COURTS, FY 2012 & FY 2013

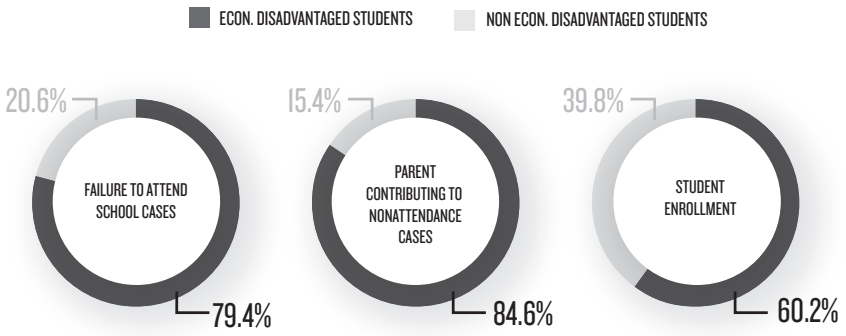


Are some students affected more than others?

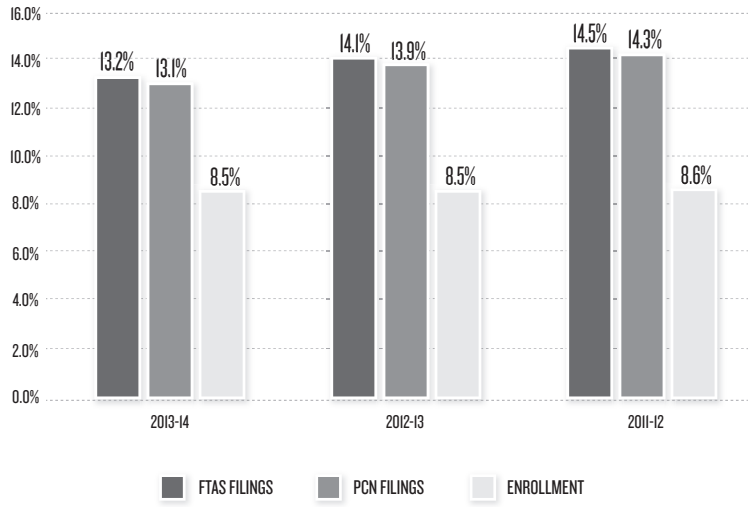
Texas Appleseed's review of both TEA data and data from the largest school districts in the state showed certain groups of students are disproportionately affected by Texas' truancy laws:

- Students classified as "economically disadvantaged,"
- Special education students, and
- African-American and Hispanic students.

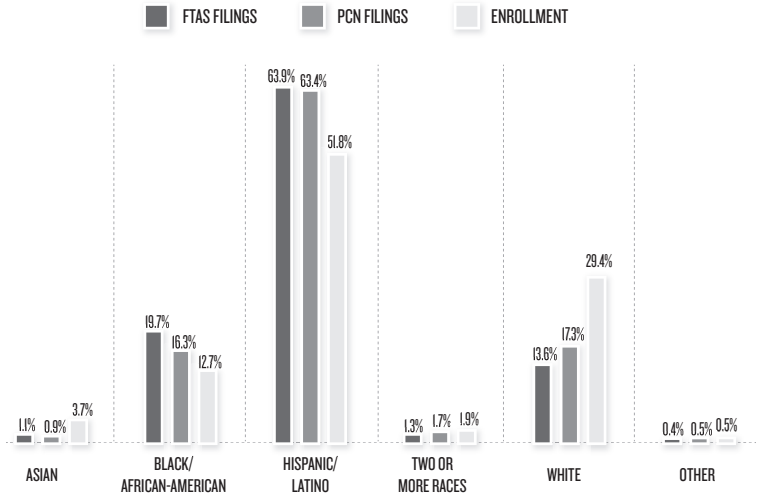
FTAS & PCN CASES FILED AGAINST ECONOMICALLY DISADVANTAGED STUDENTS, 2013–14



REPORTED FTAS & PCN CASES FILED AGAINST SPECIAL EDUCATION STUDENTS & THEIR PARENTS



REPORTED FTAS & PCN CASES, BY RACE/ETHNICITY OF STUDENTS, 2013-14



How are JP and Municipal Courts different than Juvenile Courts?

Juvenile courts in Texas, and across the country, have a different focus than adult criminal courts. They were created to focus on rehabilitation rather than simply punishment, with the understanding that because of their age, children have the capacity to change and grow out of poor decision-making.

For this reason, juvenile courts are civil rather than criminal and include a lot of protections meant to ensure that young people are not stigmatized as a result of their involvement with the courts. There are broader confidentiality laws for cases that go through juvenile courts than cases that are processed in JP and municipal courts. In addition, indigent children who go to juvenile courts are entitled to appointed counsel, whereas children sent to the JP and municipal courts are not appointed counsel. More often than not, in JP and municipal courts, children are faced with having to appear, plead, present defenses, and advocate for themselves without any legal representation, and often with little to no review of the rights guaranteed to them, what the pleas mean, and the consequences associated with each. This is an especially difficult process for children with special education needs, who represent 1 out of every 8 FTAS cases filed.

Following the child's plea, a judge either schedules the case for a later court date with a prosecutor if the student pleads not guilty or, for the majority of students who plead guilty or no contest, the judge immediately orders sanctions including fines, as well as options like community service or mandatory tutoring.

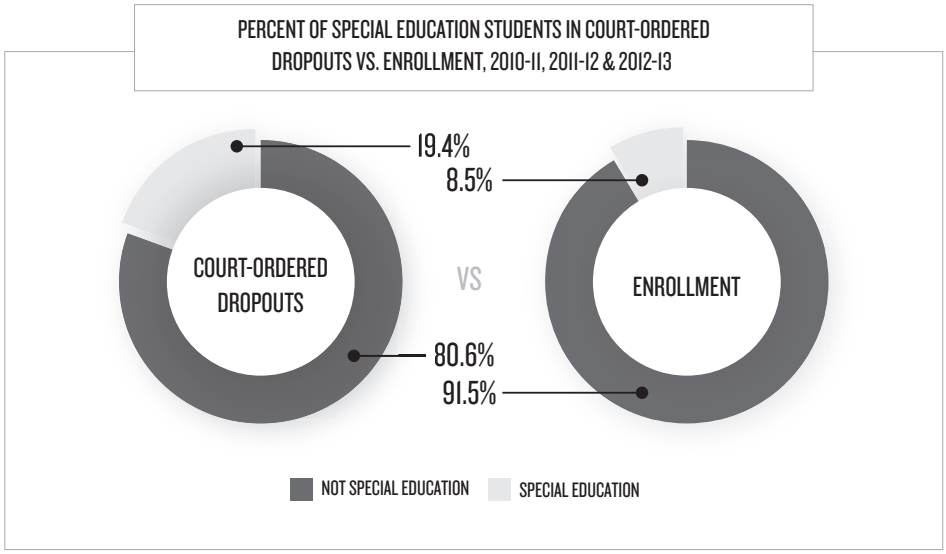
What are the consequences of a truancy conviction?

Fines, which can range up to $500, as well as court costs, are issued in a majority of cases filed against students and parents. If a child is unable to pay the fines and court costs, he or she could face arrest and incarceration once the child turns 17 years old. Parents charged with PCN face the same possibility of incarceration if they do not pay fines. Other failures to obey the judge's orders or appear on the scheduled date may also lead to arrest and confinement.

Convictions in truancy cases result in a criminal record. Opportunities to have the conviction expunged from one's record are available, but only in limited circumstances. Criminal convictions can lead to a loss of opportunity related to higher education, future employment or military enrollment.

Judges may also order students to attend school going forward without any unexcused absences or tardies, suspend a student's driver's license, order a student to attend tutoring, order community service, or order students to attend any one of a wide range of programs for substance abuse, counseling, parenting, or anything else the judge believes to be in the child's best interest. However, because an individualized assessment of a child's needs has rarely occurred, children are not often referred to programs that would address their needs and the underlying causes of truancy. Texas Appleseed has heard from parents about arguably illegal requirements imposed by judges beyond what the statute provides—punishments such as requiring students to wear an ankle GPS monitor, submit to drug testing, or disclose all social media passwords so the judge could view their personal messages and accounts.

One particularly troubling sanction that judges may order in truancy cases is that students drop out of school and take the General Educational Development (GED) test. In other words, **courts in Texas are ordering children to drop out of school as a punishment for not going to school.** Over a three-year period, 6,423 students who were ordered to drop out and take the GED then failed the GED test. This number does not include data for 2014, a year when the passage rate for the GED dropped significantly due to changes to the test. Special education students, in particular, are overrepresented in the group of students ordered to drop out who then failed the GED, accounting for 1 in 5 court-ordered dropouts.



Are schools required to attempt to improve a student's attendance before sending a student to court?

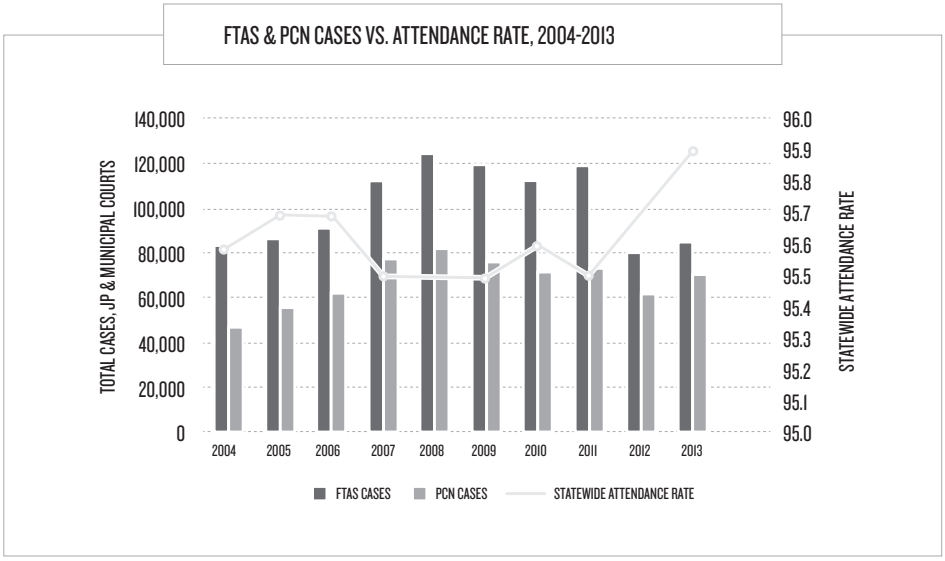
By law, schools must implement truancy prevention measures before charging children with FTAS. However, the law does not delineate what these measures must entail so in practice, they are often meaningless. Schools may merely attempt a phone call or letter to the student's parent, without any inquiry into a child's circumstances and needs, in order to meet the law's requirements. Schools often ignore the fact that there are a number of serious, underlying causes of truancy related to family, school, and personal factors, which may include a student having to take care of a sick parent, being the victim of bullying, or having un- or under-diagnosed special education needs. The myth that most truant children are simply "skipping class" has been debunked.

Effective solutions are those that address these underlying factors, and in most cases, the school, the student and the student's family could address the truancy problem if schools made meaningful attempts to do so. Yet, schools often pass the responsibility on to courts—courts that are generally not designed, equipped or trained to provide meaningful assistance to students and their families. Once a child is in court, many judges routinely fail to make even a cursory inquiry into the causes of truancy. Rather, they issue sanctions that may fail to meaningfully address a student's issues.

Does relying on courts to address truancy work?

The current, court-centered approach to addressing truancy is not working—students are criminalized at an alarmingly high rate, often for behavior that is completely out of their control. Other indicators like attendance rates have not significantly improved despite the high numbers of court filings. Texas Appleseed's own data analysis shows little relationship between the rate at which districts send children to court for truancy and their attendance, graduation and dropout rates. To the extent they are related, higher truancy filing rates are weakly associated with lower attendance and graduation rates and higher dropout rates.

Research indicates that overly punitive responses to truancy, including fines, actually exacerbate the problems that truancy alone creates. Additionally, court involvement, particularly for children who have had no previous experience with the criminal justice system, increases the likelihood of dropout. Court involvement also increases the likelihood that children will be funneled into the juvenile justice system and, eventually, into the adult criminal justice system for more serious offenses. Initial and subsequent escalating court involvement can also lead to negative feelings toward school, poor academic performance, and stress within families.



Are there differences between courts and school districts in the way truancy is handled?

School-level absence and tardy policies, district-level court referral guidelines, and court-level sanctions imposed for truancy vary widely in Texas, creating a patchwork of unpredictable policies and practices. While one school may require absence notes to only be submitted in writing in order to be excused, another may require parents to personally call in to explain an absence. While one district may encourage schools to only file charges against a parent rather than the truant child, another district may require that charges always be filed against both the student and his or her parents, after only a few absences. While some courts may offer community service in lieu of fine payment, others may assess the $500 maximum on both the student and his or her parents.

What *is* consistent across Texas is that FTAS and PCN charges occur far too frequently, are meaningless solutions to truancy's underlying causes, and disproportionately impact African-American and Hispanic students, students who are economically disadvantaged, and students with special education needs.

Are there school districts that are implementing successful programs?

A handful of districts have implemented research-based programs to address truancy. These programs share some key components, including collaboration between youth, their families, school officials, and community service providers, as well as a comprehensive approach that accounts for the multiple factors that contribute to truancy. Additionally, successful approaches to truancy reduction often involve a tiered intervention model, in which successively more intensive interventions are applied to students as their number of unexcused absences increases. An initial intervention may involve a meeting with the family and signing an attendance contract, while more intensive interventions may include referral to school- or community-based treatment programs. Court is used only as a last resort.

Major Policy Recommendations

Texas must do better by its students. The state must move away from a system that sends 115,000 truancy cases—disproportionately filed against low-income students, special education students and students of color—to adult criminal court each year, doing nothing to help improve students' school attendance. Interventions that occur outside of the court system will provide the greatest benefit, and the state must move toward a system where schools, students and families solve truancy problems, and court is used only as a last resort. Based on conclusions from existing research and the findings presented in this report, Texas Appleseed recommends the following policy changes.

Legislative Recommendations

1. Decriminalize Failure to Attend School & Parent Contributing To Nonattendance

   Truancy should no longer be adjudicated as a crime in the adult criminal courts. To achieve this, the Class C misdemeanors of Failure to Attend School (FTAS) and Parent Contributing to Nonattendance (PCN) should be eliminated from the Texas Education Code. Truancy would then be treated as a Children in Need of Supervision (CINS) offense, and the current fines and criminal convictions associated with the offense would be eliminated.

2. Make All Court Referrals Discretionary

   Schools should not be mandated by law to file a complaint against a student for 10 or more absences in a six-month period, but should retain the discretion to determine whether the court referral is appropriate in each case after at least as many absences. For example, if an intervention is improving a student's attendance, but the student is still occasionally absent, the school may decide that continued intervention is more helpful than court referral. In such a case, court referral may put the student at odds with the school and make the student entirely unreceptive to further intervention.

Furthermore, the option to file a complaint against a student after three unexcused absences in a four-week period should be eliminated. Rather than court referral, three unexcused absences should trigger truancy intervention measures.

3. Require Effective School-Based Truancy Prevention & Intervention

A referral to court should only be used as a last resort. To accomplish this, the law should require that the truancy prevention and intervention measures employed by school districts are meaningful and effective. School districts should be required to employ a system of graduated or tiered interventions triggered by a certain number of unexcused absences. The interventions should increase in intensity if the student continues to accumulate unexcused absences despite the interventions, and should be based on best practices and diversion programs that have proven successful. If the graduated interventions fail to improve a student's attendance, the school district could then choose to refer the child to juvenile court.

4. Require Development of Standards for School-Based Interventions & Submission of Truancy Intervention Plans

The Texas Education Agency (TEA) should be required to develop standards for the types of truancy prevention and intervention measures attempted before a court referral is made. School districts that fail to implement interventions meeting these standards, as well as districts that send a high percentage of students to court for truancy, should then be required to submit school-based truancy intervention plans to TEA for their approval to reduce the number of court referrals.

5. Prohibit the Use of Detention or Confinement as a Result of Truancy

The law should be amended to eliminate the Valid Court Order exception, so that the juvenile courts are prohibited from detaining any juvenile as a result of contempt stemming from an underlying truancy charge. Additionally, so long as truancy cases are adjudicated in JP and municipal courts, those courts should be prohibited from confining any individual, even those who have reached the age of criminal responsibility, for contempt of an order stemming from a truancy charge.

6. Prohibit Suspension as Punishment for Truancy or Nonattendance

Current Texas law allows for schools to suspend children to punish them for truancy or other categories of nonattendance (cutting class, leaving campus, etc.). School districts are sending students to in-school suspension or out-of-school suspension for being tardy to class or missing class or school entirely. Suspension does nothing to address the underlying issues with a truant student and fails to improve attendance, and schools should not be permitted to use it to punish truancy or absence from school or class.

7. Prohibit Court-Ordered Dropout as a Consequence for Truancy

Enforcement of compulsory school attendance laws should be designed to encourage students to regularly attend school—not push them out of school entirely when they have attendance problems. The law should be amended so that courts cannot order students charged with truancy to unenroll from school and take the GED. This authority is leading to thousands of dropouts annually. Such an order is particularly inappropriate for special education students, whose passage of the GED is even less likely than their peers.

Texas Education Agency Recommendations

1. Require Schools to Produce Data

School districts are already required to report truancy data to TEA through the Public Education Information Management System (PEIMS), and TEA may factor a district's failure to report data into its accreditation status, which TEA is responsible for determining. Given this authority, TEA should ensure that school districts are fully reporting data in a timely manner on truancy cases as required, and downgrade the status of those districts that fail to report complete data.

2. Develop & Highlight Best Practices

TEA already maintains a Best Practices Clearinghouse on a number of topics, one of which is dropout prevention. Given the strong link between truancy and dropout, TEA should include best practices from around the state addressing truancy in its Clearinghouse, so that school districts can learn from each other about the most effective ways to divert students from court while improving attendance.

School District Recommendations

1. Recognize the Critical Role of Schools in Addressing Truancy

Regardless of whether truancy is decriminalized, school districts and campuses should undertake efforts to understand and address the truancy problems in their districts. A first step is to collect data about student absenteeism and truancy, including demographic data on the students who are absent and truant, as well as data on the effectiveness of school-based interventions. This data should be systematically collected and analyzed by the district, as well as made publicly available for parents and other interested parties. Schools should also map the resources and programs currently available for students within the school setting, as well as in the broader community, to determine what resources are already in place to address truancy and what needs improvement.

2. Develop Truancy Intervention Measures that Provide Individual and Family-Based Assessments Within a Tiered or Graduated Framework

School districts should develop meaningful truancy intervention measures based on best practices. At the lowest tier, schools need to implement truancy prevention measures, such as educating students and parents on the importance of school attendance and the links between attendance and dropout. When students accumulate unexcused absences, individualized interventions should begin that involve the student's family, such as a parent and student conference to develop solutions to the attendance problems, and

an attendance contract outlining the school's, student's and family's responsibilities. For those students who do not respond to low-level intervention, more intensive interventions that include individual and family assessments to identify the underlying causes of each student's absences from school may be necessary. These students should then be referred to appropriate services. In order to connect students with the services that they need, school districts should harness relationships with community service providers and other existing resources. Additionally, school districts should pay special attention to students with disabilities who already receive special education services and should work to identify those students who would benefit from such services.

3. Avoid the Use of Suspension as Punishment for Nonattendance

Sending students to in-school suspension or out-of-school suspension for being tardy to class or missing class or school does nothing to address the underlying issues with a truant student and fails to improve attendance. Schools should not use suspension to punish truancy, absence, or tardiness from class but should instead devise sanctions, where appropriate, that require more learning, not less.

4. Evaluate Truancy Intervention Measures

Essential to any truancy intervention program or measure being implemented in a school district is an evaluation of the outcomes to determine whether the measures are effective. Primary to tracking effectiveness is collecting data on a student's attendance, but school districts should track other relevant variables, such as a student's grades, course failures, grade retention, and graduation or dropout, to see how well students are actually progressing.

5. Refer Students to Court Only as a Last Resort

School districts and campuses should intervene to address truancy issues with children and their families directly, rather than relying on law enforcement or the court system to address their truancy problems. Filing a petition in court should be used only as a last resort, after the school's intervention measures fail to improve a student's attendance. This requires the development of meaningful interventions as discussed in the previous recommendation, but also a commitment on the part of the school administrators to keep kids out of court whenever possible and to redesign the interventions if they are failing.

Additionally, court referral should not signal to a school that the schools' involvement is no longer necessary. Schools should be particularly aware of the resources and services that a student who has been referred to court needs in the school setting, since these students may be the ones experiencing the most serious problems.

6. Adopt Positive, Evidence-Based Approaches to School Discipline and Improve School Climate

Punitive discipline models are expensive and ineffective and can exacerbate truancy problems by making students feel isolated and disengaged. Districts should adopt positive disciplinary models like PBIS and restorative justice that have been shown to improve student behavior across the board and reduce reliance on exclusionary discipline, hence improving student engagement and reducing truancy.

CHAPTER 1

BEST PRACTICES FOR TRUANCY INTERVENTIONS

Research demonstrates a link between truancy, meaning repeated or chronic unexcused absences from school, and a number of negative outcomes for students, including high school dropout, school disengagement, poor academic performance, and even delinquent behavior. The negative effects of truancy go beyond just the individual student, causing classroom learning to suffer and the entire school district to lose funding tied to attendance rates. Given the problems associated with truancy, state and local policymakers, school districts, and school administrators should prioritize its reduction and implement effective policies to increase the school attendance of Texas students. However, effectively addressing truancy requires an understanding of its root causes, which are often multidimensional and complex. It can involve problems faced by the student individually, problems within the student's family, and even problems within the student's school or broader community. The best truancy reduction programs identify the unique causes of each student's school nonattendance and connect each individual student with resources and services to overcome those barriers to attendance.

I. Individual and Community Impact of Truancy

Repeated absences from school are associated with disengagement from school, poor academic performance, and increased high school dropout rates.[1] Studies show that, at all school levels, poor attendance results in lower academic achievement and, along with grade retention, significantly impacts dropout rates.[2] One study demonstrated that for low-income students in urban areas, each additional day absent from school correlated with a 7 percent decrease in the probability of graduating from high school.[3] In fact, nonattendance has been shown to be a better predictor of dropout

1 Martha Yeide & Mel Kobrin, U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Truancy Literature Review 3-4 (2009); Sydney McKinney, Vera Inst. of Justice Status Offense Resource Ctr., Truancy: A Research Brief 1 (2013).

2 Yeide & Kobrin at 3.

3 *Id.* at 4.

than test scores among high school students.[4] Expectedly, school failure and dropout significantly impact students' futures, often leading to difficulties finding and retaining stable employment and lower lifetime earnings.[5]

School attendance is not only a problem for secondary school students. Truancy in early elementary school is a predictor for similar negative outcomes like grade retention and dropout.[6] For example, chronic absences as early as kindergarten have been linked with lower performance by the end of elementary school.[7] For children in kindergarten through third grade, chronic absences of 20 or more days are already associated with school dropout.[8]

Truancy has also been linked with other negative outcomes, including delinquent behavior and even adult crime.[9] Research shows that chronically truant students are more likely than non-truant students to report engaging in behaviors that result in involvement in the juvenile justice system.[10] It is not necessarily the case that truancy *causes* delinquent behavior, but many of the underlying causes of truancy may also be risk factors for juvenile and adult justice system involvement.[11] Still, this linkage means that truancy should be treated as an indicator that students are in need of targeted, effective interventions to help them stay on track to graduate and succeed.

The negative impact of truancy reaches beyond the effects on the absent student. High truancy rates affect the achievement of the class and school overall, since educators have to slow down the rate at which they cover curriculum, thereby harming students who are not truant.[12] Schools also lose federal and state education funding when students are truant.[13] This funding is based upon the number of students in attendance, so each student absent leads to less funding.[14] Conversely, increasing attendance by just a small percentage can mean significantly more money for a school district. For example, in Fort Worth, Texas, an increase in the attendance rate of just 1.1 percent—from 93.8 percent in the 2002-03 school year to 94.9 percent in the 2003-04 school year—resulted in an additional $4 million in funding for the district.[15]

Clearly, truancy demands attention from state and local policymakers, including the legislature, school boards, school administrators, and educators. Its potential negative impacts are too great to allow students to disengage from school without meaningful attempts to intervene and improve their attendance and ultimately their academic

4 Hedy Chang et al., *Chronic Absenteeism Can Devastate K-12 Learning*, Education Week (Oct. 8, 2014), *available at* http://www.edweek.org/ew/articles/2014/10/08/07chang.h34.html?utm_source=fb&utm_medium=rss&utm_campaign=mrss&cmp=RSS-FEED.

5 Tonisha Jones, et al., Ctr. for Children & Youth Justice, Updated Literature Review on Truancy: Key Concepts, Historical Overview, and Research Relating to Promising Practices—with Particular Utility to Washington State 10-11 (2011).

6 Nat'l Ctr. for School Engagement, Pieces of the Truancy Jigsaw: A Literature Review 6-7 (2007) [hereinafter Pieces of the Truancy Jigsaw].

7 Hedy N. Chang & Mariajosé Romero, Nat'l Ctr. for Children in Poverty, Present, Engaged, and Accounted For: The Critical Importance of Addressing Chronic Absence in the Early Grades 8 (2008).

8 *See* Yeide & Kobrin, *supra* note 1, at 4.

9 *Id.*; *see also* McKinney, *supra* note 1, at 2.

10 *See* Yeide & Kobrin at 4.

11 Jones et al., *supra* note 5, at 12.

12 *See* Yeide & Kobrin, *supra* note 1, at 4; Jones et al., *supra* note 5, at 11.

13 Yeide & Kobrin at 5.

14 *Id.*

15 *Id.*

outcomes. Effective interventions must be developed to improve students' attendance and increase their chances of graduation and future success.

II. Root Causes of Truancy

For truancy interventions to be effective, they must be based on the research about the causes of truancy. This research shows that truancy is most often the result of a complex set of factors that generally fall into one of the following categories: family, school, and personal factors.[16] Often, it is not one single factor that is keeping a student from regularly attending school.[17] Rather, a number of factors interact to lead to a student's repeated absences from school.[18] Even when it appears that a student's nonattendance is simply a poor decision to skip school or "play hooky," oftentimes one or more of these factors has led to that student's school disengagement or avoidance.

- *Family and home factors* contributing to truancy include poverty, lack of transportation to school, homelessness, or financial problems requiring students to work during school hours.[19] Additional problems preventing school attendance may include family members' health issues, elevated levels of family conflict, inconsistent parental disciplinary practices, the lack of parental focus on the importance of education, abuse, neglect, or lack of parental involvement, among others. [20]
- *School factors* contributing to truancy include poor relationships with teachers, a negative school climate, an unsafe school environment, bullying, inappropriate academic placement, failure to identify special education needs, and ineffective or inconsistently applied attendance policies.[21] Schools may also be pushing students out of school by using suspensions as punishment for truancy or failing students for poor attendance, leading to disengagement and poor academic performance, and a cycle of continued truancy.[22]
- *Personal factors* such as poor academic performance (often due to the failure of the school to identify and/or meet special education needs), feelings of academic incompetence, low self-esteem, poor relationships with other students, and gang involvement also contribute to truancy.[23] Truant students may be suffering from mental health, physical health or substance abuse problems that prevent them from attending school.[24] Students may also feel disengaged, disconnected, or alienated from school for other reasons, or feel like school is not a place where they are capable of succeeding, leading to school avoidance.[25]

16 Jones et al., *supra* note 5, at 10.

17 *Id.* ("Correlates of truancy are now known to be numerous and diverse, and truancy is now broadly believed to seldom result from the effects of one single factor alone[.]").

18 *Id.*

19 Pieces of the Truancy Jigsaw, *supra* note 6, at 3-4.

20 *See* Nat'l Ctr. for School Engagement, Truancy Fact Sheet 5 (2007) [hereinafter NCSE Fact Sheet]; Yeide & Kobrin, *supra* note 1, at 6.

21 Yeide & Kobrin at 6.

22 *See id.*; *see also* Ctr. for Mental Health in Schools at UCLA, School Attendance Problems: Are Current Policies & Practices Going in the Right Direction? 4 (2008) [hereinafter Ctr. for Mental Health].

23 *Id.*

24 NCSE Fact Sheet, *supra* note 20, at 6.

25 Ctr. for Mental Health, *supra* note 22; *see* McKinney, *supra* note 1, at 3.

In recent years, Texas Appleseed staff members have observed truancy cases at multiple stages of the court proceedings in at least 15 justice and municipal courts in 10 counties across the state, observing many of these courts more than once. Texas Appleseed is also in close contact with attorneys who represent students charged with truancy in other justice and municipal courts across the state. Texas Appleseed's work has led to parents, students and others impacted by truancy charges contacting the organization on a regular basis over the past couple of years. These court observations and conversations with parents, attorneys, and others form the basis of much of this report. They also confirm what research cited above shows are the causes of repeated absences from school. The students that Texas Appleseed has spoken to or observed in court have been absent for reasons as varied as the following, leading to their prosecution for truancy:

- Persistent asthma attacks;
- Migraine headaches;
- Injury due to participation in high school athletics;
- Unidentified special education needs;
- Behavioral problems of special needs child causing siblings to be late to school;
- Specialized treatment sessions for autism;
- Bullying at school;
- Pregnancy and childbirth;
- Persistent medical problems of student's infant child;
- Responsibility to drive non-driving ill family members to doctor and hospital;
- Severe depression;
- Responsibility to care for chronically ill mother;
- Responsibility to care for younger siblings and take them to school;
- Running away from home;
- Homelessness;
- Parent's work schedule;
- Attending funeral of a grandparent abroad; and
- Mistakes in attendance records and incorrectly documenting excuses for absences.

The E3 Alliance, an Austin-based collaborative with the mission of improving educational outcomes in Central Texas, recently completed a study of the reasons that Central Texas students were absent from school. The study sought to identify the reasons any student was absent from a group of 9,000 students in nine schools over the course of eight weeks by talking to the parents of absent students, rather than relying on the schools' coding data.[26] The researchers then recorded a reason for each of the 16,800 absences that occurred during that time frame.[27] The study did not focus only on "truancy," or even attempt to determine whether absences were excused versus unexcused. Still, the

26 E3 Alliance, *Acute Illness is the Prominent Reason why Students Miss School in Central Texas*, http://e3alliance.org/2013/06/11/acute-illness-is-the-prominent-reason-why-students-miss-school-in-central-texas/ (last visited Feb. 12, 2015).

27 *Id.*

results dispel the notion that the most common reason for students missing school is intentionally "skipping" school. The researchers found the most common reason for missing school was actually acute illness, accounting for about half (48 percent) of absences.[28] Other chronic illness, medical, and dental issues accounted for another 9 percent of absences.[29] "Skipping" school accounted for only 5 percent of absences.[30] An equal percentage of absences were due to family emergency (4 percent) and family responsibilities (1 percent) combined.[31] Other repeatedly cited reasons for absences included mental health problems (2 percent) and travel (2 percent).[32] Clearly, the reasons for absence can be complex and varied. And even those children whose parents reported they were "skipping" may be avoiding school for a reason like poor academic performance or bullying—reasons that require more than mere punishment to correct. The most effective truancy reduction programs base their interventions on these myriad reasons for school nonattendance.

DIEGO'S STORY

Diego, a 17-year-old student in the Houston area, experienced several periods of homelessness beginning with his mother kicking him out of the house when he was 12 years old. He missed school because he felt embarrassed to go. "I didn't have anywhere to shower or brush my teeth," he explained to Texas Appleseed.

When he was informed that he had been charged with Failure to Attend School, he went to court alone at the instructed time and date. He did not appear before the judge that day but met with the district attorney (DA). After explaining to the DA that he did not have a home, making school attendance difficult, the DA told Diego to "grow up and get a job." Despite the fact that he did not have a parent or guardian with him, he entered a guilty plea and agreed to complete a General Educational Development (GED) program, get a job, and pay a $500 fine.

Diego had aspirations of attending college and wanted to graduate from high school—a plan he conveyed to his school, court staff, and the DA. But after the truancy prosecution, he is finishing his GED and working at fast food restaurants, per the terms of the plea agreement. He currently lives with the leader of his church youth group. When asked about his path through adolescence, Diego said: "I'm not where I'm supposed to be in life. I never envisioned myself as having to work two jobs, and things just keep getting worse and worse. … I don't want to throw a pity party, but this is not how it's supposed to be."

28 E3 Alliance, *Attendance Reasons Study Presentation* 39 (June 11, 2013), *available at* http://e3alliance.org/2013/06/11/acute-illness-is-the-prominent-reason-why-students-miss-school-in-central-texas/.

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

III. Characteristics of Promising Programs

Chronically truant students may face many serious issues and require significant support to address those issues and get them back on track to graduate. **Because truancy is most often the result of multiple, interrelated factors involving the student, the student's family, the school, and the community, effective truancy programs address barriers to attendance on an individualized basis.** By the same token, when a student is not attending school because of family, school, or personal circumstances, merely punishing that student does nothing to remove the barriers that are preventing his or her regular school attendance. Additionally, effective programs and interventions harness existing knowledge and resources by involving all relevant parties, including students, their parents, teachers, school administration, community-based organizations, and others. Based on a review of promising and emerging programs, at least six key components of effective truancy intervention programs have emerged:

1. *Active collaboration* between the program, truant youth and their families, and schools and community institutions like social services providers and law enforcement.[33] The collaborative efforts allow for the consideration of different perspectives and harness the unique strengths and knowledge of all parties involved.[34]
2. *Student and family involvement* with early and continual participation, input, and advice from the families, recognizing that parents or guardians are often the most knowledgeable about students' lives and best able to help craft solutions to solve their children's challenges.[35]
3. *A comprehensive approach* that acknowledges that there are multiple factors that contribute to truancy, and hence, a variety of individualized problems or needs that may need to be addressed in order to improve attendance.[36] Comprehensive programs focus on prevention and intervention and provide services that address the needs of both occasional and chronically truant students.[37]
4. *Meaningful incentives and sanctions* need to be implemented.[38] Specifically, motivating incentives should be "recognition-based" (i.e., they reward positive student behavior when it occurs, thus encouraging it in the future).[39] Sanctions, when necessary, should be graduated and clearly related to the behavior at issue.[40]
5. *A supportive program environment* must exist, meaning the program is neither isolated in its efforts nor being opposed or undermined by other stakeholders.[41]

33 Jones et al., *supra* note 5, at 14; *see also* Nat'l Ctr. for School Engagement, Truancy Prevention in Action: Best Practices and Model Truancy Programs 9-15 (July 2005) [hereinafter Prevention in Action].

34 Jones et al., at 14.

35 *Id.* at 14-15; Prevention in Action, *supra* note 33, at 14-15.

36 Jones et al. at 14-15.

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

6. *Rigorous evaluation and assessment* to ensure the program's effectiveness.[42] Continual data collection and evaluation allow programs to make changes to improve the program and eliminate unnecessary practices.[43]

Tiered interventions may be particularly effective in reducing truancy.[44] At the lowest level are truancy prevention programs that are offered to the entire student body, such as encouraging and rewarding regular attendance and educating families about the importance of attendance. Those programs alone will keep some students from having unexcused absences. For those students who do begin to accumulate unexcused absences, low-level individualized interventions may be applied. Schools may, for example, require students and their parents to meet to discuss the reasons for truancy, develop an action plan, and sign an attendance contract, which has been shown to reduce the need for more formal interventions for many truant students.[45]

For the smaller group of students who do not respond to these initial low-level interventions, more intensive interventions may be necessary, such as case management services to assess a child's and family's individualized needs and barriers to regular school attendance.[46] The student should then be referred to appropriate school- or community-based services where they will receive the necessary support to resolve ongoing issues.[47] Additionally, regular follow-up with students and families is essential to ensure students continue to succeed.[48] Only in the rare cases where chronic unexcused absences continue after these intensive individualized interventions are applied would court referral ever be needed or appropriate.

Furthermore, when sanctions are used in any truancy intervention program as a consequence for additional absences, they must be carefully considered. Truancy is not merely a disciplinary issue, given the complex causes that contribute to it; hence, punitive and sanction-oriented approaches are often ineffective.[49] **Overly punitive responses have even been shown to exacerbate truancy problems.**[50] Generally, incentives for improved attendance are more effective.[51] Additionally, sanctions should never withhold learning time as a response to absence from school, but rather require more learning through tutoring or classes outside of school hours when appropriate.[52]

42 *Id.*

43 *Id.*

44 Tarrant Cnty. Truancy Task Force, Truancy Solutions: A Collaborative Plan for Schools, Police Departments, Community Agencies, and the Juvenile Justice System 26 (2012) [hereinafter Tarrant Cnty. Truancy Task Force].

45 ABA Comm'n on Youth at Risk, Legal and Educational System Solution for Youth: Report from a Leadership and Policy Forum on Truancy and Dropout 26-27 (2012).

46 Yeide & Kobrin, *supra* note 1, at 9.

47 *See* Tarrant Cnty. Truancy Task Force, *supra* note 44, at 26; *see also* Coalition for Juvenile Justice, Nat'l Standards for the Care of Youth Charged with Status Offenses 26 (2013) [hereinafter Nat'l Standards].

48 *See* Nat'l Standards at 26.

49 Jones et al., *supra* note 5, at 13.

50 Gay Eastman et al., *Finding Effective Solutions to Truancy: What Works, Wisconsin Research to Practice Series*, University of Wisconsin Extension 5 (2007).

51 *Id.*

52 Nat'l Ctr. for School Engagement, "Teach from the Heart": What Tarrant County Youth Want From Their Schools 55 (2012) [hereinafter What Tarrant County Youth Want From Their Schools].

IV. Promising Truancy Intervention Programs

A number of promising truancy interventions have been developed in Texas that share many of the key components that the research supports. For example, the Building Engagement Support Teams (B.E.S.T.) Program in Williamson County; the Family Keys Program in Bexar, Travis, and Webb Counties; and the Waco ISD Suspending Kids to School Program are examples of promising programs that seek to identify the reasons students are absent and connect the students with school- and community-based resources that can improve their attendance. Additionally, the Texas Juvenile Justice Department recently awarded grants to four counties—Comal, El Paso, Tarrant, and Karnes—to establish new truancy prevention and intervention programs, all of which show great promise in their design.[53] While these TJJD-funded programs are limited in scope to certain school districts, grade levels, and/or schools within the counties, they all seek to divert students and their parents from court by providing individualized assessments of the students' and families' needs and barriers to attendance, and by tailoring appropriate interventions.[54] Additional research is needed to understand more about exactly what works to address truancy, since many existing programs, within the state and beyond, have not been rigorously evaluated by researchers.[55] However, these Texas-based programs are still promising interventions, with data suggesting that they are having a measurable impact on students' attendance.

Outside Texas, there are promising programs worth review as well. The Community Truancy Board (CTB) model, developed in Spokane County in Washington State, is one such program with data demonstrating its success.[56] Created in 1996 in the West Valley School District, the CTB model recognizes that the issues surrounding truancy vary from family to family, and may include such issues as housing concerns, lack of transportation, violence in the home, special education issues, medical and mental health issues, and substance abuse, among others.[57] The CTB consists of school administrators, school staff, community service providers, community members, and juvenile court staff. [58] The trained CTB members collaborate with the student and his or her family to develop solutions to the student's attendance problems and, when necessary, provide referrals to community-based nonprofits and services.[59] Because the underlying reasons for truancy are so varied, interventions and supports are tailored to each student and family.[60] After the assessment and connection to services, an agreement is signed by all parties, and a truancy specialist monitors the student's progress and provides mentoring services.[61] If the student does not comply with the agreement, a juvenile court case against them may proceed.[62] Notably, the CTB's cost is kept low by harnessing existing resources within the

53 Texas Juvenile Justice Dept., TJJD-Funded Prevention & Early Intervention Programs: Grant T. School Attendance Improvement Projects 2014, on file with author.

54 *Id.*; Conversations between Texas Appleseed and program administrators in Comal County, El Paso County, and Tarrant County (Mar. 2014).

55 *See, e.g.*, McKinney, *supra* note 1, at 5–6; Wash. State Inst. for Pub. Policy, What Works? Targeted Truancy and Dropout Programs in Middle and High School 9 (2009).

56 *See* Models for Change, Innovation Brief: Using Community Boards to Tackle Truancy 4 (2013).

57 *Id.* at 2.

58 *Id.*

59 *Id.*

60 *Id.*

61 *Id.*

62 *Id.*

WILLIAMSON COUNTY'S BUILDING ENGAGEMENT SUPPORT TEAMS (B.E.S.T.)

Administered by Williamson County Juvenile Services, Williamson County's B.E.S.T. program (formerly known as the WilCo Neighborhood Conference Committee) is a program designed to divert kids from court for truancy.[63] The program is a multi-agency collaboration among Williamson County Juvenile Services, most of the county's school districts, the local JP courts, volunteers, and community-based service providers[64] like LifeSteps,[65] United Way of Williamson County,[66] and Bluebonnet Trails Eastern Williamson County Center.[67]

A student is referred to the B.E.S.T. program by the school after a certain number of unexcused absences, but before the 10 unexcused absences that require court referral.[68] The student then meets with program volunteers and staff to create a Positive Action Plan, which contains a set of individualized and targeted goals designed by the student, his or her family, and the volunteers to improve the student's school participation.[69] The student is assigned a case manager who monitors the student's progress on a weekly basis to ensure the attendance goals in the plan are being met. When necessary, the program staff or case managers may refer a student to services like substance abuse treatment or mental health treatment, provided by nonprofit organizations in the community at low or no cost.[70] By providing services that educate and address the individual needs of the child and family, the program strives to keep youth out of the court system and empowers them "to take positive control" of their education.[71]

A student is referred back to the school district only when he or she does not successfully complete the program—for example, regularly misses scheduled appointments with the case manager, makes no progress on his or her Positive Action Plan, or continues to have unexcused absences from school.[72] At that point, the school district determines whether to file a complaint against the student in JP court.[73] The filing of formal charges thus occurs as a last resort rather than by default.[74] The B.E.S.T. program reports that the number of youth referred to JP court fell from 308 students in 2009 to 150 in 2012 due to implementation of the program.[75] In the 2011-12 school year, 90 percent of the youth participating in the program were diverted from JP court based on a six-month follow-up.[76]

63 Materials obtained from Williamson County's B.E.S.T. Program Administrators and interviews and observations of program, on file with author (March 2014), [hereinafter B.E.S.T. Materials]; *see also* Neighborhood Conference Committee, http://ncc.wilco.org/Home/tabid/3335/Default.aspx (last visited Feb. 12, 2015).

64 B.E.S.T. Materials.

65 LifeSteps, http://lifestepscouncil.org (last visited Feb. 12, 2015) (providing substance abuse services to children and families).

66 United Way of Williamson County, http://www.unitedway-wc.org/about-us (last visited Feb. 12, 2015) (focusing on advancing education, health, and economic opportunities for individuals, families, and communities).

67 Blue Bonnet Trails Community Services, http://bbtrails.org/about-us/mission-vision-history-2/ (last visited Feb. 12, 2015) (providing services to adults, children, and infants with mental illness, chemical dependency, emotional disorders, and developmental disorders or delays).

68 B.E.S.T. Materials, *supra* note 63.

69 *Id.*

70 *Id.*

71 *Id.*

72 *Id.*

73 *Id.*

74 *Id.*

75 *Id.*

76 *Id.*

community, and cost savings from reduced court cases are passed to CTBs.[77] The program boasts that the likelihood of graduating increased by 28 percent for students exposed to the intervention compared with truant students who did not participate in the program.[78]

V. Dropout and Disciplinary Programs Impacting Truancy

Truancy and dropout are closely linked, with certain factors making both truancy and dropout more common.[79] Truancy itself has been found to be a risk factor for dropout.[80] Given this close connection, effective dropout and truancy intervention measures are often aligned.[81] While programs designed to prevent dropout vary widely, many integrate the same programmatic designs that have been shown to successfully reduce truancy.[82] Dropout prevention programs often utilize a combination of personalized, student-focused counseling or mentoring, academic support by way of additional tutoring, significant family outreach and/or school- or work-focused plans to assist in engaging the student.[83] This individualized approach, providing each student with supports and services needed to succeed, is similar to what has been shown to work to address truancy.[84]

Furthermore, implementation of positive research- and evidence-based disciplinary practices that focus on reducing student misbehavior without removing students from the classroom may have a positive impact on truancy as well. Texas Appleseed has consistently advocated for such approaches, including restorative justice and Positive Behavioral Interventions and Supports (PBIS), to reduce reliance on exclusionary discipline (e.g., suspensions and expulsions) in schools. These practices equip students with the knowledge and support systems to address the root causes of negative behavior. While PBIS and restorative justice may require administrators and teachers to devote additional time to behavior management at the outset, they eventually allow schools to recoup lost learning time, since their goals are to change problem behavior—not just remove problem students.

Specifically, PBIS is an evidence-based disciplinary model that seeks to minimize the need for exclusionary discipline by improving school climate and changing student behavior.[85] PBIS sets behavioral expectations for students, then rewards them for successfully following those guidelines.[86] PBIS also uses a tiered system of behavioral support, through which a number of different discipline strategies may be implemented at each tier .[87] The first tier strategies focus on positive classroom management training, guidelines for teachers on responding to misbehavior, a predictable disciplinary system, and data-

77 Models for Change, *supra* note 56, at 3.

78 *Id.*

79 Jones et al., *supra* note 5, at 39 ("Virtually the same predictors of dropouts are at play in the case of truancy.").

80 *Id.*

81 *Id.*; *see also* Wash. State Inst. for Pub. Policy, *supra* note 55 (examining both types of programs for purposes of truancy reduction since they are "closely linked").

82 Jones et al. at 39.

83 *See* Camilla A. Lehr, at al., *Essential Tools, Increasing Rates of School Completion: Moving From Policy and Research to Practice, A Manual for Policymakers, Administrators, and Educators*, Nat'l Ctr. on Secondary Educ. and Transition 1, 32 (May 2004), *available at* http://www.ncset.org/publications/essentialtools/dropout/dropout.pdf.

84 *See* Jones et al., *supra* note 5, at 39-40.

85 Dignity in Schools, Fact Sheet: Creating Positive School Discipline, *available at* http://www.dignityinschools.org/sites/default/files/Creating_Positive_Discipline_Fact_Sheet.pdf.

86 Texans Care for Children, School-Wide Positive Behavioral Interventions and Supports: A Plan for Texas 5 (2012), *available at* http://txchildren.org/Images/Interior/reports/pbis-%20a%20plan%20for%20texas.pdf.

87 *Id.* at 5-6.

driven interventions.[88] If students do not respond to first tier preventative interventions, a school may employ second tier strategies, which include more intensive, personalized interventions.[89] Examples include teaching social skills or conflict resolution, or a Check In/Check Out program (where students check in with an adult at the beginning and end of each day and receive teacher feedback throughout the day).[90] For students who do not respond to second tier measures, third tier strategies are implemented. These strategies include the creation and implementation of highly individualized responses, such as functional behavioral assessments and personalized support plans.[91]

Understandably, PBIS implementation is rapidly expanding in schools across the country and has more than doubled in number to 18,000 schools from 2007 to 2012.[92] For schools that have implemented PBIS, disciplinary incidents have decreased by up to 60 percent.[93] Schools that implement PBIS have also seen positive changes to school climate—in one state, a study of 12 schools revealed that PBIS decreased the time spent disciplining students, thus adding the equivalent of 700 days of instruction time to the schools.[94] One would expect these climate improvements to support increased attendance, and that is what the evidence suggests. For example, one study of Maryland schools found that the percentage of habitually truant students steadily decreased in the schools that received PBIS training, and steadily increased in those that did not.[95]

Another schoolwide disciplinary model that schools may adopt is a restorative justice program (also known as restorative discipline). Restorative justice is a prevention-oriented system that encourages collaboration to resolve school conflicts, such as student misbehavior and bullying.[96] At the heart of this model is the belief that misbehaviors affect people and interpersonal relationships; thus, meaningful solutions and interventions are those that address the relationships among students and school administrators, and teach students how their actions affect their school community.[97] Students participate in small group discussions about harmful behaviors, so that they may reach a resolution that addresses conflict and the harm created by their behavior in a meaningful and lasting way.[98] This encourages students to take responsibility for their actions and allows them to acknowledge and understand how their behavior directly impacts their peers, the learning environment, and the school community.[99]

88 *Id.*

89 *Id.*

90 *Id.*

91 *Id.*

92 *Id.* at 12.

93 Texans Care for Children, Positive Behavior Supports, http://txchildren.org/pbis (last visited Feb. 12, 2015).

94 *Id.*

95 Valarie Austin et al., Using Multi-tiered Systems of Support to Address the Social-Emotional Needs of Students in Maryland, Governor's Summer Internship Program Policy Paper 1, 21 (2014).

96 *Restorative Discipline Program in San Antonio Middle School Reduces Student Suspensions*, The University of Texas at Austin (Dec. 17, 2013), http://www.utexas.edu/news/2013/12/17/restorative-discipline-san-antonio/.

97 *See* Heather T. Jones, Restorative Justice in School Communities: Successes, Obstacles, and Areas for Improvement, Institute for Restorative Justice and Restorative Dialogue 2-3 (2013), *available at* http://www.utexas.edu/research/cswr/rji/rdinschools.html.

98 *Id.*

99 *See id.*

In situations involving truancy, the restorative justice model provides a forum for students to explain the reasons they have been tardy or absent from school.[100] It also allows school administrators and teachers to communicate to the student why it is important for students to attend school and the impact that nonattendance has on the school and classroom environments.[101] This allows for the creation and implementation of prevention and intervention strategies that address the underlying causes of truancy. The Community Truancy Board model in Washington State incorporates restorative justice principles and is an example of the impact restorative justice principles can have on truancy and related outcomes.[102]

By understanding the causes of truancy, it is possible to develop interventions that improve school attendance. Texas policymakers and school officials should develop research-based solutions throughout the state that provide the individualized services that are needed to promote regular school attendance for truant students.

100 Jennifer L. Mongold & Bradley D. Edwards, Reintegrative Shaming: Theory into Practice, 6(3) J. Theoretical & Phil. Criminology 205, 210 (Sept. 2014).

101 *Id.*

102 Models for Change, *supra* note 56, at 3–4.

CHAPTER 2

TRUANCY LAWS IN TEXAS

Despite the compelling evidence that truancy is most often related to problems that a student is facing on a personal, family, or school level, Texas' primary truancy intervention does nothing to address those problems. Rather, the primary response to a student's repeated unexcused absence from school in Texas is to charge that student with a crime that is adjudicated in adult criminal court and that most often results in a fine and a criminal conviction.

I. Truancy Handled as a Misdemeanor in Adult Court

In Texas, youth are subject to compulsory school attendance laws that require them to attend school from age six until their 18th birthday.[103] Children who violate the compulsory attendance laws may be referred to court by schools or law enforcement.[104] For a child to be referred to court, he or she must have missed three or more days or parts of days within a four-week period, or 10 or more days or parts of days within a six-month period. [105] A school district has the option to send a child to court after missing three or more unexcused days or parts of days within a four-week period.[106] But, the school district is compelled by law to refer the child (or the child's parent, or both the child and parent) to court if the child misses 10 days or parts of days without excuse in a six-month period.[107]

Jurisdiction over truancy cases is shared by the justice courts (JP), municipal courts, constitutional county courts, and juvenile courts.[108] Which court has jurisdiction is

103 *See* Tex. Educ. Code § 25.085.

104 *Id.* §§ 25.091(a)(2)(B)(i), 25.0951.

105 *Id.* § 25.094(a)(3); Tex. Fam. Code § 51.03(b)(2). Only unexcused absences are counted for purposes of court referral. *See* Section III, *infra*.

106 Tex. Educ. Code § 25.0951(b).

107 *Id.* § 25.0951(a).

108 *Id.* § 25.094(b); Tex. Fam. Code §§ 51.04(a), 51.04(h), 54.021.

dictated by a complex maze of statutes.[109] In counties with populations of less than 100,000, the juvenile, JP and municipal courts have concurrent jurisdiction over truancy cases.[110] In counties with populations larger than 100,000, the juvenile courts have exclusive jurisdiction but may waive their jurisdiction—either on a case-by-case basis or as a blanket waiver so that the JP or municipal courts can hear the cases.[111] In cases where there is concurrent or waivable jurisdiction, no clear rules dictate whether a child is sent to juvenile court, JP, or municipal court, creating an arbitrary system in which the exact same behavior may be treated as criminal in one context, but not in another. Additionally, two counties, Dallas County and Fort Bend County, have created specialty truancy courts as part of their constitutional county courts.[112] These specialty truancy courts are criminal courts in which truancy is adjudicated as a misdemeanor.[113]

Despite the overlapping jurisdiction, the overwhelming majority of truancy cases are heard in JP or municipal courts, rather than the juvenile courts.[114] These adult criminal courts were granted jurisdiction over truancy cases as a result of sweeping changes by the Texas Legislature to the state's truancy laws in 1995.[115]

In the JP and municipal courts, truancy is charged as a Class C misdemeanor for Failure to Attend School (FTAS).[116] Handling truancy primarily as a Class C misdemeanor offense in the adult court system, as it is now, has been the practice for at least 15 years, since 2000.[117] Texas' enforcement system for compulsory school attendance laws is unique as compared with other states, in that Texas is one of only three states to allow children to be sent to adult courts for school nonattendance.[118] In fact, only one other state, Wyoming, allows for children to be adjudicated in adult *criminal* court for truancy, like Texas does.[119]

II. The JP and Municipal Court Process

JP and municipal courts function very differently than juvenile courts. Most importantly, children facing FTAS charges in JP or municipal courts are not appointed counsel, as they would be in the juvenile courts.[120] These children are responsible for making their own decisions about how to plead and how to defend themselves in court, without court-

109 *See* David Slayton, Texas Office of Court Admin., *Written Testimony for the Senate Jurisprudence Committee*, Oct. 23, 2014, *available at* http://www.txcourts.gov/media/662322/OCA-Written-Testimony-Senate-Jurisprudence-Charge-3-October-23-2014.pdf.

110 Tex. Fam. Code §§ 51.04(a), 51.04(h).

111 *Id.* § 54.021.

112 *See* Tex. Gov't Code, T. 2, Subt. D, Ch. 54, Subchs. W, JJ; *see also* Dallas County Truancy Court, http://www.dallascounty.org/department/countyclerk/truancy.php (last visited Feb. 13, 2015); Fort Bend County, Texas Truancy Court, http://www.fortbendcountytx.gov/index.aspx?page=626 (last visited Feb. 13, 2015).

113 *See* Tex. Gov't Code, T. 2, Subt. D, Ch. 54, Subchs. W, JJ.

114 *See* discussion *infra*, Ch. 3.

115 1995 Tex. Sess. Law Serv. ch. 260 (S.B. 1).

116 Tex. Educ. Code § 25.094(e).

117 *See* Ryan Turner, Texas Municipal Courts Education Center, Written Testimony for the Senate Jurisprudence Committee, Oct. 23, 2014.

118 *See* Complaint filed with Dep't of Justice by Disability Rights Texas, Nat'l Ctr. for Youth Law, and Texas Appleseed concerning Dallas County Truancy Courts (Jun. 13, 2013) at n. 15, *available at* http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=966&Itemid= [hereinafter DOJ Complaint].

119 *Id.*

120 Tex. Code Crim. Proc. art. 1.051(c). Counsel is not appointed in JP or municipal courts despite the fact that these are criminal cases. The threshold for appointment of counsel to indigent defendants is whether the charge carries the possibility of imprisonment, and Class C misdemeanors are punishable by fine only. *See also Scott v. Illinois*, 440 U.S. 367, 369 (1979) (no constitutional violation for defendant unrepresented by counsel not sentenced to any term of imprisonment); *cf.* Tex. Fam. Code §51.10(f).

appointed counsel. Courts, including the U.S. Supreme Court, have repeatedly recognized that assistance of counsel is especially important for children, as they are particularly vulnerable to the complicated and coercive nature of the criminal justice process.[121] Yet, in JP and municipal courts, children go unrepresented by counsel unless they hire their own.[122]

Additionally, other protections present in juvenile court do not exist in JP or municipal courts, such as specific protections in juvenile courts to make sure defendants only waive their legal rights knowingly and voluntarily.[123] As a general rule, before a defendant enters a plea in a criminal proceeding, the record must show that the defendant knowingly and intelligently waived his or her rights.[124] These rights include a number of due process rights, such as the protection against self-incrimination embodied in the Fifth Amendment and the right to cross examine witnesses embodied in the Sixth Amendment, both made applicable to the states through the Fourteenth Amendment.[125] In juvenile courts, special care is taken to ensure children understand these rights and know what waiving them means.[126] Children also have counsel to help them understand this.[127] Yet, Texas Appleseed attorneys have observed a number of JP and municipal courts where the judge simply recited a form statement or handed out a form waiver about the rights children were afforded and would waive if they pled guilty. Many JP and municipal court judges routinely glossed over these rights, and Texas Appleseed even witnessed judges failing to mention these rights at all. There is rarely any inquiry into each individual child's understanding of his or her rights and the impact of waiving them.

Not only do most juveniles in the JP and municipal courts go unrepresented, but generally a prosecuting attorney does not review the complaints upon which the charges are based for legal sufficiency before an initial hearing. Only after a student pleads "not guilty" is the charging document typically reviewed.[128] Judges accept guilty pleas based only on the charging documents in front of them, sometimes without a truancy officer or witness from the school present to verify the number of absences or the facts upon which the charge was based.[129] Texas Appleseed has done extensive court watches across the state and observed that an overwhelming majority of children pled guilty or no contest when facing FTAS charges.[130] With no mechanism to determine which FTAS cases should be dismissed or diverted without court involvement, or a defense attorney to guide them in the process as in Texas' juvenile courts, numerous students and parents of students who have strong legal defenses to the truancy charges plead guilty to charges that never should have been filed in the first place.[131]

121 *See In re Gault*, 387 U.S. 1, 39, n. 65 (1967) (recognizing that children, and even most adults, have difficulty understanding the legal system).

122 Tex. Code Crim. Proc. art. 1.051(c).

123 *See* Ryan Kellus Turner, *Ticketing, Confidentiality, and Special Education Issues*, Juv. Law Sec. Newsl. (Juvenile Law Section, State Bar of Tex., San Antonio, Tex.), Dec. 2012, at 5; Ryan Kellus Turner & Mark Goodner, *Passing the Paddle: Nondisclosure of Children's Criminal Cases*, Juv. Law Sec. Newsl. (Juvenile Law Section, State Bar of Tex., San Antonio, Tex.), Dec. 2010, at 13.

124 *Johnson v. Zerbst,* 304 U.S. 458, 464 (1938) (noting that waiver of rights is "ordinarily an intentional relinquishment or abandonment of a known right or privilege," that courts must indulge every reasonable presumption against the waiver of fundamental rights, and holding specifically that the right to counsel was not waived).

125 Thomas S. Morgan & Harold C. Gaither, Jr., *Constitutional Rights of Juveniles*, 29 Tex. Prac., Juvenile Law and Practice § 4:1 (3d ed.) (March 2014).

126 *See id.*; *see also* Tex. Fam. Code § 51.09 (Waiver of Rights).

127 Tex. Fam. Code § 51.10(f).

128 Texas Appleseed's court observations; *cf.* Tex. Fam. Code § 53.012 (requiring prosecutor to review case referred to juvenile system for legal sufficiency and "desirability of prosecution").

129 Texas Appleseed's court observations.

130 *Id.*

131 Texas Appleseed's court observations and conversations with students and parents.

The violation of some students' rights in these courts goes further, in that parents and students charged with truancy may have varying levels of English proficiency, but their right to an interpreter is being denied.[132] In one court that Texas Appleseed observed, an interpreter was actually present, but the attendance officer challenged the student's assertion that he needed the interpreter's help to understand the proceedings and present his defense. The student, who had recently immigrated to the U.S., was forced to explain the circumstances for his absences to the judge using his limited English while the interpreter stood idly by. In another court, no interpreter was provided. Instead, the judge (who did not speak Spanish well) would occasionally drop in Spanish words or phrases when addressing Spanish-speaking parents, such as, "Listen to me because this is *muy importante*" and "Your daughter has not been *en la escuela*."[133]

Additionally, Texas Appleseed has witnessed and heard reports of children arrested at school or in court on contempt charges being shackled or put in handcuffs. The U.S. Supreme Court has long recognized that a blanket rule requiring defendants to be restrained during court hearings is unconstitutional, making this routine use of handcuffs in FTAS cases, without any showing of individualized flight or safety risk, unconstitutional.[134] Additionally, the collateral harm caused by unnecessary use of restraints in court is particularly acute for young people, who are more susceptible than adults to the embarrassment associated with shackling.[135]

III. Limitations on Filing FTAS Charges

Age Limits

FTAS charges can only be filed against an individual between the ages of 12 and 17.[136] In 2010, media coverage revealed that students aged 18 to 21 years—who were not subject to compulsory education laws—were nonetheless being jailed for FTAS charges.[137] This prompted the legislature to pass a law limiting FTAS prosecutions to those under the age of 18.[138] For students age 18 and over, educators can choose to unenroll students after five or more absences, but cannot prosecute them for FTAS.[139] For children under age 12, an FTAS complaint cannot be filed against the child. The school's primary option to initiate a court case is to file a Parent Contributing to Nonattendance (PCN) complaint against

132 *Id.*; *see also Baltierra v. State*, 586 S.W.2d 553, 559 (Tex. Crim. App. 1979) (holding that "when it is made known to the trial court that an accused does not speak and understand the English language an interpreter must be furnished to translate to the accused the trial proceedings. . . . In the absence of the opportunity to be aware of the proceedings and the testimony of the witnesses [the accused is] denied the constitutional right of confrontation and, that right not being knowingly and intelligently waived, [the] trial and conviction are null and void").

133 Quotes included are from JP judges in courts across the state during Texas Appleseed court observations. Names of judges and location of courts have been omitted as it is not the intent of this report to single out any particular judge, but rather to highlight systemic problems.

134 *See Deck v. Missouri*, 544 U.S. 622, 626-32 (2005) (acknowledging long-established prohibition of routine use of shackles during guilt phase of criminal trials and holding that same prohibition applies in sentencing phase).

135 Dr. Marty Beyer Aff. ¶¶ 10, 17, 18, 20, Aug. 2006, cited in Brian D. Gallagher & John C. Lore III, *Shackling Children in Juvenile Court: The Growing Debate, Recent Trends and the Way to Protect Everyone's Interest*, 12 U.C. Davis J. Juv. L. & Pol'y 453, 461, n. 39 (2008).

136 Tex. Educ. Code § 25.094.

137 Forrest Wilder, *School House Crock*, Texas Observer, (April 1, 2010), *http://www.texasobserver.org/school-house-rock/*.

138 *See* Tex. Educ. Code § 25.094(a)(1).

139 *See id.* § 25.085(e).

the child's parent.[140] Additionally, students who are ages 10 or 11 can be adjudicated in the juvenile courts for truancy, even though they cannot be charged with FTAS.[141]

Excused Absences

FTAS complaints may only be based upon unexcused absences.[142] Whether an absence is considered to be excused or unexcused is dependent upon a combination of state law, school district policy, and individual school policy. The Texas Education Code provides that certain types of absences must be excused, including observance of a religious holy day, a required court appearance, an appearance at a governmental office to complete paperwork required in connection with the student's application for United States citizenship, participation in a United States naturalization oath ceremony, or for service as an election clerk.[143] Furthermore, state law requires schools to excuse a temporary absence resulting from a visit to a health care professional if the student returns to school on the same day of the appointment.[144]

State law also requires that children with a temporary, remediable physical or mental illness "that makes the child's attendance infeasible" and has been verified by a "qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment" be exempt from compulsory school attendance. In other words, they should not be charged with FTAS.[145] Similar exceptions are made for students 16 and over who are taking classes to prepare to take the GED, among other things.[146] School districts and individual schools may also implement policies that provide for additional reasons to excuse an absence, as well as the procedures that a student must go through to have an absence excused.[147]

Despite the fact that absences based on the reasons enumerated in state law and school policy should be excused, students are consistently charged with FTAS, even when their absences are due to these legally permissible reasons.[148] This is often due to the fact that students have failed to correctly follow their schools' complicated processes for excusing an absence. The interaction of state law, school district policy, and individual school rules related to procedures for documenting absences can lead to a complex maze of regulations that students and parents must navigate. For instance, Texas Appleseed thoroughly reviewed the attendance policies of Dallas Independent School District (DISD), Richardson ISD (RISD), Garland ISD (GISD), and Mesquite ISD (MISD), as well as many area schools, in conjunction with the filing of a complaint with the U.S. Department of Justice in 2013 alleging violations of students' constitutional and civil rights.[149] The policies reviewed were complex and confusing, and students and parents

140 *Id.* § 25.093. *See infra* Section VI for a discussion of PCN.

141 Tex. Fam. Code § 51.03(e-1)(1).

142 Tex. Educ. Code §§ 25.094(f); 25.0951.

143 *See id.* § 25.087.

144 *See id.* § 25.087(b)(2).

145 *See id.* § 25.086(a)(3).

146 *See id.* § 25.086(a)(5)-(12).

147 *See id.* § 25.087(a).

148 Information based on Texas Appleseed's court observations and conversations with students and parents.

149 *See* DOJ Complaint, *supra* note 118.

revealed that these policies were often not adequately explained until an FTAS complaint had been filed.

As an example of the complexity, all of the district and school policies provided that there was a three-day limit for parental excuse notes due to illness, but the details of how those notes must be submitted varied considerably among schools. Some schools required parents to call the day the student was absent and follow up with a letter; others allowed faxed or e-mailed excuses; others only accepted a written letter. One MISD high school required the parent to call the school "ASAP" on the day of the absence or else it would be considered unexcused; the school did not accept parent notes.[150] Some schoolwide policies provided there were "no exceptions" to the three-day policy,[151] and many of the school policies indicated that an unexcused absence was "automatically" entered into the attendance records if a note was not received within three days.[152] Several schools even defined "truancy" to include the failure to turn in a note within three days.[153] So, if parents made a mistake in following the school's procedures, the school could mark an otherwise excused absence as unexcused, potentially leading to a FTAS charge for not following the school's documentation policies.

Tardy vs. Truant

State law provides that a student may be charged with the crime of FTAS for missing "days or parts of days."[154] An opinion from the Texas Attorney General clarifies that merely being tardy to school or class should not be considered a part of a day for purposes of truancy.[155] Guidance from the Texas Education Agency (TEA) echoes this interpretation, instructing schools not to file against students for merely being tardy or late.[156] However, this leaves open to districts' and schools' interpretations what constitutes tardy instead of an absence for part of a day. The school districts may in turn leave the decision up

150 North Mesquite High School, Policies: Attendance, http://65.120.152.66/nmhs/information/policies.html (last visited Feb. 13, 2015).

151 George Bannerman Dealey Montessori Vanguard & International Academy, Attendance Policy (DISD), Appendix B ("If a note is not received by the third day after the absence, an excused note cannot be accepted.") (on file with author); Rosie Sorrells Education & Social Services at Townview Center, ESSM Attendance (DISD), Appendix B ("Late notes are not accepted.") (on file with author).

152 *See* J.J. Pearce High School, 2011-2012 Student Handbook 17 (RISD), *available at* http://www.edline.net/files/_WWBww_/e8d8dc38674c6a033745a49013852ec4/11_12_student_hdbk.pdf; Moises E. Molina High School, 2012-2013 Tardy Procedures 9 (DISD), Appendix B (on file with author); Hillcrest High School, Attendance Policy (DISD), Appendix B (on file with author); David W. Carter High School, Attendance and Tardy Procedures 2012-2013 (DISD), Appendix B (David Carter High School's guidance on this issue is the only guidance that appears to distinguish between a parent's and doctor's note, but it is extremely confusing, stating "[w]ithin three days of an absence, the student must give the Attendance Office clerk a written note from a parent/guardian stating the date and the reason for the absence. After three days, a note must come from the physician releasing the student back to school. Students not turning in a note within the three days will be counted as an unexcused absence.") (on file with author); Justin Ford Kimball High School, Student Attendance Policy (DISD), Appendix B (on file with author). One DISD high school's school level policy indicates, "[d]iscrepancies in attendance must be noted within the six weeks. No changes will be made after the six weeks ends unless the absence was school related or a teacher error."

153 Justin Ford Kimball High School, Student Attendance Policy (DISD), Appendix B (on file with author); Garza Early College High School, 2012-2013 Guidelines for Student Attendance and Punctuality 1-2 (DISD), Appendix B (on file with author).

154 Tex. Educ. Code §§ 25.094(a)(3), 25.0951(a)-(b).

155 *See* Op. Tex. Att'y Gen. No. DM-200 (1993), *available at* https://www.texasattorneygeneral.gov/opinions/opinions/48morales/op/1993/pdf/dm0200.pdf.

156 *See 2013 Attendance, Admission, Enrollment Records and Tuition*, TEA Letter, *available at* http://www.tea.state.tx.us/index4.aspx?id=2147508100.

to individual schools. For example, DISD does not establish when a student who is late to class will no longer be considered tardy and instead is marked absent.[157] Instead, school-level policies determine this distinction, causing considerable variation among schools. Some school policies consider being more than five minutes late to class as an absence,[158] while others provide students a 25-minute window before marking them absent.[159] Thus, despite the Attorney General's opinion and TEA's urgings, students can be charged with FTAS even if they are present at school but are late. Over and over again, Texas Appleseed has received calls from parents whose children were charged with truancy for merely being late to class.

IV. Direct Consequences of Conviction

If convicted of FTAS, a Class C misdemeanor, a student can be fined up to $500, plus court costs usually around $80.[160] In many instances, fines are the first and only response to truancy. Based on Texas Appleseed's court observations, the level of fines varies greatly depending on the presiding judge. While one judge may opt for a deferred disposition for a student's first offense if he or she does not have future absences, another might impose a $500 fine in an attempt to instill in the child the severity of the offense. Data from the Harris County JP courts—one of the few counties with available data—shows that the average fine assessed in those courts in FTAS and PCN cases was $229.[161]

Judges may also order students to attend school going forward without any unexcused absences or tardies.[162] Additionally, judges are empowered to suspend a student's driver's license; order a student to attend tutoring; order community service; order attendance at a class for students at risk of dropping out; or order students to attend any one of a wide range of programs for substance abuse, counseling, parenting, or another program the judge believes to be in the child's best interest.[163] Judges may also order the parents of a juvenile convicted of a Class C misdemeanor to attend a class and pay up to $100 for the class, or even attend the child's classes or functions at school.[164] Furthermore, judges are also permitted under the law to order students to take the high school equivalency exam to obtain their General Educational Development (GED) certificate.[165] Texas Appleseed has also heard from parents about requirements imposed by judges beyond what the law provides, and that are arguably beyond the authority of the court—punishments such

157 *See* Anne Frank Elementary School Policies: Attendance and Tardiness, http://www.dallasisd.org/Page/6636 (last visited Feb. 13, 2015).

158 *See* Zan Wesley Holmes, Jr. Middle School, Student Attendance Policy 2012-2013 (DISD), Appendix B ("If a student is 5 minutes late to class without a pass, he or she may be marked absent. If the student has a pass, the teacher will submit an attendance correction form to the attendance office in order for it to be changed to a tardy.") (on file with author); Wilmer-Hutchins High School, Attendance (DISD), Appendix B (on file with author) (Wilmer-Hutchins High School in DISD indicates that a student will be marked absent if they are more than eight minutes late to class.).

159 *See* North Mesquite High School, Attendance Guidelines for North Mesquite High School 2012-2013 (MISD) (indicating 25 minutes is considered "excessively late" for first period classes and will be counted as an unexcused absence) (on file with author). North Mesquite's policy indicates, incorrectly, that "The State of Texas does not distinguish between a student being tardy and being absent. It is a courtesy that NMHS does provide a tardy policy which provides some flexibility for the times that students are a few minutes late to class." One DISD high school allows students to have an "absence" from a class changed to a "tardy" if they attend Saturday school. Emmett J. Conrad High School, Attendance Policy 2012-13 (DISD), Appendix B (on file with author).

160 *See* Tex. Penal Code § 12.23; Tex. Code Crim. Proc. art. 45.041(b)(2).

161 Data on file with author.

162 *See* Tex. Code Crim. Proc. art. 45.054(a)(1)(A).

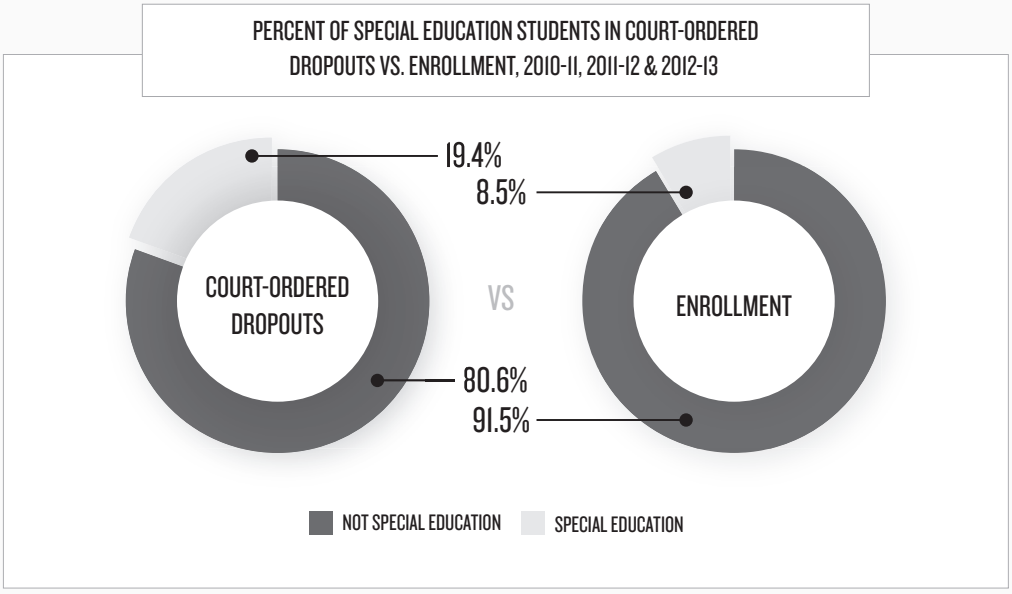
163 *Id.* arts. 45.049, 45.054, 45.057.

164 *Id.* art. 45.057.

165 *Id.* arts. 45.054(a)(1)(B)-(C).

PUSHOUT COURTS

The goal of court intervention in FTAS cases is theoretically to improve regular school attendance. But, in fact, many students are being pushed out of regular school entirely—and even ordered by the court to drop out. Texas Appleseed has witnessed judges in several JP courts who ordered students over age 16 charged with FTAS to quit school and enroll in a GED program so that they would not continue to be charged with FTAS.[166] Studying for or completing one's GED exempts the individual from compulsory school attendance laws, so judges who order students to obtain their GED are effectively ordering students to drop out of school.[167] **Over a three-year period between 2010 and 2013, 6,423 students were ordered by Texas courts to drop out of school to take the GED and subsequently failed the test.[168] Of these 6,423 court-ordered dropouts, 1,247—about 1 in 5—were special education students.[169]** Almost three in four students who dropped out were economically disadvantaged as well. These dropouts translated to an estimated cost to the state of nearly $52 million annually.[170] The court-ordered dropouts are especially troubling given the fact that the new GED test, which implements the Common Core standards and began being administered in Texas in 2014, is more difficult to pass. This has led to a dramatic drop in passage rates in several states.[171] In Texas, passage rates went from 74 percent in 2013 to 51 percent in 2014.[172]



166 Texas Appleseed's court observations.

167 *See* Tex. Fam. Code § 25.086(a)(5)-(6).

168 Data obtained from Texas Education Agency, on file with author.

169 *Id.*

170 Based on methodologies from The Bush School of Government and Public Service on the costs of high school dropouts (taking into account lost income, higher welfare costs, and lost sales tax due to lower earnings), The Bush Sch. of Gov't & Public Serv. at Texas A&M Univ., The ABCD's of Texas Educ.: Assessing the Benefits & Costs of Reducing the Dropout Rate 51-4 (2009).

171 *Is the New GED Test an Educational Improvement or Setback*?, PBS Newshour, Jan. 6, 2015, http://www.pbs.org/newshour/bb/new-ged-test-educational-improvement-setback/.

172 Data obtained from Texas Education Agency, on file with author.

FTAS charges have led to students unenrolling from traditional school in other ways, as well. Texas Appleseed has spoken with numerous parents who chose to withdraw their children from public school and homeschool them, or even relocate them to live with relatives in other counties or states, in the hopes of avoiding future FTAS charges. Additionally, one JP judge encouraged students charged with truancy to enroll in an alternative school out of town and away from their families.[173] Also, the 6,423 court-ordered dropout figure does not include students who were forced to unenroll to take the GED and passed the test, but who may have wanted to complete high school. While attending an alternative school, homeschooling, or taking the GED may be appropriate in some cases, many students are best served in a traditional school environment. These students are being pushed out of school by courts that should be attempting to keep them in school and on track to graduate.

as requiring students to wear ankle GPS monitors, submit to drug testing, or disclose all social media passwords so the judge could view their personal messages and accounts.

FTAS charges may even lead to a student's arrest, detention, or confinement. Upon reaching age 17, an individual can be arrested and jailed for not paying court-ordered fines stemming from FTAS cases.[174] A warrant may also be issued after a child turns 17 if he or she has failed to appear in court as directed for an FTAS charge.[175] Elsewhere, the law also allows for the arrest and confinement of an individual who has been convicted of FTAS and violates a subsequent court order, thereby committing contempt of court.[176]

Recent legislation enacted in 2013 did attempt to curb the arrest of children for any Education Code offense (e.g., FTAS).[177] However, the bill only addressed arrests for the offense of FTAS itself, so arrests for contempt were not affected. Additionally, a law enforcement officer is permitted to take a juvenile into custody without a warrant if there is probable cause to believe that a child has committed a Conduct Indicating a Need for Supervision (CINS) offense or misdemeanor, such as truancy.[178]

There is no statewide data tracking the number of individual students arrested or jailed for FTAS charges or convictions in the JP or municipal courts. Data provided by Dallas County Truancy Courts shows that in FY 2012, approximately 5,000 warrants were issued and more than 1,700 were served in Dallas County alone stemming from FTAS cases.[179] Sixty-seven individuals were jailed or detained during that same period in Dallas County for failing to pay fines or for other contempt.[180] Data from the Harris County JP

173 Texas Appleseed's court observations.

174 *See id.*; Tex. Code Crim. Proc. art. 45.050 (prohibiting the confinement of a child for contempt, and defining "child" as a person younger than 17); *cf.* Tex. Att'y Gen. Op. No. GA-0131, *available at* https://www.oag.state.tx.us/opinions/opinions/50abbott/op/2003/htm/ga0131.htm.

175 Tex. Code Crim. Proc. art. 45.060 (The court must first issue the defendant a notice "by personal service or by mail to the last known address and residence of the individual" ordering the defendant to appear at a new date. But if the defendant still fails to appear, an arrest warrant may issue.).

176 *See e.g.*, Tex. Gov't Code § 21.002(c); Tex. Fam. Code § 51.032(a)(2).

177 S.B. 1114, 83rd Leg. (Tex. 2013), codified at Tex. Educ. Code § 37.085, prohibits issuing a warrant for the arrest of any person for a Class C misdemeanor under the Education Code (which includes FTAS) committed when the person was younger than 17 years of age.

178 Tex. Fam. Code § 52.01(a)(3).

179 Dallas County Truancy Court, Outcome Measures Summary Report for Fiscal Year 2012 (2013) [hereinafter Dallas County Outcomes].

180 *Id.* Includes both detention of juvenile offenders and those confined in adult jail.

JUVENILE CASE MANAGER PROGRAM

JP and municipal courts have the statutory authority to employ a juvenile case manager with the approval of the commissioners court, city council, or other appropriate authority.[181] Juvenile case managers can be funded by additional fees collected as court costs.[182] They may provide prevention services to children at risk of entering the juvenile justice system, as well as intervention services for children before cases are filed against them.[183] And they also assist JP and municipal court judges in the monitoring of orders against juvenile defendants.[184]

Despite the positive intentions of the juvenile case manager program, its existence does not alleviate the problems associated with how truancy is handled in Texas. For one, the vast majority of defendants do not have this resource at their disposal. No data presently exists accounting for the total number of juvenile case managers employed in JP and municipal courts across the state, but even by the most liberal estimates, only about 20 percent of JP and municipal courts have employed juvenile case managers.[185] Second, the juvenile case manager is an employee of the court and reliance on a court employee to address truancy encourages court involvement. Best practices would divert as many children as possible from any court involvement.[186] The most effective ways in which juvenile case managers are currently employed are in the handful of jurisdictions that are involving the case managers in school-based interventions, before a case is even filed with the court.[187] However, even this model merits caution because it relies upon the court's resources and employees to address a problem, which keeps the court involved in a problem more effectively handled by the schools themselves.

courts indicates that approximately 850 individuals were jailed in FY 2014 for truancy-related cases, though the data does not distinguish between FTAS and PCN cases.[188] And data from Tarrant County JP courts shows 42 individuals jailed in FY 2014 for truancy-related charges.[189] Texas Appleseed has witnessed JP judges order individuals to jail for unpaid fines and heard from numerous parents whose children were jailed. During one of Texas Appleseed's court observations, the JP judge told a student who had not paid his fines, "It's crazy that I have to put someone in jail for missing school. But I won't lose any sleep over it. It's a wave of my pen and I go to lunch."

181 Tex. Code Crim. Proc. art. 45.056(a).

182 Tex. Code Crim. Proc. art. 102.0174; *see also* Tex. Code of Crim. Proc. art. 102.015 (allowing counties or municipalities to retain additional court costs collected for the truancy prevention and diversion fund in jurisdictions with a juvenile case manager program).

183 Tex. Code Crim. Proc. art. 45.056(a), (c).

184 *Id.*

185 Email on file with author.

186 *See* discussion *infra,* Chapter 4.

187 *See e.g.*, discussion *infra*, Chapter 1, regarding WilCo's B.E.S.T. Program.

188 Data on file with author.

189 *Id.*

A juvenile defendant under age 17 can also be transferred to the juvenile court for contempt of a JP or municipal court order.[190] Data from the Texas Juvenile Justice Department (TJJD) shows that more than 2,000 juveniles were petitioned to juvenile courts in 2013 for contempt of a JP or municipal court order (though all of these were not necessarily stemming from FTAS cases).[191] Upon transfer to the juvenile system, it is possible that the juvenile court would order the child's detention prior to adjudication for a variety of reasons, such as the child's parent or guardian not providing the child with "suitable supervision, care or protection."[192] Texas Appleseed has observed children handcuffed in Dallas County Truancy Courts for violating court orders, and then transferred by constable to the County's Truancy Enforcement Center. Many of these children are then transferred to the Letot Center, which is a non-secure residential facility run by the Dallas County Juvenile Department. During an 18-month period between October 2012 and March 2014, 346 juveniles were transferred to Letot as a result of contempt in FTAS cases and detained for some period of time. Seventy-five were admitted to the residential program at Letot.[193] The average length of stay for the residential program is 26 days.[194]

The practice of detaining juveniles for contempt is not isolated to Dallas County. Data shows that more than 800 youth statewide were detained in 2013 for violating a JP or municipal court judge's order, 37 of whom were detained for longer than 10 days.[195] In fact, 55 youth referred to the juvenile court for the CINS offense of truancy (i.e., not contempt of a court order) were detained for some period of time during 2013.[196] Additionally, violation of a court order from the JP, municipal, or juvenile court is also defined in the Family Code as "delinquent conduct," so the juvenile court could conceivably order an offender to various levels of probation or even confinement for contempt, despite the fact that confinement of a juvenile is not permitted for the underlying offense.[197]

V. Collateral Consequences of Conviction

The costs of a conviction for FTAS go beyond the punishment imposed by the court. A child convicted of FTAS may experience lasting consequences and face barriers to future endeavors. A criminal conviction makes applying for a job, obtaining admission to college, joining the military, or obtaining public benefits more difficult and sometimes

190 Tex. Code Crim. Proc. art. 45.050(c).

191 Texas Juvenile Justice Department, State-wide Statistical Report, 01/01/2013 to 12/31/2013 (on file with author) [hereinafter TJJD Statistical Report].

192 *See* Tex. Fam. Code § 54.01(e).

193 Data on file with author.

194 *Id.*

195 TJJD Statistical Report, *supra* note 191. These JP/municipal court orders did not necessarily stem from FTAS cases. The data reviewed does not provide information about the underlying offense in the JP/municipal court.

196 *Id.* Twenty-eight youth were detained for less than 24 hours; 24 youth were detained between one and 10 days; and three youth were detained for more than 10 days on the basis of truancy alone.

197 Tex. Fam. Code § 51.03(a)(2); *see* Tex. Att'y General Op. No. GA-0131, *supra* note 174 (clarifying that "a child who is charged with contempt of a justice court order may be detained by a juvenile court"). The ability to detain a status offender for contempt, despite the fact that they may not be detained as a result of the underlying status offense itself, is commonly referred to as the Valid Court Order (VCO) exception to the prohibition against detention of status offenders. *See* Tex. Fam. Code § 51.02(17) (defining VCO as a "court order entered under Section 54.04 [of the Texas Family Code] concerning a child adjudicated to have engaged in conduct indicating a need for supervision as a status offender); Tex. Fam. Code § 54.04 (describing the procedures and possible outcomes of a disposition hearing, including the placement of a child in a correctional facility).

bars them entirely.[198] In one JP court in North Texas, Texas Appleseed observed a judge who lectured all the students before accepting their pleas, announcing that most of them would walk out of court that day with a criminal record. He cautioned that the defendants should not even apply to work at a business like the one he owned with such a record, because he would "throw [their] application in the trash."[199]

JASON'S STORY

Around the same time that Jason's parents split when he was in high school, his mother's rheumatoid arthritis worsened, making it difficult and sometimes impossible for her to get out of bed in the morning. As the eldest sibling at 15 years old, Jason stepped up for his family, taking responsibility for getting his younger siblings ready for school and walking them to school. This often made him late to school, and he was charged with Failure to Attend School. His tardies continued, and so did the court cases, eventually leading to $2,400 in total fines. The court also suspended his driver's license, causing him to have to quit his part-time job and leaving him no way to pay the fines.

Jason did manage to graduate from high school and promptly applied to join the military. He was told that he was ineligible due to the outstanding fines. Jason went back to court to ask the judge if he could pay the outstanding fines little by little. He offered $50 a month (an amount which would still require four years to pay off the fines) or even additional community service to work them off. The judge reduced the fines to $1,700, but insisted that Jason pay at least $300 a month, a sum he could not afford. Texas Appleseed was able to find him pro bono counsel who, in turn, was able to get the fines dramatically reduced and the hold on his driver's license removed. But the assistance of counsel is exceedingly rare in these cases, and without it, Jason would still be facing an impossible debt from his truancy cases.

Expunction and confidentiality provisions, while valuable, do not sufficiently protect a child from having to disclose an FTAS charge or conviction to a potential school or employer. Expunction is generally limited to students who have only one offense or students who can show that they have subsequently received a high school degree or GED.[200] Even for children who meet the statutory criteria to have their FTAS records expunged, many are not aware of the ability to get their records expunged or are unable to pay the additional fee for expunction.[201] Second, broad confidentiality provisions do not equate to a complete prohibition on the disclosure of criminal convictions. In the 83rd legislative session, the Texas Legislature enacted House Bill (HB) 528 which, along with Senate Bill (SB) 393 and SB 394, expanded confidentiality requirements related to

198 *See, e.g.*, National Inventory of Collateral Consequences of Conviction, Amer. Bar Ass'n, http://www.abacollateralconsequences.org/ (last visited Feb. 13, 2015) (compiling almost 300 collateral consequences under Texas law resulting from any misdemeanor offense).

199 *See supra* n. 133.

200 *See* Tex. Code Crim. Proc. arts. 45.0216; 45.055(e)(2).

201 *See* Tex. Code Crim. Proc. art. 45.055(d).

the records of youth charged with or convicted of certain fine-only misdemeanors, like FTAS.[202] However, even with these confidentiality and expunction provisions, youth may still be required to disclose a criminal conviction on documents like an employment, military or college application.[203] Applications often ask whether an individual has been charged with or convicted of any crime—not whether a conviction record exists—so an honest answer would still require disclosure of the conviction.

VI. Parent Contributing to Nonattendance

In addition to, or in lieu of, filing a complaint against a student for FTAS, a school may opt to file a charge against a student's parent(s).[204] Parent Contributing to Nonattendance (PCN) is a Class C misdemeanor like FTAS, and is heard by JP or municipal courts. [205] PCN requires the same number of unexcused absences as FTAS (three in a four-week period or 10 in a six-month period), with the additional element of showing that the parent was negligent in failing to require a child to attend school.[206] The law requires that a parent must be issued a written notice of the child's absences before being prosecuted, but lack of this notice is not a defense to prosecution.[207] Like FTAS and other Class C misdemeanors, PCN carries a potential $500 fine as punishment, plus court costs. Parents may be ordered to complete additional requirements like community service or other programs.[208]

PCN charges can be filed against any parent of a child who is subject to the compulsory school attendance laws (between ages 6 and 18). For children between ages 6 and 11, PCN is the only criminal charge that schools may file, since children under age 12 cannot be charged with FTAS (though a student aged 10 or 11 could be referred to juvenile court). For students between ages 12 and 17, it is within the school's discretion whether to file criminal charges against the student only, the parent only, or both. School districts' policies vary as to whether a district generally files against the student and/or the parent.[209] For example, Plano ISD states that its policy is to file only against the parent if the child is in grade five or below; against the parent and child if the child is in grades six through 10; and against only the child if the child is in grades 11 or 12.[210] On the other hand, Klein ISD's policy is to file both an FTAS charge against the child and a PCN charge against the parent(s) if a student is between the ages of 12 and 17 years. If a student is under 12 years, then a PCN charge is filed against the parent.[211] Like Klein ISD, Northside ISD also files against both students and parents whenever possible.[212]

202 *See* Tex. Code Crim. Proc. art. 45.0217 (amended by Acts 2013, 83rd Leg., R.S., Ch. 1257 (HB 528), Sec. 3).

203 Ctr. for Cmty. Alternatives, Criminal History Screening in College Admissions: A Guide for Attorneys Representing College Applicants and Students During and After Criminal Proceedings 1 (2013) (Many colleges collect criminal history data from applicants and use them in admission decision-making. Some disclosures include cases that were expunged, dismissed, or otherwise set aside.).

204 *See* Tex. Educ. Code § 25.093.

205 *Id.*

206 *See id.*

207 *Id.* §§ 25.095(b)-(c).

208 *See* Tex. Penal Code § 12.23; Tex. Educ. Code §§ 25.093(c), (f).

209 School district policies and memoranda on file with Texas Appleseed.

210 *Id.*

211 *Id.*

212 *Id.*

Texas Appleseed has observed from court watches and conversations with parents that many of the parents who are charged with PCN care deeply about their children's school attendance, but were actually not aware that there were any problems until they received a summons to appear in court. For example, some parents report never having received the statutorily required notice regarding their child's absences. These parents had been dropping their child off every morning on time, but their child was mistakenly marked absent or was consistently late to one class during the day and, as a result, accrued unexcused absences. Many other parents charged with PCN had personal circumstances that prevented them from ensuring that their children attended school every day, on time. For example, a child's repeated asthma attacks in the morning, a child's disability-related behavioral issues, a parent's job requiring her to work morning shifts, or a parent's debilitating, chronic illness made it impossible for them to get their child to school every day, on time.

Both PCN and FTAS charges are very harsh measures designed to coerce students and parents into school attendance by punishing them. Children, often along with their parents, are being sent to adult criminal court where they must answer criminal charges without the appointment of counsel, and are usually ignorant of the legal process, their rights, and potential defenses. These charges often lead to fines, criminal convictions, and other harsh punishments for not attending school. Yet, the cases do little, oftentimes nothing, to address the reasons why a student is repeatedly absent from school.

CHAPTER 3

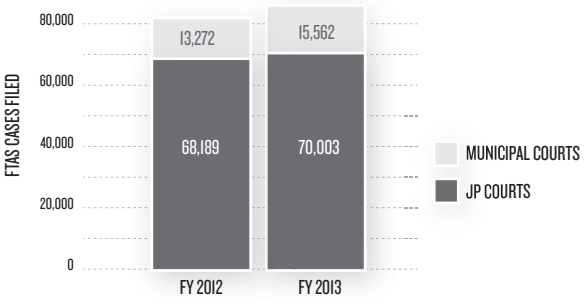
OVERWHELMING RELIANCE ON COURTS

Texas policymakers have designed a system that relies overwhelmingly on the JP and municipal courts to address truancy across the state. Texas schools send a huge number of children to court each year—far more than any other state—often without any meaningful intervention in the schools prior to court referral.

I. High Number of Truancy Prosecutions

A staggering number of FTAS cases are heard by Texas JP and municipal courts each year. According to the Texas Office of Court Administration's (OCA) annual report, a total of 85,565 FTAS cases were filed in FY 2013.[213] The courts saw an approximately 4,000 case increase from the previous year, when 81,461 FTAS cases were filed.[214] The tremendous number of juvenile cases heard by JP and municipal courts in Texas has led some to refer to the JP and municipal courts as the "shadow juvenile justice system."[215]

TOTAL STATEWIDE FTAS CASES IN JP & MUNICIPAL COURTS, FY 2012 & FY 2013[216]



213 Texas Office of Ct. Admin., 2013 Annual Statistical Report, *available at* http://www.txcourts.gov/statistics/annual-statistical-reports/2013.aspx [hereinafter OCA 2013 Report].

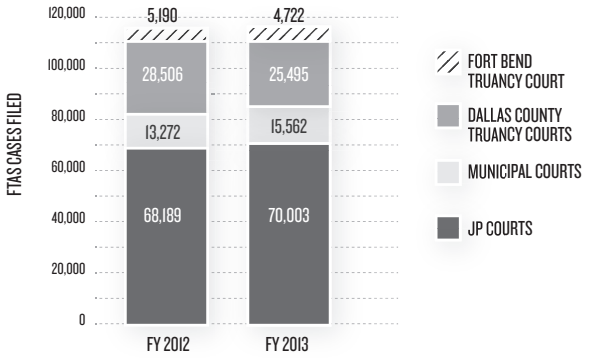
214 Texas Office of Ct. Admin., 2012 Annual Statistical Report, *available at* http://www.txcourts.gov/statistics/annual-statistical-reports/2012.aspx [hereinafter OCA 2012 Report].

215 Robert O. Dawson, Texas Juvenile Law 589 (Tex. Juv. Prob. Comm'n, 7th ed. 2008).

216 *See* OCA 2012 Report, *supra* note 214; OCA 2013 Report, *supra* note 213.

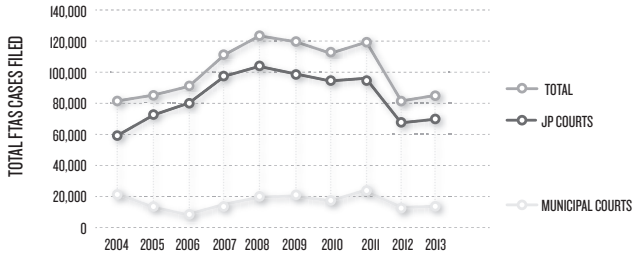
Notably, these numbers do not account for FTAS cases prosecuted in the specialized truancy courts of Dallas County and Fort Bend County. These specialized truancy courts, which are also adult criminal courts, are not included in the OCA data cited above because they are not JP or municipal courts. In 2012, 28,506 FTAS cases were filed in the Dallas County Truancy Courts; in 2013 that number was 25,495.[217] Additionally, 5,190 FTAS cases were filed in the Fort Bend Truancy Court in 2012, and 4,722 cases were filed there in 2013.[218] When adding the cases from the specialty truancy courts, the total number of FTAS cases filed statewide was approximately 115,000 cases in both 2012 and 2013.

TOTAL STATEWIDE FTAS CASES IN ALL COURTS, FY 2012 & FY 2013



The total number of FTAS cases has fluctuated significantly over the course of a decade since 2004 (when data from OCA for the total number of FTAS prosecutions is available). While the number of FTAS cases filed in 2013 was actually very similar to the number of cases in 2004, the number of cases was even higher in the period between those years, and particularly high between 2008 and 2011.[219] Total FTAS cases in the JP and municipal courts alone peaked with 124,168 cases in 2008.[220]

TOTAL FTAS CASES, JP & MUNICIPAL COURTS, 2004-2013



217 Legislative Budget Board, Texas State Gov't Effectiveness and Efficiency Report: Selected Issues and Recommendations 10 (Jan. 2013) [hereinafter LBB GEER Report].

218 *Id.*

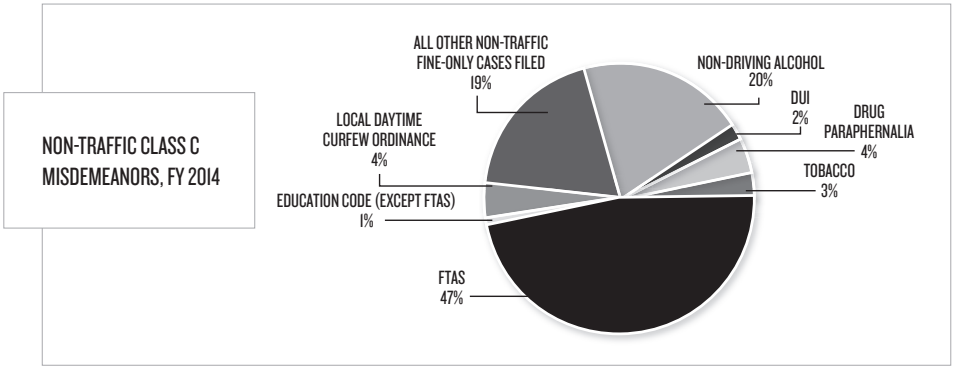
219 Texas Office of Ct. Admin., FYs 2004–13, *available at* http://www.txcourts.gov/statistics/annual-statistical-reports.aspx.

220 *Id.*

While the total number of FTAS prosecutions has fluctuated somewhat in recent years, it has remained tremendously high, with more than 100,000 cases prosecuted in adult court each year for absence from school. The number of cases is especially troubling when compared with other states. A 2014 report from the National Center for Juvenile Justice accounted for all truancy cases petitioned to juvenile courts across the country in 2011.[221] They reported that truancy was the most commonly prosecuted status offense, and yet juvenile courts in all states across the country handled just under 50,000 truancy cases total in 2011 (the most recent year for which national data is available).[222] This means that **Texas is prosecuting almost double the number of truancy cases than all other states combined**.

The volume of FTAS cases filed in JP and municipal courts dwarves the total number of Child in Need of Supervision (CINS) cases filed in Texas' juvenile courts for truancy. There were only 1,014 CINS referrals for truancy to the Texas juvenile courts in 2013 and 1,011 CINS referrals for truancy in 2012.[223] In fact, during FY 2013, the total number of all cases on Texas juvenile court dockets was 61,197, according to OCA data.[224] In the prior year, there were 55,720 total cases on the docket.[225] This means that **Texas is processing more FTAS cases in its JP and municipal courts than cases of any type in its juvenile courts.**

Furthermore, FTAS cases make up the largest percentage of Class C misdemeanor cases prosecuted statewide against juveniles in JP or municipal courts. In FY 2013, 37 percent of all non-traffic misdemeanors filed against juveniles in JP and municipal courts were FTAS cases, constituting the single largest cause for referral for non-traffic juvenile cases to these courts.[226] Since the passage of SB 393, leading to a reduction in ticketing for other Class C misdemeanors, the percentage of FTAS filings is now even higher. In FY 2014, FTAS cases accounted for almost half (47 percent) of all non-traffic Class C misdemeanor cases prosecuted against juveniles in JP and municipal courts.[227]



221 *See* Charles Puzzanchera & Sarah Hockenberry, *Juvenile Court Statistics 2011*, Nat'l Ctr. For Juv. Justice 66 (2014).

222 *Id.*

223 TJJD Statistical Report, *supra* note 191.

224 OCA 2013 Report, *supra* note 213.

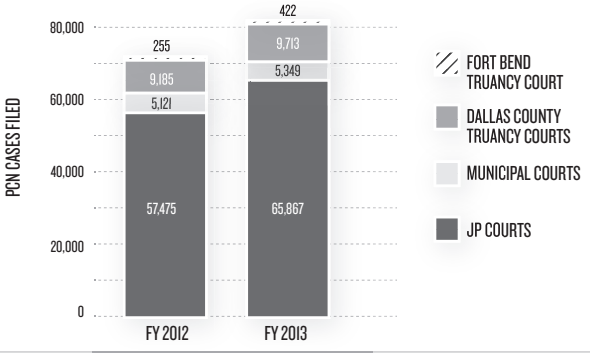
225 OCA 2012 Report, *supra* note 214.

226 Calculations based on data in OCA 2013 Report, *supra* note 213.

227 Calculations based on data in Texas Office of Ct. Admin., 2014 Annual Statistical Report.

The total number of Parent Contributing to Nonattendance (PCN) cases filed in Texas is similarly very high. In FY 2013, 71,216 PCN cases were filed in JP and municipal courts, a significant increase from the 62,596 PCN cases filed in 2012.[228] PCN cases are also heard in the Dallas County Truancy Courts (9,713 PCN cases in 2013) and Fort Bend Truancy Court (422 PCN cases in 2013).[229] Adding the PCN cases from the specialty truancy courts to the total number of PCN cases filed in JP and municipal courts leads to a statewide total of approximately 72,000 PCN cases in 2012 and approximately 81,400 PCN cases in 2013. Combining the estimated 115,000 FTAS cases filed in 2013 with the approximately 81,400 PCN cases filed that same year means approximately 196,000 truancy-related cases were filed that year against Texas parents and students.

TOTAL STATEWIDE PCN CASES IN ALL COURTS, FY 2012 & FY 2013



The trends across a longer time frame for PCN cases are somewhat different than for FTAS cases. More than 20,000 more PCN cases were filed in 2013 than were filed in 2004, when 46,900 cases were filed, so the recent total is up significantly from a decade ago.[230] But, as with FTAS cases, the total number of PCN cases peaked a number of years ago in 2008, when 82,755 cases were filed, and has gone back down since then.[231]

TOTAL PCN CASES, JP & MUNICIPAL COURTS, 2004-2013

228 *See* OCA 2013 Report, *supra* note 213; OCA 2012 Report, *supra* note 214.

229 LBB GEER Report, *supra* note 217, at 10.

230 Texas Office of Ct. Admin., Annual Statistical Reports, FYs 2004–13, *supra* note 219.

231 *Id.*

II. Lack of Meaningful School-Based Interventions

Texas' reliance on courts to address truancy is evidenced not only by the sheer number of court cases filed, but also by the failure of many school districts to provide any meaningful interventions prior to referring students to court. Many school districts choose to file complaints against students after three unexcused absences within a four-week period, despite there being no legal requirement to do so.[232] When complaints are filed after only three absences in four weeks, it is very unlikely that any significant individualized intervention has been attempted; four weeks is a very short amount of time to assess a child's needs and connect the child with necessary resources to improve school attendance. When a school district chooses court intervention at such an early point, it is likely completely relying on the courts to address the problem rather than attempting to find solutions to the underlying causes of truancy within the school setting.

School districts are required to report their total number of court referrals to TEA and to report whether those referrals were based upon three or 10 unexcused absences.[233] According to the data reported by school districts to TEA, 38 percent of all court filings in 2012-13 were made based on only three absences.[234] This is fairly consistent across recent years, with about 39 percent of filings in 2011-12 and 42 percent of filings in 2010-11 made for only three absences.[235]

Drilling down to individual school districts, of the 323 districts (of 1,026 total districts) that reported any filings for the 2012-13 school years, 71 school districts (22 percent) reported that *all* of their cases filed were based on three unexcused absences only. And 137 school districts (42 percent) reported that they filed 50 percent or more of their cases based on three unexcused absences only. On the other hand, 105 school districts (33 percent) reported zero filings based on three unexcused absences and reported that they only filed for 10 or more absences.[236] This data shows that a substantial percentage of cases are filed on the basis of three absences, though the practice of filing on the basis of only three absences varies significantly across districts—some districts do it all the time; others opt never to file at such an early stage.

This district-to-district variability is confirmed by the documents that Texas Appleseed collected from the largest school districts in Texas. Texas Appleseed requested information from the 20 largest school districts on any truancy prevention and intervention programs in those districts. In the documents provided, several districts described their policies for when a student would be referred to court. For example, El Paso ISD's truancy policy suggests that schools should "file early and file as many times as necessary."[237] The district directs that a notice be sent to the child's home after he or she has a second unexcused absence and that a court referral be made no later than the fifth absence.[238]

232 Tex. Educ. Code § 25.0951 makes filing charges for three unexcused absences within four weeks optional, not compulsory. Before filing a complaint for three absences in a four-week period, a school must issue a warning letter and request a conference with parents in accordance with Tex. Educ. Code § 25.095(b). However, the fact that a parent never received such a letter or request does not constitute a defense to a PCN or FTAS charge. Tex. Educ. Code § 25.095(c).

233 Data reporting requirements discussed more fully, *infra*, Chapter 4.

234 Information based on TEA School District Data, 2010-13, collected through open records request and on file with author.

235 *Id.*

236 *Id.*

237 Information on large school districts' truancy prevention and intervention programs collected through open records request and on file with author.

238 *Id.*

Northside ISD's policy involves sending out a notice and brochure if a child has three unexcused absences in four weeks, but waiting until a fifth unexcused absence to make a court referral.[239] On the other hand, Fort Worth ISD generally does not file on students for three unexcused absences, but does so only after 10 absences.[240] Plano ISD also does not file against students or parents when there are three absences but waits until 10 absences, according to their policy.[241] So, whether a student will be referred to court for less than 10 absences depends on the policy of the school district in which they attend school.

WACO ISD'S SUSPENDING KIDS TO SCHOOL INITIATIVE

Waco ISD's Suspending Kids to School Initiative (SKSI) is a tiered intervention program aimed at changing the school climate and student behavior while reducing the number of students that are placed in an alternative school or referred to court.[242] The program was designed to address a range of student misbehavior, including truancy.[243] SKSI was designed to move away from the traditional punitive justice model of school discipline and instead move toward a system of meaningful prevention and intervention based on restorative justice principles.[244]

SKSI contains several tiers of programs, including a lower-level preventative measure called the Safe School Ambassador program, through which students are trained to positively intervene if they see misbehavior like bullying, conflict, or vandalism.[245] The second tier involves Peer Mediation—mediation sessions led by trained student mediators designed to resolve conflict.[246] When a student accumulates a certain number of unexcused absences, the student may be referred to one of the higher tiered interventions like Student Court or Saturday Diversion.[247] Student Court, while administered by a classroom teacher, assigns students to serve as jury members to hear disciplinary matters and determine restorative sanctions.[248] Many sanctions require the student to take responsibility for his or her actions and develop a plan to correct the problem within the framework of a restorative justice model, while avoiding formal court contact.[249]

239 *Id.*

240 *Id.*

241 *Id.*

242 Waco Independent School District, Suspending Kids to School Initiative, http://www.wacoisd.org/cms/one.aspx?objectId=47855 (last visited Feb. 12, 2015). Additional information on this program was obtained from Texas Appleseed's April 2014 interview with Program Administrators.

243 *See id.*

244 *Id.*

245 Waco Independent School District, Safe School Ambassadors, http://www.wacoisd.org/cms/one.aspx?portalId=428&pageId=47866 (last visited Feb. 12, 2015).

246 Waco Independent School District, Peer Mediation Program, http://www.wacoisd.org/cms/one.aspx?portalId=428&pageId=47870 (last visited Feb. 12, 2015).

247 *See* Waco Independent School District, Student Court Program http://www.wacoisd.org/cms/one.aspx?portalId=428&pageId=47874 (last visited Feb. 12, 2015); Waco Independent School District, Saturday Diversion Course, http://www.wacoisd.org/cms/one.aspx?portalId=428&pageId=47878 (last visited Feb. 12, 2015).

248 Waco Independent School District, Student Court Program.

249 *Id.*

In Saturday Diversion, a student and his or her parent or guardian spend two Saturdays in a class designed to improve attendance and behavior problems through lessons on communication, pro-social behavior, and building supportive relationships.[250] The class is designed to get at the causes of truancy and misbehavior through discussions and conflict resolution between parents and students.[251] Additionally, a community resource panel makes presentations to the families to connect students and families in need with community-based services (e.g., clothing donations, transportation providers, or referrals for counseling).[252]

Initial data suggests that Waco ISD's SKSI program has been very successful in reducing the number of students referred to court. One year into implementation of the program, the number of referrals to court decreased by 54 percent, and more than 80 families were diverted from court.[253] Prior to this program, Waco ISD averaged twice the state's average of referrals to court.[254]

To be clear, sending a child to court after 10 absences is not less problematic or more effective than sending a child to court after three absences. But, sending a child to court after three unexcused absences in a short period of time suggests that no meaningful individualized intervention may have been attempted. Texas Appleseed has confirmed this lack of meaningful intervention through our court watches and conversations with parents and students. Over the past couple of years, Texas Appleseed has received countless calls from conscientious parents who have been charged with PCN or whose children have been charged with FTAS. Many of these parents were not even aware of the student's attendance problems at all prior to receiving a summons, a clear indication that no meaningful intervention had been attempted. Others were aware that their child had accumulated absences for various reasons but had proactively contacted school administrators to either document the reasons for the absences or to work with the administrators to solve the child's attendance problems. Yet, these parents found themselves facing misdemeanor charges rather than an attempt by the school to collaboratively solve the underlying problem.

The information provided by the largest school districts to Texas Appleseed discusses the types of general interventions that they are attempting with students prior to referring them to court, and reveals that many of these interventions are not designed to address students' specific needs. As a result of 2011 legislative reforms, Texas schools are required to document that they have tried some sort of prevention or intervention program prior to filing a formal truancy complaint in court.[255] Yet, the statute does not delineate any requirements for the required prevention or intervention programs; that is left completely up to the schools to determine the structures for themselves. Some commonly used "interventions" cited by these school districts include automated calls to parents when a

250 Waco Independent School District, Saturday Diversion Course, *supra* note 247.

251 *Id.*

252 *Id.*

253 *Id.*

254 *Id.*

255 S.B. 1489, Sec. 10, 82nd Leg. (Tex. 2011), codified at Tex. Educ. Code § 25.0915.

BECKY'S STORY

Becky is a straight-A student at a Houston-area middle school. During her seventh-grade year, her mother was diagnosed with dementia and hospitalized for an extended period. As the disease progressed, Becky's mother began losing her memory and would take phone numbers down incorrectly or pick up the kids from school at the wrong time or the wrong place. Around that time, Becky's father planned a trip to the family's former hometown in Massachusetts for a week to arrange to sell their old house. He arranged a plan with the school in order to obtain Becky's school assignments in advance so that they could be completed while Becky was away with her mother.

However, upon her return, Becky was charged with Failure to Attend School. On top of the absences from the trip, Becky had three unexcused absences from times when her mother had dropped off the doctor's notes to the wrong person at the school. Becky's father, an attorney, went to court appearances with her where she initially pled not guilty. During a meeting with the prosecutor, Becky and her father were told they could either pay a $500 penalty or pay $120 and do 16 hours of community service. Wanting his middle school daughter to be finished with court appearances, Becky's father agreed to the $120 fine and community service. However, Becky was also placed on probation for three months, during which she was required to take drug tests and complete a character class at additional cost. Her father estimated at one point that he had spent at least 30 hours transporting his middle school daughter to court-ordered classes and community service. As a seventh-grader, Becky now has a criminal record. Becky's case is evidence of how court referral has become a knee-jerk response by school districts, even when it is completely unnecessary and only serves to make a bad situation worse.

child is not at school; form warning letters sent to a student's home after a certain number of absences; and brochures or handouts with tips for regular school attendance.[256] While a handful of districts are attempting intensive interventions with truant students within the school setting—several of which are highlighted in this report—many are not. Many districts simply tally unexcused absences and make perfunctory attempts to intervene before sending their students to court.

The Legislative Budget Board (LBB) of the Texas Legislature recently reviewed the truancy prevention and intervention programs in nine school districts in depth, as well as conducted a survey of 330 additional school districts.[257] The LBB also concluded that while some districts were attempting intensive multipronged approaches to truancy, "in other districts, the intervention consisted solely of a brief meeting between attendance staff and the student to outline the law regarding truancy and its consequences."[258] Based on the 330 school districts' survey responses, the most commonly used "intervention" was either a warning letter or call to parents, with almost every district reporting they did this before filing a complaint; less than a third of the districts that responded to the

256 School district policies regarding truancy interventions collected through an open records request and on file with author.

257 LBB GEER Report, *supra* note 217, at 5.

258 *Id.* at 6.

survey reported connecting students to outside "support services."[259] This failure of many school districts to effectively address truancy in the school setting leads to the more than 100,000 truancy cases being filed each year, a staggering number by any measure.

SUSPENDED FOR TRUANCY

Texas Appleseed had heard reports that some school districts suspend students for truancy, and in response to initial open records requests, a handful of districts reported using disciplinary measures such as detention to intervene with truant students. This led Texas Appleseed to send a follow-up open records request to the five largest districts to see how often students were being issued in-school suspensions and out-of-school suspensions as an intervention for truancy. Dallas ISD reported suspensions were not issued as a consequence for truancy.[260] Houston ISD reported they did not even keep data on how often suspensions were issued for truancy, but it was not necessarily the case that they were not used.[261] Of the remaining three largest school districts with available data, two reported that they did not suspend children for "truancy," but they did suspend children for "skipping" (described by an official from one district to be when a student is on campus but not going to class), cutting class, leaving the campus without permission, or being tardy or late to class. Specifically, for the 2013-14 school year:

- Northside ISD reported almost 3,000 in-school suspensions for truancy.[262]
- Cypress-Fairbanks ISD reported approximately 1,200 out-of-school suspensions for tardiness.[263]
- Austin ISD reported approximately 1,500 in-school suspensions for cutting class and 800 for leaving without authorization. Austin ISD also reported approximately 600 out-of-school suspensions for cutting class, 850 for leaving without authorization and 30 for tardiness.[264]

Punishing students for being absent from class by removing them from class is an intervention in which the punishment is essentially the same as the crime—denial of education. Recently, six states enacted laws prohibiting schools from suspending students for truancy or excessive absence, or severely limiting this punishment.[265] Certainly, more appropriate sanctions and interventions are available for students who are not attending class. As a general rule, sanctions that require more learning rather than less learning are more appropriate in a school setting where the primary mission is to educate students.[266]

259 *Id.* at 6-7.

260 Data on file with author.

261 *Id.*

262 *Id.*

263 *Id.*

264 *Id.*

265 Arkansas, Florida, New Mexico, Virginia, Illinois, and Rhode Island. Am. Ass'n of School Adm'rs, Winter 2014 Edition: Legislative Trends Report 1 (2014).

266 What Tarrant County Youth Want From Their Schools, *supra* note 52.

CHAPTER 4

INEFFECTIVENESS OF COURT REFERRALS

Data collected and analyzed by Texas Appleseed confirms that Texas school districts vary considerably in the rate at which they send children to court for truancy. When these court filing rates are compared to districts' attendance rates, it is clear that sending more children to court does not translate to better attendance or lower dropout rates.

I. Variability in Prosecution Rates

The data compiled and reported annually by the Office of Court Administration (OCA) comes directly from the courts and is the most reliable source for data on the total number of FTAS cases filed. The OCA data demonstrates that the number of FTAS prosecutions is not a function of county size. The following table, *Counties with Highest Number of FTAS Prosecutions in JP Courts*, *2013*, lists the 20 counties with the highest number of FTAS prosecutions in their JP courts (the municipal and specialty truancy courts in Dallas and Fort Bend counties are not included). One might expect that the counties with the highest number of total prosecutions would be the counties with the largest populations, but that is not necessarily the case. Some smaller counties have FTAS prosecution numbers that are equivalent to the most populous counties in the state. For example, in 2013, the JP courts in Jefferson County, with a population of about 250,000, had a similar number of FTAS cases filed as Tarrant County, with a population of almost 2 million people. Similarly, Starr County, with 62,000 people, had almost as many FTAS cases filed as Brazoria County, which is five times as populous.

II. Lack of Reliable Truancy Data from School Districts

Because the OCA data is collected from the courts themselves, it does not allow for an evaluation of school district filing rates, since more than one school district may file cases within a single county or city. Therefore, Texas Appleseed collected data from the Texas Education Agency (TEA) to home in on which school districts were filing against the greatest number of students. School districts are required to track certain disciplinary actions, including the number of students that they refer to court for truancy

COUNTIES WITH HIGHEST NUMBER OF FTAS PROSECUTIONS IN JP COURTS, 2013[267]

RANK: TOTAL NUMBER OF FTAS PROSECUTIONS	COUNTY	2013 FTAS PROSECUTIONS[268]	TOTAL COUNTY POPULATION[269]	STATE POPULATION RANK
1	Harris	13,636	4,336,853	1
2	Bexar	8,871	1,817,610	4
3	Montgomery	5,388	499,137	11
4	El Paso	3,120	827,718	7
5	Nueces	2,668	352,107	14
6	Travis	2,132	1,120,954	5
7	Jefferson	1,925	252,358	20
8	Tarrant	1,882	1,911,541	3
9	Cameron	1,792	417,276	13
10	Brazoria	1,676	330,242	15
11	Starr	1,649	61,963	54
12	Collin	1,425	854,778	6
13	Midland	1,036	151,468	27
14	Johnson	1,020	154,707	26
15	Denton	849	728,799	9
16	Potter	699	121,661	35
17	Lubbock	682	289,324	18
18	Wichita	624	132,047	31
19	Webb	589	262,495	19
20	Galveston	578	306,782	17

each year.[270] School districts must then report this data to TEA as part of the Public Education Information Management System (PEIMS) data report.[271] In addition to reporting cases filed, school districts also report to TEA whether each filing was based on three absences in a four-week period or 10 absences in a six-month period, as well as whether the case resulted in a fine or no fine.[272] School districts also report to TEA how many cases were filed against parents for PCN, whether the filing was based on three or 10 absences, and whether a fine resulted.[273]

267 OCA 2013 Report, *supra* note 213. For more information about Dallas and Fort Bend Counties, *see infra* Breakout Box: Specialty Truancy Courts.

268 OCA 2013 Report.

269 U.S. Census Bureau, *2013 Population Estimates*, http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml (insert name of county in "Community Facts" search bar).

270 *See* Texas Ass'n of School Bds., Transparency Mandates on School Districts 4 (2009) *available at* https://www.tasb.org/legislative/documents/transparency.pdf.

271 Tex. Educ. Code §§ 29.083, 42.006 (requiring school districts to collect and report data to TEA on demographic information, academic performance, and disciplinary actions through TEA's Public Education Information Management System (PEIMS)). *See* LBB GEER Report, *supra* note 217, at 8-9.

272 *See* LBB GEER Report, at 8-9.

273 *Id.*

SPECIALTY TRUANCY COURTS

Two counties, Dallas and Fort Bend, have established specialty truancy courts to process truancy cases from their local school districts. The Dallas County Truancy Courts receive referrals from Dallas ISD, Garland ISD, Mesquite ISD, and Richardson ISD, while the Fort Bend Truancy Court receives referrals from Fort Bend ISD. These truancy courts operate as adult criminal courts and adjudicate truancy offenses as misdemeanor crimes, like the JP and municipal courts do.

The Dallas County Truancy Courts handle a huge volume of FTAS and PCN cases, with 35,208 truancy cases heard in 2013—25,495 FTAS cases and 9,713 PCN cases.[274] Similarly, Fort Bend ISD sends a relatively large number of students to court for truancy for a district of its size, reporting 4,722 FTAS cases in 2013.[275] Fort Bend handles quite fewer PCN cases, however, with only 422 filed in 2013.[276] Yet, all of these cases are not reported to the Office of Court Administration along with other FTAS cases because the specialty truancy courts are not JP or municipal courts. So, Dallas and Fort Bend counties do not appear in the chart of counties with the largest number of FTAS cases in their JP courts, despite the fact that their rates are just as high. In the chart collecting data from large school districts, Dallas ISD (the biggest district sending cases to Dallas County Truancy Courts) and Fort Bend ISD have two of the highest prosecution rates.

These truancy courts are problematic in that they indicate a complete reliance by the counties and school districts on the court system to address truancy problems. Based on Texas Appleseed's court observations of these truancy courts, as well as accounts of individuals who have been adjudicated in the courts, it is apparent that many of the schools in these counties are not attempting any meaningful interventions before sending students to court for truancy. The practices of these courts are also very troubling, routinely violating the rights of students accused of truancy. In 2013, Texas Appleseed filed a complaint against Dallas County and the local school districts based on the routine violations of students' constitutional rights that Texas Appleseed had observed.[277] The courts have also historically relied very heavily on fining students. At the time of Texas Appleseed's complaint, the Dallas County Truancy Courts had collected almost $3 million in fines over the course of a single year,[278] though more recent data suggests this has decreased.[279] While the total amount of revenue from the Fort Bend Truancy Court is not available, their average fine amount is quite high at $295.[280]

274 *Id.*, at 10.
275 *Id.*
276 *Id.*
277 *See* DOJ Complaint, *supra* note 118.
278 *Id.*
279 Data on file with author.
280 *Id.*

Texas Appleseed requested from TEA the PEIMS data that school districts reported on the number of truancy/FTAS cases filed for the 2010-11, 2011-12, and 2012-13 school years. Upon reviewing the data, it was apparent that there are major problems with the data. The information received from TEA included data from less than half of all Texas school districts. According to TEA's 2012-13 report, there are 1,026 school districts in Texas,[281] but the information that TEA provided to Texas Appleseed only included data from 446 districts.[282] Many of these 446 districts reported filings for only one or two of the three school years that we reviewed, so for each individual school year, there were actually fewer than 446 districts reporting data. For example, only 323 school districts reported any truancy court referrals to TEA for the 2012-13 school year.[283]

There are two conceivable explanations for why a school district's data may not be included in the data set that TEA provided to Texas Appleseed: either that district had zero FTAS filings to report, or that district failed to report their data to TEA. Given the OCA data, it is clear that non-reporting is a large part of the explanation for the lack of data from all school districts in the TEA data set. The total number of FTAS filings reported to TEA by the school districts for the 2012-13 school year was 50,153.[284] By comparison, the OCA reported 85,565 cases for FY 2013 (which covers approximately the same time period as the 2012-13 school year), and with the specialized truancy courts included, that number is closer to 115,000.[285] So, clearly, the TEA data is incomplete, accounting for fewer than half of the cases filed statewide.[286] Yet, school districts are generally not held accountable for failing to report accurate or complete data.[287]

The TEA data, while woefully incomplete, still allows for the calculation of a "prosecution rate" by dividing the total number of filings by the total enrollment for each district. This allows for the identification of school districts that are filing comparatively more complaints regardless of size. The prosecution rate is not necessarily equal to the percentage of students who are filed against, since a student may have more than one filing against him or her in a given year. In fact, the TEA statewide disciplinary data shows that while 50,153 court referrals were made by districts, only 42,315 students were referred, meaning thousands of students were referred to court more than once over the course of the 2012-13 school year. Data from Dallas County Truancy Courts also suggests recidivism is a problem in these cases; 50 percent of cases in those courts involved students who have previously been referred to court for truancy.[288] Still, the prosecution rate is an approximation of which school districts are relying more heavily on the courts to handle truancy, at least among those districts that are reporting their data as required.

281 *Id.*

282 PEIMS data collected from TEA through open records request, on file with author [hereinafter TEA PEIMS Data].

283 *Id.*

284 *Id.*

285 *See* discussion *supra*, chapter 3, section I.

286 *See* LBB GEER Report, *supra* note 217, at 8-9 (noting that "[t]he usefulness of PEIMS truancy data is limited because it is inaccurate and incomplete" and explaining that some districts fail to enter truancy data into PEIMS completely while others claim to not even be aware that they must submit it).

287 *Id.*

288 Dallas County Outcomes, *supra* note 179.

Of the 323 school districts that reported truancy data to TEA, the following 20 have the highest prosecution rates for the 2012-2013 academic year based on data provided to TEA. (Note that the large school districts that reported data directly to Texas Appleseed are discussed in Section III and omitted from this chart. Also omitted are school districts with total enrollment of less than 2,000 students, since their filing rates appear inflated even when filing very few cases.)

SCHOOL DISTRICTS WITH HIGHEST FTAS PROSECUTION RATES REPORTED TO TEA, 2012-13[289]

SCHOOL DISTRICT	FILING RATE	FTAS CASES	TOTAL ENROLLMENT
Perryton ISD	8.47%	203	2,398
Garland ISD	6.98%	4,054	58,059
Amarillo ISD	6.73%	2,243	33,327
Kilgore ISD	6.27%	246	3,924
Mount Pleasant ISD	4.85%	269	5,548
Laredo ISD	4.40%	1,092	24,823
Burleson ISD	4.32%	457	10,581
Alice ISD	4.12%	226	5,479
Mercedes ISD	4.05%	231	5,705
Galveston ISD	3.96%	266	6,710
Zapata County ISD	3.53%	127	3,597
Pampa ISD	3.37%	124	3,676
Beaumont ISD	3.33%	661	19,850
Dumas ISD	3.03%	142	4,682
Robstown ISD	2.88%	89	3,091
Silsbee ISD	2.86%	79	2,762
Big Spring ISD	2.65%	111	4,195
South San Antonio ISD	2.61%	257	9,842
Duncanville ISD	2.55%	338	13,271
Kingsville ISD	2.53%	90	3,559

The TEA data confirms what the OCA data suggested—that reliance upon the courts to address truancy is not a function of school district size. School districts that are large, small, and somewhere in between are all contributing to the staggering number of FTAS cases in Texas.

289 TEA PEIMS Data, *supra* note 282.

III. Trends in Largest School Districts

Texas Appleseed also sought data directly from school districts, requesting the 20 largest school districts to provide the total number of FTAS cases filed against students and PCN cases filed against parents for three school years: 2010-11, 2011-12 and 2012-13. For many districts, the total number of cases that the school district reported to Texas Appleseed was dramatically different from the total number of cases reported to TEA. Included in the Appendix is a chart showing the discrepancies between the total number of cases reported to TEA in the PEIMS data and the total number of cases reported directly to Texas Appleseed.

Texas Appleseed's calculations for the filing rates in the largest districts follow. Previous years are included in the Appendix. Because many of the largest districts only provided the number of total cases filed that includes both FTAS and PCN cases, Texas Appleseed calculated an "FTAS + PCN Filing Rate" for each district by dividing the total number of FTAS and PCN cases by total enrollment. The districts are ranked below based on that FTAS + PCN Filing Rate. When possible, Texas Appleseed also calculated an "FTAS Only Filing Rate" by dividing only the total FTAS cases (not including PCN cases) by enrollment.

FTAS AND PCN PROSECUTIONS, SELF-REPORTED BY 20 LARGEST SCHOOL DISTRICTS, 2012-13[290]

DISTRICT	FTAS FILINGS	PCN FILINGS	FTAS + PCN FILINGS	ENROLLMENT	FTAS + PCN FILING RATE	FTAS ONLY FILING RATE
San Antonio ISD	6,273	6,059	12,332	54,268	22.72%	11.56%
Dallas ISD	23,100	6,345	29,445	158,932	18.53%	14.53%
Houston ISD	*	*	20,715	203,354	10.19%	*
Northside ISD	3,368	4,719	8,087	100,159	8.07%	3.36%
Fort Bend ISD	4,378	217	4,595	69,591	6.60%	6.29%
Pasadena ISD	*	*	2,144	53,665	4.00%	*
Cypress-Fairbanks ISD	1,631	2,022	3,653	110,013	3.32%	1.48%
Katy ISD	*	*	2,026	64,562	3.14%	*
Fort Worth ISD	1,471	1,006	2,477	83,503	2.97%	1.76%
Klein ISD	521	841	1,362	47,045	2.90%	1.11%
Brownsville ISD	506	629	1,135	49,190	2.31%	1.03%
El Paso ISD	*	*	1,220	63,210	1.93%	*
Arlington ISD	817	152	969	65,001	1.49%	1.26%
Plano ISD	*	*	494	55,185	0.90%	*
Aldine ISD	244	332	576	65,684	0.88%	0.37%
Austin ISD	249	26	275	86,516	0.32%	0.29%
Lewisville ISD	45	62	107	52,528	0.20%	0.09%
North East ISD	57	7	64	67,901	0.09%	0.08%
Conroe ISD	**	**	**	53,934	**	**
Garland ISD	***	***	***	58,059	***	***

* Only provided total number of court filings, not broken down between FTAS and PCN filings.
** Does not keep districtwide data on the number of court filings.
*** Did not respond to open records request.

290 Data on FTAS and PCN cases collected from largest 20 school districts through open records request, on file with author [hereinafter Large District Data].

As this data demonstrates, there is tremendous variability across the largest districts as to filing rates for both FTAS and PCN cases. The 2012-13 FTAS + PCN Filing Rates range from more than 20 percent in San Antonio ISD to 0.09 percent in North East ISD, the district to the immediate north of San Antonio ISD. Similarly, there is tremendous variability in the FTAS Only Filing Rate (i.e., for students only) from almost 15 percent in Dallas ISD to 0.08 percent in North East ISD, during 2012-13. Clearly, the number of FTAS and PCN filings is *not* simply a function of total student enrollment. Rather, large school districts, which are often the ones considered to have the most resources at their disposal, are making very different decisions about how to handle truancy and how many students to refer to court. Whether a child is charged with FTAS after unexcused absences from school depends greatly on where the child attends school and the policies and practices of that district. School districts differ in the extent to which they will rely on the courts or attempt school-based interventions.

School districts are fairly consistent across the school years with respect to their filing rates. For example, five large school districts consistently had an FTAS + PCN filing rate below 1 percent across each school year analyzed: Aldine ISD, Austin ISD, Lewisville ISD, Plano ISD, and North East ISD. At the other end of the spectrum, five other large school districts consistently had an FTAS + PCN filing rate above 5 percent across all school years analyzed: Dallas ISD, Houston ISD, Fort Bend ISD, Northside ISD, and San Antonio ISD. The other districts that were able to provide data fell somewhere in the middle. This suggests that the school districts are not re-evaluating their policies about court referral year to year. More importantly, it suggests that certain districts' problems with truancy persist despite the fact that they are sending a relatively large number of students to court.

Finally, most, but not all, large districts filed more on students than parents. In the 2012-13 school year, seven of 13 districts filed more cases against students than parents. Some districts rely almost exclusively on student filings, such as Fort Bend ISD, which filed 4,378 cases against students for FTAS, but only 217 cases against parents of those students for PCN. On the other hand, some districts file a relatively equal number of cases against parents and students, and a handful of districts, like Northside ISD, file significantly more parent filings—4,719 PCN cases versus 3,368 FTAS cases. Whether a student, parent, or both are charged varies greatly depending on the school district.

IV. Court Referral is Not an Effective Response

Courts, particularly adult courts, are constrained in how they can respond to children, and are not equipped to assess the underlying circumstances that resulted in truancy. Their responses tend to be one-size-fits-all. Most JP and municipal courts neither seek out nor are provided with detailed, specific information about each youth's past and present situation,[291] including prior offenses, past or current trauma, special education needs, family obligations, or medical issues. Courts have the ability to require a child to attend counseling or programs,[292] but without specific information, it is not clear what interventions are appropriate for each child. Furthermore, judges are often ill-prepared to handle the complex social, educational, and environmental issues involved when a

291 *See* Nat'l Standards, *supra* note 47, at 26.

292 Tex. Code Crim. Proc. art. 45.054.

SKYLER'S STORY

Skyler is a very good student who has been inducted into the National Honor Society. She became pregnant her junior year of high school and was absent from school while in the hospital for the birth, and for a month afterward on doctor's orders. She intended to return to school and graduate, so just days after being released from the hospital, Skyler called the school to see if she could complete assignments while she was ordered to remain home by the doctor. The school refused, claiming she was supposed to have registered her pregnancy with the school nurse—a policy that she had never been told about and that is not in any school or district policy provided to students.

When Skyler returned to school, she brought her hospital discharge papers and doctor's notes, but the school refused to excuse her absences. They claimed that her excuses were being submitted too late, since several weeks had passed since she was actually in the hospital. According to the attendance officer, she should have brought the documentation to him before she even returned to school. Skyler was charged with Failure to Attend School, pled no contest, and was ordered to pay fines and court costs she could not afford.

Skyler has determinedly remained in school and is still on track to graduate. But, the court referral did not make her more likely to attend school—in fact, it was just an additional barrier that the school erected as she tried to stay engaged in school. Her road to success would have been much easier if she were supported by school personnel who paid attention to what was going on in her life, accommodated her circumstances, and got her support when needed. Instead, the school mechanically prosecuted Skyler for truancy due to technical violations of the rules, and the court automatically responded with a hefty fine.

student is truant.[293] Most adult court judges do not have the necessary training nor information regarding youth development and services.

Courts are also overburdened, making them unable to provide the individualized attention and services that truant students need.[294] In particular, the JP and municipal courts operate to maximize efficiency, handling a huge volume of cases each year. In addition to FTAS cases, they handle all adult and juvenile Class C misdemeanor cases, which include traffic tickets and low-level criminal charges.[295] They also handle civil suits involving damages less than $10,000 (JP courts) and violations of city ordinances (municipal courts).[296] Across Texas, there are 817 JP judges and 1,288 municipal court judges[297] with 20.5 million total cases on their dockets,[298] amounting to roughly 9,750

293 *See* Annie Salsich & Jennifer Trone, Vera Institute of Justice, From Courts to Communities: The Right Response to Truancy, Running Away and Other Status Offenses 3-4 (2013).

294 *See id.*

295 *See* Tex. Code Crim. Proc. arts. 4.11 (Jurisdiction of Justice Courts), 4.14 (Jurisdiction of Municipal Courts); *see also* Office of Court Administration, *Court Structure of Texas*, Sept. 1, 2014, http://www.txcourts.gov/media/683427/1-Court-Structure-Chart-for-publication9_1_14b.pdf [hereinafter *Court Structure of Texas*].

296 *Court Structure of Texas*.

297 *Id.*

298 OCA 2014 Report, *supra* note 216.

FAMILY KEYS PROGRAM (BEXAR COUNTY, TRAVIS COUNTY, WEBB COUNTY)

The Family Keys Program, developed by Southwest Keys, is a truancy prevention and intervention program for at-risk youth ages 11 to 13 in Bexar, Travis, and Webb counties.[299] The Program uses a two-pronged approach providing short-term crisis intervention services when needed, as well as connections to community services to ensure long-term success for students and families.[300] When a child is referred to the Program, a caseworker completes an "immediate needs assessment" by eliciting information from the student, family, and other knowledgeable sources; develops a crisis plan to meet the student's needs; and establishes a timeline for the student's involvement with the Program (generally three months).[301] Program staff connects the student and family with existing community resources, providing guidance in areas such as education, mental health, substance abuse, healthcare, and employment, as needed.[302] After discharge, program staff continues to follow up with the family to track progress and identify outstanding needs.[303] In the 2013-14 school year, 82 percent of the youth involved in the program improved their attendance, with more than 95 percent of students avoiding a court referral during their participation in the program.[304] Additionally, 96 percent of involved students improved their school behavior, as evidenced by a decline in school discipline referrals.[305]

cases per judge annually. To keep up with such a tremendous caseload, they must dispose of cases expeditiously. The fact that JP and municipal courts adjudicate cases quickly and economically, particularly in comparison to the juvenile courts, was one reason that they were given jurisdiction over FTAS cases.[306] The consequence is that an overwhelming majority of students plead guilty and spend mere minutes before the judge before being sentenced in the truancy dockets that Texas Appleseed has observed. In this little time, the identification of student needs and design of individualized interventions is impossible.

Research suggests that court-based interventions are not effective solutions to truancy.[307] One recent study out of Washington State indicated that truancy petitions to juvenile court had no effect on future school attendance and grade point average or dropout rates.[308] Students who were referred to court for truancy were compared with students who were not referred to court, and their resulting school attendance was no different.[309] Another study found that court intervention improved attendance during the time that the children were being monitored by the court, but the improvement in school attendance was not sustained.[310]

299 Southwest Keys Program, Prevention and Intervention Program: Family Keys Model (on file with author).

300 *Id.* at 3.

301 *Id.* at 4–5.

302 *Id.* at 6.

303 *Id.* at 6–9.

304 Southwest Key Family Keys Truancy Prevention Program Outcomes (on file with author).

305 *Id.*

306 LBB GEER Report, *supra* note 217, at 11.

307 *See* McKinney, *supra* note 1.

308 *Id.*; *see* Jones, et al., *supra* note 5.

309 McKinney, *supra* note 1, at 6.

310 *Id.* at 4.

The response of the JP and municipal courts—convicting students of a crime and sentencing them to a fine or other consequences—is also punitive in nature. The research shows that overly punitive responses are not effective, [311] since truancy is most often not the result of mere defiance that can be corrected by punitive measures. Rather, truancy is a complex issue brought on by one or a combination of school, personal and family factors.[312] Family factors may include poverty, parental neglect, even homelessness. Personal factors may include addiction, mental health problems, or gang involvement. And school factors may include bullying, negative school climates, or failure to identify learning disabilities. Effective truancy intervention must address these underlying causes of truancy rather than merely punishing a student for nonattendance.

The data confirms our observations that sending children to court for nonattendance is ineffective in changing behavior. The following is a chart comparing the court case filing rates from the largest school districts with their attendance rates, graduation rates, and dropout rates.

FTAS + PCN FILING, ATTENDANCE, GRADUATION, AND DROPOUT RATES FOR LARGEST 20 SCHOOL DISTRICTS, 2011-12[313]

SCHOOL DISTRICT †	FTAS+PCN FILING RATE 2011-12	FTAS+PCN FILING RATE 2010-11	ATTENDANCE RATE 2012	4-YEAR GRADUATION RATE, CLASS OF 2012	LONGITUDINAL DROPOUT RATE, 2012
San Antonio ISD	16.14%	17.07%	95.0	81.8	12.1
Dallas ISD	19.29%	19.29%*	95.5	83.2	10.2
Houston ISD	7.44%	10.29%	95.7	81.7	11.3
Northside ISD	7.59%	6.08%	95.7	92.8	2.9
Fort Bend ISD	7.48%	12.16%	97.1	91.9	4.3
Pasadena ISD	3.59%	5.24%	95.6	88.8	7.1
Cypress-Fairbanks ISD	3.38%	3.41%	96.1	90.7	4.0
Katy ISD	3.35%	3.60%	96.8	92.9	3.0
Fort Worth ISD	2.52%	2.63%	94.9	81.7	13.3
Klein ISD	3.96%	3.90%	95.9	90.7	4.8
Brownsville ISD	2.18%	3.19%	96.4	87.6	4.6
El Paso ISD	5.64%	2.10%	95.6	83.3	8.4
Plano ISD	0.94%	0.99%	96.9	95.8	0.9
Aldine ISD	0.35%	0.53%	95.5	81.6	14.4
Austin ISD	0.25%	0.15%	95.1	84.9	8.8
Lewisville ISD	0.32%	0.24%	96.8	94.0	3.0
North East ISD	0.16%	0.23%	96.2	90.4	5.0

† Data for Arlington ISD, Garland ISD and Conroe ISD not provided.
* Dallas ISD filing rate for 2010-11 is an estimate based on more recent years; data not available for 2010-11.

311 *See supra* n. 49 & 50 and accompanying discussion.

312 *See supra* n. 19-25 and accompanying discussion.

313 TEA PEIMS Data, *supra* note 282.

If court referrals were positively impacting truancy, one would expect higher filing rates to lead to higher attendance rates and graduation rates, as well as lower dropout rates. However, this data suggests that it is not the case. Some of the districts with the highest attendance and graduation rates, like Lewisville ISD (attendance rate of 96.8 percent; graduation rate of 94.0 percent) and Plano ISD (attendance rate of 96.9 percent; graduation rate of 95.8 percent) have filing rates near the bottom of the pack. Conversely, some districts with the lowest attendance and graduation rates like San Antonio ISD (attendance rate of 95.0 percent; graduation rate of 81.8 percent) and Houston ISD (attendance rate of 95.7 percent; graduation rate of 81.7 percent) have very high filing rates.

Based on the data available, there is no evidence that sending more children to court translates to better attendance and higher graduation rates. In fact, Texas Appleseed's observations, research, and data analysis suggest the opposite—that these courts are completely ineffective at improving attendance and graduation rates and reducing dropout.

CORRELATION: FTAS FILINGS, ATTENDANCE RATES, GRADUATION RATES & DROPOUT RATES

To further analyze the relationship between these variables, Texas Appleseed examined the linear relationship between the variables—that is, as the filing rate in districts increased, what happened to attendance rates, graduation rates and dropout rates? Texas Appleseed was able to calculate a simple correlation coefficient between the 2011-12 attendance rate and the FTAS + PCN filing rate for 2011-12.[314] Appleseed also examined the relationship between the filing rate from the previous year (2010-11) and the 2011-12 attendance rate, reasoning that a district's enforcement practices over the course of an entire school year could impact attendance in the following year if the attendance of students previously sent to court had improved. Appleseed found the relationship between the attendance rate and the filing rate of the same year was weak to moderate, with a linear correlation coefficient of -0.31. The relationship between the attendance rate and the previous year's filing rate was even weaker, with a linear correlation coefficient of -0.20. In basic terms, this suggests that rather than being a useful tool for *increasing* attendance, truancy charge filings actually have very little relationship to attendance rates at all. To the extent there is any relationship, higher truancy filing rates are weakly associated with *lower* attendance rates.

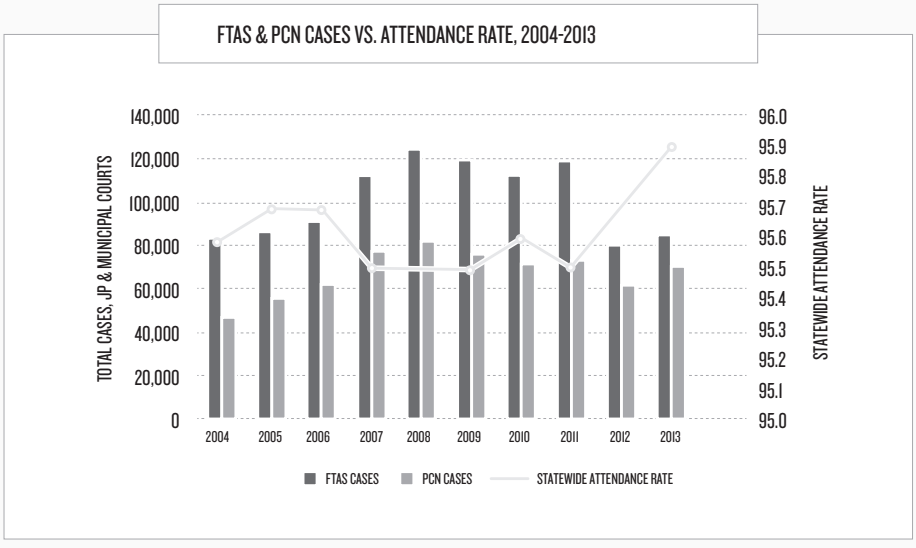
The same is true for graduation rates. The relationship between the 2012 four-year graduation rates and the filing rate from the same year was weak to moderate, with a linear correlation coefficient of -0.37. This suggests that rather than being a useful tool for *increasing* graduation rates, truancy filings have little relationship to graduation rates. Those districts sending relatively more truancy cases to courts do not necessarily have higher graduation rates. In fact, high truancy filing rates are weakly associated with *lower* graduation rates.

314 The 2011-12 school year was used because it was the most recent year with all relevant data points at the time this data analysis was conducted.

Finally, one would expect the dropout rates to be lower in districts that were filing more cases in court if truancy court filings were an effective tool to decrease dropouts. And yet, the opposite is true. There is a weak to moderate relationship between truancy filings and dropout rates, with a linear correlation coefficient of 0.31 between 2012 dropout rates and the filing rates from that same year. The linear correlation coefficient between 2012 dropout rates and filing rates from 2010-11 was a similar 0.30. Those districts filing more truancy cases do not necessarily have lower dropout rates. High truancy filing rates are actually associated with *higher* dropout rates.

Of course, this data set is very small and does not constitute a representative sample of all Texas school districts. Improving data collection and reporting processes at the school district level would enable a more precise and accurate analysis of the relationship between attendance and truancy filings in the future. Higher quality data would also allow for more sophisticated data analysis, allowing for the isolation of different variables to determine their impact on truancy, attendance and graduation.

Finally, a look at statewide attendance rate trends also suggests that filing more FTAS cases against students and PCN cases against parents has not meaningfully impacted attendance rates over the course of a decade. As discussed in Chapter 3, the number of FTAS cases filed has fluctuated quite a bit over the course of 10 years, with a peak in 2008 and a relatively large number of cases filed between 2008 and 2011, followed by a dropoff to current levels.[315] Yet, the attendance rate has remained relatively stable over the last 10 years, fluctuating by only a couple of tenths of a percentage point in either direction. While the attendance rate was 95.9 percent in 2013, at its lowest point over the 10-year period, it hovered around 95.5 percent from 2007 to 2011. This low point roughly corresponds to the period of time when FTAS filings were the highest.[316]



315 *See* Texas Office of Ct. Admin., Annual Statistical Reports, FYs 2003–13, *available at* http://www.txcourts.gov/statistics/annual-statistical-reports.aspx.

316 Texas Education Agency, Academic Excellence Indicator System Reports, 2004-2013, *available at* http://ritter.tea.state.tx.us/perfreport/tapr/2013/.

CHAPTER 5

ECONOMIC HARDSHIP ON CHILDREN & FAMILIES

Many of the factors that lead to truancy are associated with poverty. As a report from the National Center for Children in Poverty explains, "When families are poor, they lack resources (often taken for granted by many middle class families) that make regular school attendance much easier."[317] Indeed, existing research suggests that truancy is more common among low-income students.[318] In 2006, demographic data was collected on more than 600 students being served by seven Truancy Reduction Demonstration Programs funded by the Office of Juvenile Justice and Delinquency Prevention. Eighty-seven percent of the students served by these programs qualified for free or reduced price lunch.[319] Many of the parents and students with whom Texas Appleseed has worked over recent years have also described school attendance problems closely related to their economic hardships, including, for example, lack of reliable transportation to school and homelessness.

Statewide, the attendance rate data for economically disadvantaged students is slightly lower than the total attendance rate. This indicates truancy may be more common for these students. In the 2012-13 school year, the statewide attendance rate was 95.8 percent, while the attendance rate of economically disadvantaged students was 95.4 percent. In the 2011-12 school year, the statewide attendance rate was 95.9 percent, while the attendance rate of economically disadvantaged students was 95.6 percent.

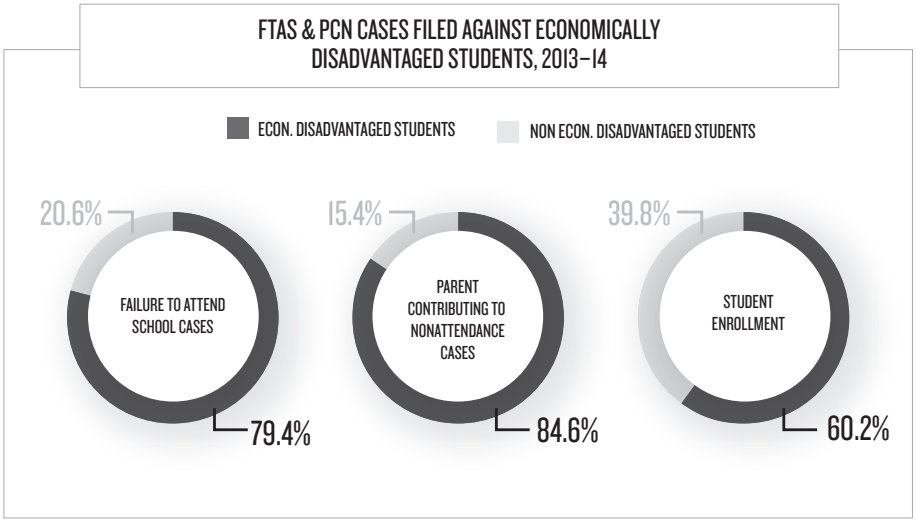
Texas Appleseed collected data from TEA to determine whether students who were being charged with truancy were disproportionately low-income students. This data demonstrates that an overwhelming majority of both reported FTAS cases and PCN cases are filed against economically disadvantaged students and their parents. The percentage of reported cases filed against economically disadvantaged students and parents was

317 Chang & Romero *supra* note 7, at 15.

318 Jones et al., *supra* note 5, at 9.

319 Pieces of the Truancy Jigsaw, *supra* note 6, at 5.

approximately 80 percent in the 2013-14 school year, and on the rise over the course of the past two school years.[320] These cases are filed disproportionately against economically disadvantaged students, who comprise only about 60 percent of the student enrollment statewide. The same is true for PCN cases. In fact, an even greater percentage of PCN cases are filed against parents of economically disadvantaged students—almost 85 percent in the most recent year.[321]



As discussed in Chapter 4, the TEA data is incomplete. For that reason, Texas Appleseed also requested data directly from the 20 largest school districts on the economic status of students charged with FTAS. Specifically, Texas Appleseed requested certain demographic data for students prosecuted for FTAS including their race/ethnicity, special education status and eligibility for free or reduced price lunch. Most school districts could not provide the information requested. In fact, only six of the 20 districts were able to produce a complete set of the requested data.

The fact that many school districts are not keeping such data reveals an ignorance of the truancy problems in their own districts. To truly address truancy in a meaningful way, districts must have an understanding of the factors that are contributing to truancy and who is being sent to court. The failure to collect this data suggests an indifference on the part of school districts to their own truancy problem and a reliance on the courts to intervene.

The following is a snapshot of the data that six districts were able to provide regarding whether students charged with FTAS were also eligible for free or reduced price lunch during the 2012-13 school year. Data from the previous school year is included in the Appendix. These districts are not necessarily the districts with the greatest problems; they are the districts that are maintaining better data and should be commended for that.

320 Statewide PEIMS data collected from TEA through open records request and on file with author [hereinafter Statewide PEIMS Data.]

321 *Id.*

FTAS CASES FILED AGAINST STUDENTS ELIGIBLE FOR FREE/REDUCED LUNCH, 2012-13[322]

DISTRICT	FTAS CASES, F/R LUNCH	FTAS CASES, NOT F/R LUNCH	PERCENT FTAS CASES, F/R LUNCH	ENROLLMENT, ECONOMICALLY DISADVANTAGED	TOTAL ENROLLMENT	PERCENT ENROLLMENT ECONOMICALLY DISADVANTAGED
Cypress-Fairbanks ISD	1,079	552	66.2%	54,621	110,013	49.7%
Northside ISD	2,534	834	75.2%	53,317	100,159	53.5%
North East ISD	45	12	78.9%	31,247	67,901	46.1%
Aldine ISD	182	62	74.6%	55,612	65,684	84.8%
San Antonio ISD	5,996	277	95.6%	50,429	54,268	93.0%
Lewisville ISD	30	15	66.7%	15,732	52,528	30.0%

Texas Appleseed also collected data from districts on PCN cases to determine how many of these were filed against parents of students who were eligible for free or reduced price lunch. A summary of the data for the 2012-13 school year follows, with the 2011-12 data included in the Appendix.

PCN CASES FILED AGAINST PARENTS OF STUDENTS ELIGIBLE FOR FREE/REDUCED LUNCH, 2012-13[323]

DISTRICT	PCN CASES, F/R LUNCH	PCN CASES, NOT F/R LUNCH	PERCENT PCN CASES, F/R LUNCH	ENROLLMENT, ECONOMICALLY DISADVANTAGED	TOTAL ENROLLMENT	PERCENT ENROLLMENT, ECONOMICALLY DISADVANTAGED
Cypress-Fairbanks ISD	1,404	618	69.4%	54,621	110,013	49.7%
Northside ISD	3,486	1,233	73.9%	53,317	100,159	53.5%
North East ISD	7	0	100.0%	31,247	67,901	46.1%
Aldine ISD	257	75	77.4%	55,612	65,684	84.8%
San Antonio ISD	5,801	258	95.7%	50,429	54,268	93.0%
Lewisville ISD	54	8	87.1%	15,732	52,528	30.0%

This local data leads to the same conclusion as the statewide data: that the overwhelming majority of prosecutions for FTAS and PCN are filed against economically disadvantaged students and parents. Further, the disparities are greatest in the districts where a lower percentage of students are economically disadvantaged. In Aldine ISD and San Antonio ISD, the vast majority of the student body is economically disadvantaged, so it follows that most cases would be filed against those students. But for the other four reporting school districts—Cypress-Fairbanks ISD, Northside ISD, North East ISD, and Lewisville

322 Large District Data, *supra* note 290.

323 *Id.*

ISD—only approximately one-third to one-half of the student body is economically disadvantaged. Yet, in all four of these districts, at least two-thirds of FTAS cases were filed against economically disadvantaged students. Overall, across all six reporting districts, an economically disadvantaged student was *more than three times as likely* as a non-economically disadvantaged student to have a FTAS complaint filed against him or her in the 2012-13 school year, based on calculated risk ratio between the two groups.

The same is true for PCN cases. Most of the parents who are sent to court for PCN in these six districts are parents of students eligible to receive free or reduced price lunch. Parents of economically disadvantaged students are being charged disproportionate to their representation in district enrollment, again with the greatest disparities in those districts where the majority of the student body is not economically disadvantaged. In the same four districts where only a third to a half of the student body is economically disadvantaged, PCN cases against parents of economically disadvantaged students account for two-thirds or more of all cases filed.

The fact that so many economically disadvantaged children and their parents are charged with FTAS is deeply troubling given the fact that FTAS cases result in a fine more often than not. The data collected from TEA includes information on how many court referrals resulted in a fine.[324] Almost 61 percent of FTAS cases and almost 68 percent of PCN cases resulted in a fine of the cases reported for the 2013-14 school year. Economically disadvantaged students and parents are not fined at a lower rate. In fact, almost 62 percent of the FTAS cases filed against economically disadvantaged students and 68 percent of the PCN cases filed against economically disadvantaged parents resulted in a fine. This data also shows that a fine is slightly more likely to result in a case filed for 10 absences rather than three absences, though a majority of cases filed for only three absences still results in a fine. Furthermore, of the 330 school districts that replied to a survey conducted by the Legislative Budget Board of the Texas Legislature, 60 percent reported that their local courts imposed fines in some cases without the option of any deferred disposition before imposing fines.[325]

REPORTED FTAS & PCN CASES RESULTING IN A FINE, 2013-14

TYPE OF CASE	PERCENT OF CASES RESULTING IN A FINE
FTAS Cases Filed for Three Absences	54.6%
FTAS Cases Filed for 10 Absences	63.3%
Total FTAS Cases	60.5%
FTAS Cases Against Econ. Disad. Students	61.6%
Total PCN Cases	67.5%
PCN Cases Against Parents of Econ. Disad. Students	68.2%

324 The TEA data does not include the amount of each fine. The maximum prescribed punishment allowed for a Class C misdemeanor is a $500 fine. Tex. Penal Code § 12.23.

325 *See* LBB GEER Report, *supra* note 217, at 19.

Out of the 323 school districts that reported filings to TEA for the 2012-13 school year, 82 of them—more than one-third—reported that every FTAS case referred to court resulted in a fine. Some of these districts filed a substantial number of FTAS cases and every single case resulted in a fine. An egregious example is Richardson ISD, which filed 781 cases in 2012-13 and reported to TEA that every single case resulted in a fine. Richardson ISD files its FTAS cases in the Dallas County Truancy Courts, and this data point suggests that these courts are processing cases without any meaningful adjudication of guilt, innocence, or mitigating circumstances. One hundred fifty-six districts (about half of districts reporting any data) reported that at least 75 percent of FTAS cases that they filed resulted in a fine.

Whether a fine is imposed is not a decision made by the school district but the court. Still, if a school district has collected data that shows most cases being sent to court will result in the student being fined, the school district should reconsider whether this intervention is appropriate for its students, and particularly those students who will be burdened by the imposition of a fine. Unfortunately, the fact that a fine is assessed may actually incentivize the filing of charges against parents, at least, by the school district. The law currently provides for fines collected in PCN cases to be split between the school district and the county.[326]

The fact that most FTAS cases are filed against economically disadvantaged students, and that most of these cases will result in a fine, is cause for great concern. Not only do lower-income students have more factors that lead to truancy, but they will have a harder time paying fines, putting tremendous burdens on already strained family budgets. Even when the student or parent is informed that a payment plan may be available, the monthly payments may still present tremendous strain. When students and parents cannot afford to pay these fines, the end result may be contempt charges leading to arrest and incarceration. Or, it can be referral to the juvenile justice system for further court involvement, which adds to the problems these families are already facing and undermines the goals of Texas' public education system.[327]

In addition to fines, truancy charges also present additional burdens for low-income students that higher-income students may not face. For one, low-income families are unable to hire legal representation, whereas a higher-income family may choose to hire counsel to represent their child in court. Lower-income families may also have a more difficult time complying with other parts of court orders, particularly those that require payments. For example, a judge may order the parent and student to attend a class and require the parent to pay for the class, or assess other fees, such as a $120 "probation fee" commonly assessed in the Fort Bend Truancy Court.

326 Tex. Educ. Code § 25.093(d).

327 *See id.* § 4.001(a) ("The mission of the public education system of this state is to ensure that all Texas children have access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation.").

MADISON'S STORY

Madison suffered from both debilitating migraine headaches and severe depression beginning in middle school. She obtained doctors' notes whenever possible and was even able to continue to succeed academically. Still, the absences led to numerous Failure to Attend School cases being filed against her beginning in seventh grade, as well as Parent Contributing to Nonattendance cases being filed against her mother.

At age 12, Madison was even arrested and handcuffed in front of fellow students at a North Texas middle school for failing to appear in court on a truancy misdemeanor charge. (The court documents had been sent to an incorrect address, so neither she nor her mother were aware of her court appointment.) In court, she continued to be handcuffed. She then sat for 15 minutes with eight other children, each with their hands cuffed behind their chairs in a full courtroom. Madison explained to the judge that she had submitted doctors' notes for her severe depression. The judge responded that she had to be in school, even if she was "having a bad day."

Madison's mother has also been arrested for failure to pay fines from truancy cases. At one point, Madison and her mother were appearing in court on at least a monthly basis given the numerous charges filed against them. Her mother had paid more than $2,000 in fines and continued to owe hundreds of dollars to the court. Madison felt anxious about the court cases, living in fear that she or her mother would be arrested again, and was overwhelmed by the financial stress the cases had put on her family.

Madison's story is relatively unique, though, because she happened to come into contact with Texas Appleseed and, with the help of Disability Rights Texas and pro bono attorneys, was able to obtain a 504 accommodation plan for her disability and get two subsequent truancy charges dismissed. Her health improved, and she is on track to graduate this school year. This pro bono assistance is extraordinarily rare, and without it, Madison and her mother would still be crushed by the overwhelming fines that were imposed by the courts, like so many other families.

Lower-income students and parents may feel additional pressure to plead guilty, since pleading not guilty will almost always result in future required court appearances (e.g., for trial). Parents in low-wage jobs may either not get paid or even face losing their jobs if they have to miss additional work. Texas Appleseed has observed courts in which students and their parents had to spend the entire day in court waiting for their case to be called for an initial hearing. Other dockets last an entire morning or afternoon, and students and parents must arrive at the beginning and wait until their case is called. Consequently, the time away from work for these cases is not minimal. A judge even has the authority to order a parent to regularly attend school with her child—something Texas Appleseed observed one judge do and another judge threaten—which could certainly threaten the employment of some parents. Indeed, students and their parents often report to Texas Appleseed that they pled guilty to simply be "done" with the case (often not realizing the consequences of conviction).

Perhaps most importantly, a fine is wholly ineffective. Research has demonstrated that punitive sanctions can be counterproductive when it comes to truancy, making students feel more alienated and isolated from school rather than increasing their attendance.[328] Fines are one such punitive measure and, as expected, studies confirm that fines are not an effective intervention to avoid truancy.[329] In one JP court visited by Texas Appleseed, a mother recalled that at her previous court visit, the judge had told her that it was most effective to "hit [parents] where it hurts—in the pockets,"[330] meaning that fines were what really got results, in his opinion. This judge was mistaken. In reality, fines do nothing to help struggling families get their children to school, but rather add additional stress and burdens to already difficult situations. In fact, we have spoken to a number of parents who chose to actually withdraw their children from school entirely to avoid future criminal charges and fines, including the mother whom the judge had tried to "hit where it hurts."

While policymakers, judges, and even school officials may believe that fining students and parents sends the message that truancy is a serious issue, in reality, the message conveyed to students is that schools are not interested in investigating and addressing the issues that their students and/or families may be facing. Purely punitive measures like fines exacerbate truancy problems rather than correct them.

328 *See* discussion *infra*, Chapter 1, Section III.

329 *See, e.g.*, School Attendance Task Force, A Comprehensive Approach to Improving School Attendance in Los Angeles County (2012)(noting that "issuing tickets is a blunt tool that does not actually address the root causes for a student's difficulties in getting to school"); Educational Success and Truancy Prevention Workgroup, Report to the Pennsylvania State Roundtable (2012)(recommends against fines as ineffective); Chanelle Gandy & Jennifer Lee Schultz, Increasing School Attendance for K-8 Students 5 (Wilder Research 2007)(finding financial sanctions ineffective).

330 Texas Appleseed's court observations.

CHAPTER 6

TRUANCY & THE SCHOOL-TO-PRISON PIPELINE

In Texas, like the rest of the nation, many students are being pushed out of school by a combination of overly harsh internal school disciplinary practices, along with the criminalization of minor school-based misbehavior. Students who are excluded from class through suspension and expulsion, as well as students sent to court for school-based misbehavior, are at an increased risk of negative outcomes like dropout and juvenile justice system involvement, contributing to the school-to-prison pipeline. Certain students, mainly African-American, Hispanic, and special education students, are at increased risk of being pushed out of school through disciplinary actions and school policing.

The practice of sending over 100,000 cases to court for truancy must be considered in the context of this school-to-prison pipeline. Research suggests that sending a child to court makes the child more likely to drop out and even become involved with the juvenile justice system subsequently. Hence, Texas' current system for addressing truancy is not only ineffective, but may actually be counterproductive, serving to push children out of school rather than keep them in it. Moreover, the children who are being charged with truancy in Texas are disproportionately African-American, Hispanic, and special education students—the same students who are disproportionately the recipients of exclusionary discipline actions and the negative consequences associated with those. Even with evidence that these students are already at greater risk, state and local policymakers continue to rely heavily on the courts to handle truancy, further compounding the existing risks faced by students and funneling more children into the pipeline.

I. The School-to-Prison Pipeline and Disparities in the Administration of School Discipline

Previous research has established that certain students are more likely to be harshly disciplined and sent to court for school-based misbehavior than other students. For example, African-American students are disproportionately the recipients of exclusionary discipline actions, like suspensions and expulsions, as compared with white students.[331] The unprecedented *Breaking Schools' Rules* report, released in 2011 by the Council of State Governments, found that in the ninth grade year, African-American males in Texas public schools were 31 percent more likely to receive a discretionary exclusionary school discipline action as compared to white students.[332] These disparities existed even when researchers controlled for income level, special education status and other variables. Additionally, African-American students were no more likely to commit serious offenses mandating removal from campus—meaning the disparities disappeared when school officials had no discretion in determining how or whether to discipline the student.[333] These disparities in the administration of school discipline are not limited to Texas schools. African-American students are suspended or expelled three times more often than white students in schools across the country.[334]

Texas Appleseed's research has also established that African-American and, to a lesser extent, Hispanic students are disproportionately represented in Class C misdemeanor ticketing and arrests on Texas public school campuses.[335] For example, 11 of 15 school districts that provided data to Texas Appleseed on the race and ethnicity of students ticketed African-American students disproportionate to their representation in the total student population, with five districts ticketing African-American students at a rate double their representation in the student body.[336] National data also confirms troubling racial disparities in schools across the country when it comes to arrests and court referrals.[337] African-American students represent 16 percent of school enrollment nationwide, but 31 percent of all school-related arrests.[338]

Similar disparities have been documented for special education students. *Breaking Schools' Rules* found that special education students were overrepresented in exclusionary school disciplinary actions like suspension and expulsion.[339] Specifically, three of four special education students were suspended or expelled at some point between seventh and 12th grade.[340] The type of disability was a better predictor for whether a student would be removed from the classroom rather than special education status alone; students with emotional disturbances were significantly more likely than other students to be removed from the classroom.[341] Students with disabilities are also arrested at a higher rate than students

331 *See* The Council of State Governments, Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement 41 (2011) [hereinafter Breaking Schools' Rules].

332 *Id.* at 45.

333 *See id.* at 43.

334 U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection—Data Snapshot: School Discipline, Issue Brief No. 1 (2014), *available at* http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf [hereinafter OCR Data].

335 Texas Appleseed, Texas' School-to-Prison Pipeline: Ticketing, Arrest & Use of Force in Schools 88-90, 111-12 (2010).

336 *Id.*

337 OCR Data, *supra* note 334.

338 *Id.*

339 *See* Breaking Schools' Rules, *supra* note 331, at 52–53.

340 *Id.* at 48.

341 *Id.* at 52.

LIZZIE'S STORY

Lizzie was diagnosed with Attention Deficit Disorder in the third grade, a condition that made it difficult to learn without assistance through special education services. During her school career, Lizzie was successful and engaged in school when she was receiving the appropriate help. At her first high school, Lizzie received access to resource room support, as well as push-in special education support under her Individualized Education Plan (IEP). But she had to transfer high schools when that school converted to a magnet school.

The new school failed to implement Lizzie's IEP, and she had no one who was helping to ensure that she received the support she needed. Her academic progress faltered, leading to her placement in a one-size-fits-all, computer-based credit recovery program. This program lacked any necessary supports, and Lizzie finally gave up, becoming disengaged from school because she was not learning. Her mother attempted to advocate on her daughter's behalf to school officials, but they were unreceptive. The school completed no evaluations to consider the functional cause of the school attendance problem, and the school offered no additional academic or positive behavioral supports to improve Lizzie's attendance.

Instead, the school filed three truancy cases against Lizzie. The judge was unreceptive to Lizzie's mother's explanation that the major underlying problem was that her daughter could not understand the material and was not learning in the credit recovery program. Despite the repeated court filings, Lizzie's status as a special education student, and her conversation with the judge about her disability, she never received assistance from the court's case managers. Nor did the judge ever inquire into her capacity to represent herself or into her ability to understand the rights she waived or the pleas she entered. All in, Lizzie was convicted three times for Failure to Attend School and fined over $1,300, which she and her family lacked the ability to pay. Despite the court filings, Lizzie's mother continued to advocate for her and was able to enroll her in a charter school that provided her the type of services she needed to succeed.

without disabilities.[342] While representing only 12 percent of national school enrollment, students with disabilities comprise a full quarter (25 percent) of school-related arrests.[343]

These disparities in the administration of school discipline and policing are deeply troubling for a number of reasons, among them the documented negative impact of exclusionary discipline and arrests on students' future success. *Breaking Schools' Rules* documented a number of negative impacts that exclusionary discipline practices have on students, such as an increased likelihood of repeating a grade, dropping out of school, and coming into contact with the juvenile justice system.[344] School-based arrests and law enforcement referrals similarly increase the likelihood of dropout and future juvenile and adult criminal justice system involvement. [345]

342 OCR Data, *supra* note 334.

343 *Id.*

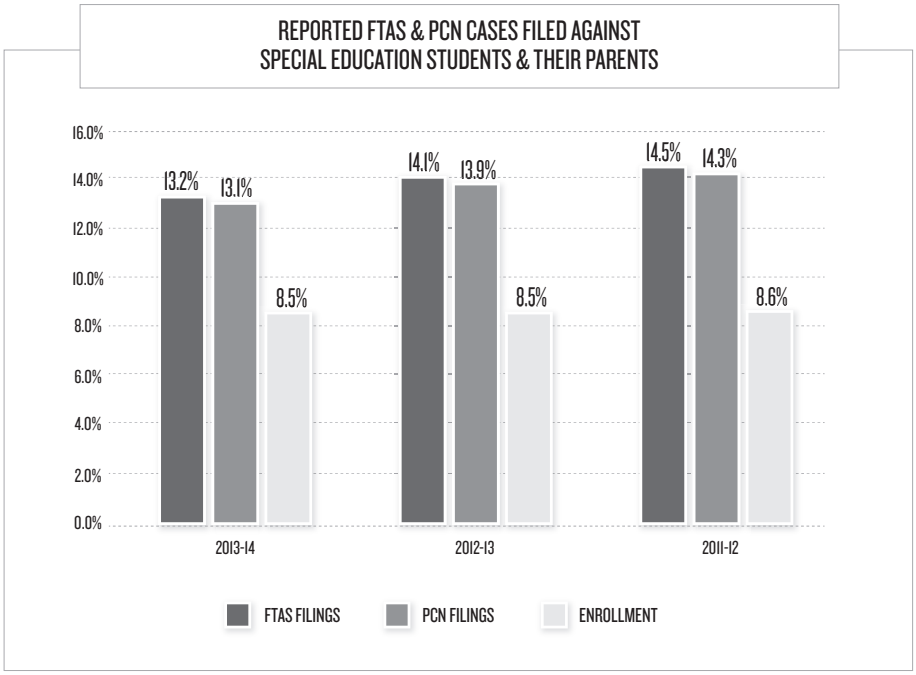
344 *See* Breaking Schools' Rules, *supra* note 331, at 54-72.

345 *See* David Simson, *Exclusion, Punishment, Racism and Our Schools: A Critical Race Theory Perspective on School Discipline*, 61 UCLA L. Rev. 506, 506–563 (2014) (discussing punitive school discipline procedures' contribution to "wider social issues" such as the school-to-prison pipeline in the context of their disproportionate effects on minority students).

II. Special Education Students are Disproportionately Sent to Court for Truancy

Given the research showing that certain student populations are impacted disproportionately by exclusionary school discipline practices and funneled into the school-to-prison pipeline, Texas Appleseed examined whether those same groups were also being prosecuted disproportionately for truancy. Certain causes of truancy may be especially prevalent among special education students. For example, students with disabilities who are not receiving the educational services to which they are entitled may become disengaged from school, making their attendance less likely. In other cases, students may have disabilities that make their regular school attendance more difficult. Texas Appleseed has worked with and heard from numerous students who were missing school due to unaddressed special education needs or disabilities, ultimately leading to court referrals for truancy.

Texas Appleseed requested data from the Texas Education Agency (TEA) on the special education status of the students involved in every reported court referral for Failure to Attend School (FTAS), as well as Parent Contributing to Nonattendance (PCN) in recent school years. That data confirms that special education students are being referred to court more often than their non-special education counterparts. While special education students represented only 8.5 percent of students statewide in the 2013-14 school year, they represented 13.2 percent of court referrals for FTAS cases and 13.1 percent of court referrals for PCN cases.[346] The data from the 2012-13 and 2011-12 school years shows even greater discrepancies between the representation of special education students in truancy referrals and the student body.[347]



346 Statewide PEIMS Data, *supra* note 320.

347 *Id.*

Because the data reported to TEA only represents a fraction of the court referrals for truancy, Texas Appleseed also requested that the 20 largest school districts provide data on the special education status of every student referred to court during recent school years. Less than half of the districts were able to provide this data. The data from those reporting school districts is below. It bears repeating that the districts listed in the following charts are not necessarily the districts with the worst problems, but rather the only large districts who were able to provide any data. Many large districts are not even tracking this data at all.

FTAS & PCN FILINGS AGAINST SPECIAL EDUCATION STUDENTS IN LARGE DISTRICTS, 2012-13[348]

DISTRICT	FTAS CASES, SPEC ED	FTAS CASES, NOT SPEC ED	FTAS CASES, % SPEC ED	PCN CASES, SPEC ED	PCN CASES, NOT SPEC ED	PCN CASES, % SPEC ED	ENROLLMENT, % SPEC ED
Cypress-Fairbanks ISD	137	1,494	8.4%	178	1,844	8.8%	7.1%
Northside ISD	559	2,809	16.6%	759	3,960	16.1%	11.1%
Fort Bend ISD	455	3,923	10.4%	27	358	7.0%	6.3%
North East ISD	12	45	21.1%	1	6	14.3%	8.7%
Aldine ISD	25	219	10.2%	33	299	9.9%	6.9%
Plano ISD*	96	398	19.4%	*	*	*	10.0%
San Antonio ISD	938	5,335	15.0%	905	5,154	14.9%	10.2%
Lewisville ISD	14	31	31.1%	16	46	25.8%	9.6%
Brownsville ISD*	55	574	8.7%	*	*	*	10.2%

* FTAS cases and PCN cases reported together.

The school districts' data confirms what the statewide data from TEA showed—that special education students are disproportionately represented in FTAS cases filed, as compared with their representation in the student body. Overall, special education students in these districts were 60 percent more likely than non-special education students to receive an FTAS complaint, based on a calculated risk ratio. While a disproportionate number of special education students were charged with FTAS in most individual districts that reported data, the size of the discrepancy varied greatly across districts. To their credit, Lewisville ISD, North East ISD and Plano ISD filed relatively few FTAS cases compared with other large districts—only a small fraction of the number of cases in districts like San Antonio ISD and Northside ISD. Yet, all three districts disproportionately filed against special education students to an alarming degree. More than 30 percent of Lewisville ISD's FTAS cases and about 20 percent of North East ISD's and Plano ISD's FTAS cases were filed against special education students during the 2012-13 school year, despite the fact that only around 9 to 10 percent of students in each district received special education services.

The overrepresentation of special education students and their parents in FTAS and PCN prosecutions is troubling, because it suggests that absences forming the basis for FTAS and PCN charges are related to students' disabilities. While data suggests special

348 Large District Data, *supra* note 290.

education students may have lower attendance rates than other students,[349] special education students and students with disabilities and their parents need for schools to provide the appropriate services and accommodations to improve their attendance and learning opportunities—not send them to court to impose additional burdens.

To make matters worse, students are not appointed counsel and, unless they are among the few who can afford to hire an attorney, are forced to represent themselves in court in FTAS cases. Schools are required in their complaints to include a student's special education status, which is supposed to put the court on notice that the student may have a more difficult time defending themselves.[350] But after watching court across the state, Texas Appleseed has yet to see a judge truly inquire into the nature of a student's disability and how that might affect the student's rights, culpability, or sentence. Moreover, JP and municipal courts lack the expertise to design educational solutions for students with disabilities, and instead take the same punitive approach as they do in most cases—imposing fines and other consequences that may be particularly inappropriate for special education students and students with disabilities.

IMPACT OF TRUANCY REFERRALS ON STUDENTS WITH DISABILITIES

By Dustin Rynders, Supervising Attorney of Education Team, Disability Rights Texas

In addition to the factors that lead other students to miss school, many students with disabilities miss school to receive essential disability-related treatment from doctors and speech, occupational, and physical therapists. Schools are provided great flexibility in determining which absences to excuse, and sometimes schools refuse to excuse absences for therapies that parents and outside providers believe are essential, but schools do not prioritize. Even when schools agree to excuse absences, a higher number of absences leads to a greater chance that students with disabilities will forget to turn in a doctor's excuse, will turn in their doctor's excuse a day late, or will be disadvantaged by inevitable school record-keeping errors when excuses are not properly logged.

Additionally, many students with disabilities miss school because they have not been identified as needing special education services. Pursuant to the Individuals with Disabilities Education Improvement Act's "child find" requirement, schools must find and serve all students with disabilities in the district who need special education and related services.[351] Unfortunately, Texas identifies fewer students as needing special education than any other state.[352] Texas trails the national special education eligibility rate by four percentage points. During the 2003-2004 school year, Texas served 11.8 percent of students with special education supports and services, but that drastically declined to only 8.6

349 In 2011-12, the overall statewide attendance rate was 95.9%, while the attendance rate for special education students was 94.5%. *See* Texas Education Agency Academic Excellence Indicator System Report 2011-12, *available at* http://ritter.tea.state.tx.us/perfreport/aeis/index.html.

350 *See* Tex. Educ. Code § 25.0915(b)(2).

351 34 C.F.R. § 300.111.

352 Janie Scull and Amber Winkler, *Shifting Trends in Special Education*, Thomas Fordham Inst. (2011), *available at* http://edexcellence.net/publications?field_pub_issue_topic_tid=All&combine=shifting+trends+in+special+education+&=Apply.

percent during the 2013-2014 school year.[353] Unfortunately, this reduction may be related to the Texas Education Agency's monitoring programs that incentivize districts to reduce eligibility rates.[354]

Disability Rights Texas (DRTx) attorneys have witnessed the ramifications of under-identification in courts that hear FTAS cases across the state. Students whom DRTx has represented include those with mental health needs so severe that they have been repeatedly hospitalized but have still not been identified for services at school. Other examples include students with learning disabilities identified outside of the school who have failed multiple grades but still have not been identified for special education within the school system. Those students who fall through the cracks of special education identification can easily give up on school attendance.

Unfortunately, even those students who are identified as needing special education services are often referred to court with FTAS charges before schools make any effort to use special education systems to identify or address underlying causes of nonattendance. Special education law and practice encourages the use of individualized positive behavior supports to assist students with disabilities by improving behaviors that interfere with their learning.[355] When there is a behavior interfering with learning, a student's Admission, Review & Dismissal (ARD) Committee should meet and agree to a Functional Behavioral Assessment (FBA) to determine the cause of behavior and make recommendations on interventions for the student's Behavior Intervention Plan (BIP). This successful approach is underutilized with regard to nonattendance. The vast majority of special education youth DRTx has met facing FTAS charges were sent to courts by schools who had never even tried conducting an FBA on their school nonattendance or amended any part of their IEP to address the nonattendance. It appears that many schools do not even think to utilize these approaches because they regard nonattendance as a court issue. However, in cases where schools utilize these tools, student attendance often improves without court intervention.

Dealing with causes of court referral for students with disabilities is even more essential in FTAS cases because of the obstacles students with disabilities face in court. Once students with disabilities arrive in court, many are further disadvantaged in understanding the court process, their basic rights, how to enter a plea, or attempt to represent themselves without a lawyer. Courts that hear FTAS cases are not even equipped with mechanisms to evaluate a student with a disability's ability to understand the charges against them or contribute to their defense. Students with disabilities are also often unable to comply with standard plea deals offered in many courts because of their disabilities. But without the ability to understand the process, many accept such plea deals nonetheless, only to risk owing higher fines or being found in contempt.

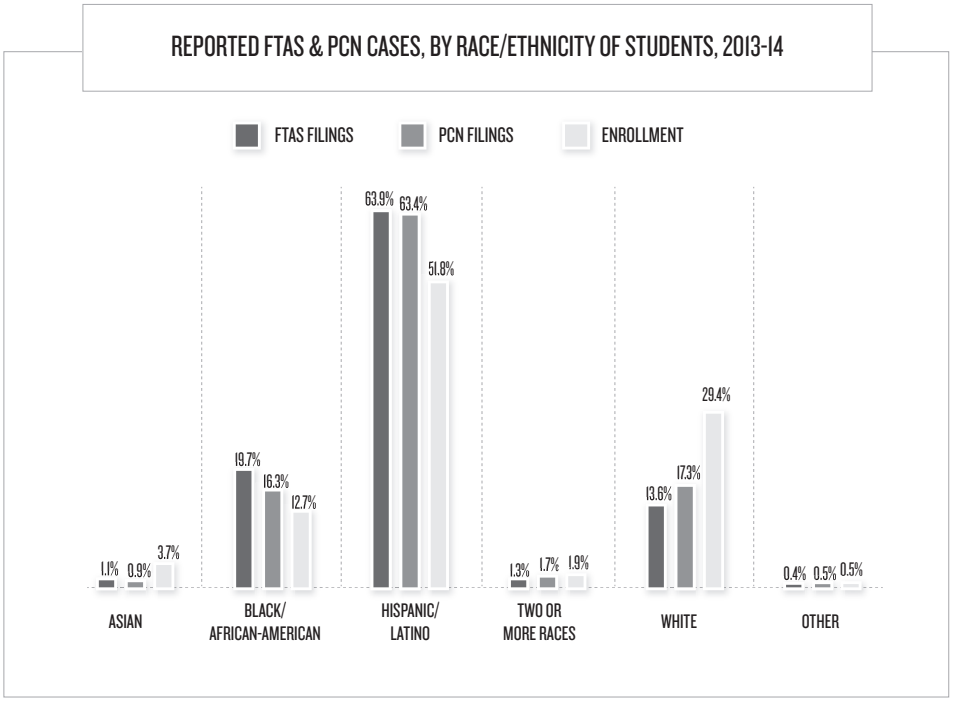
353 *Enrollment in Texas Public Schools, 2013-14*, Texas Education Agency (November 2014), *available at* http://tea.texas.gov/acctres/enroll_index.html.

354 Since 2004, TEA has utilized Performance-Based Monitoring Analysis System (PBMAS) as a key mechanism to fulfill its monitoring of public schools. Within PBMAS, Special Education Indicator No. 16 measures the percent of enrolled students who receive special education services. TEA assigned this Indicator a "performance level" of 8.5 percent. In other words, every school district and charter school is expected to identify no more than 8.5 percent of its enrollment as children with disabilities. During annual monitoring, TEA awards its best possible score – PL 0 – to schools that serve 8.5% or less of their students as eligible for special education. For higher percentages, TEA awards a PL 1-3. The larger the score the more scrutiny the school district or charter school is subject to by TEA to reach the performance level.

355 *See* 34 C.F.R. § 300.324 (a)(2)(i).

III. African-American and Hispanic Students are Disproportionately Sent to Court for Truancy

Given the fact that students of color are disproportionately disciplined and referred to court for school-based misbehavior, Texas Appleseed also requested data from TEA on the race/ethnicity of students sent to court for truancy. In the data reported to TEA, both African-American students and Hispanic students were disproportionately represented in the number of truancy court referrals compared to their representation in the student body. In the 2013-14 school year, almost 20 percent of reported FTAS court referrals statewide involved African-American students, despite the fact that African-American students represent less than 13 percent of the student body statewide.[356] The disparities for Hispanic students were even greater, with 64 percent of reported FTAS cases involving Hispanic students, despite the fact that they represent only 52 percent of the student body.[357] Similar disparities exist in PCN cases as well.[358]



Texas Appleseed also asked the 20 largest districts to disclose the race/ethnicity of the students against whom they had filed FTAS complaints in recent school years. Twelve districts provided this data. Because the statewide data suggests African-American and Hispanic students are being disproportionately sent to court, and these groups have been disproportionately affected by other school disciplinary actions, the analysis that follows focuses on these two racial/ethnic groups, as compared with white students.

356 Statewide PEIMS Data, *supra* note 320.

357 *Id.*

358 *Id.*

FTAS CASES IN LARGE SCHOOL DISTRICTS, BY RACE/ETHNICITY OF STUDENTS, 2012-13[359]

DISTRICT	FTAS FILINGS, AFRICAN-AMERICAN	ENROLLMENT, AFRICAN-AMERICAN	FTAS FILINGS, HISPANIC	ENROLLMENT, HISPANIC	FTAS FILINGS, WHITE	ENROLLMENT, WHITE	FTAS FILINGS, OTHER RACES/ ETHNICITIES	ENROLLMENT, OTHER RACES/ ETHNICITIES
Dallas ISD	42.2%	23.7%	53.9%	69.4%	2.5%	4.8%	1.4%	2.2%
Cypress-Fairbanks ISD	20.6%	16.3%	55.4%	43.5%	20.6%	28.9%	3.4%	11.2%
Northside ISD	5.7%	6.1%	80.0%	68.7%	11.1%	19.1%	3.1%	6.3%
Austin ISD	11.4%	8.7%	76.0%	60.4%	12.6%	24.8%	0.0%	6.1%
Fort Worth ISD*	26.8%	22.8%	*	60.5%	71.6%*	13.3%	1.6%	3.4%
Fort Bend ISD	53.3%	29.1%	32.9%	26.5%	6.1%	19.2%	7.7%	25.2%
North East ISD	0.0%	7.2%	80.7%	56.1%	14.0%	29.9%	5.3%	6.9%
Aldine ISD	38.1%	25.6%	58.6%	70.1%	2.0%	2.0%	1.2%	2.2%
Arlington ISD	28.2%	23.5%	51.2%	43.9%	18.7%	23.8%	1.8%	8.9%
Plano ISD	22.1%	11.3%	34.0%	22.6%	39.3%	41.3%	3.4%	24.8%
San Antonio ISD	3.9%	6.3%	94.1%	91.1%	1.7%	2.0%	0.3%	0.6%
Lewisville ISD	8.9%	9.1%	57.8%	26.8%	26.7%	49.6%	6.7%	14.5%

* Fort Worth ISD reported White and Hispanic students as a single group for tracking FTAS filings.

This data demonstrates that in most large districts represented, a disproportionately high number of students of color are being charged with FTAS, compared with enrollment. Most districts represented—but not all—filed a significantly higher percentage of cases against African-American students, as compared with their representation in the student body. And most—but not all—districts represented filed a significantly higher percentage of cases against Hispanic students, as compared with their representation in the student body. But the picture that this data paints is more complicated than the statewide data suggests, since the degree and nature of the racial disparities vary significantly across districts. Some present very large racial disparities, while others show much smaller disparities than are seen in other school discipline contexts. Some districts have disparities in truancy filings against African-American students but not Hispanic students, and vice versa. However, on the whole, most of the districts that reported data have significant work to do in order to eliminate the racial disparities in their FTAS filings.

Taken together, the data showing FTAS cases are being filed disproportionately against special education students and students of color raises major concerns. It is already well established that these groups of students are most vulnerable to being pushed out of

359 Large District Data, *supra* note 290.

the classroom through exclusionary discipline and arrest, making them more likely to enter the school-to-prison pipeline. This documented risk indicates a need for targeted interventions, rather than court referrals, to increase school engagement and put students on track to graduate and succeed. Instead, the risk for poor outcomes for these students is compounded by the fact that they are being sent to court more frequently.

The fact that many districts are not tracking the special education status and race/ethnicity of the students they send to court for FTAS is troubling as well. This suggests that many districts are not making attempts to identify the students most at risk for not attending school and dropping out. When data is collected, it can be used to identify students at risk of truancy and dropout at an early stage, and intervene before those students have become disengaged from school.[360] Successful programs that target students with attendance problems use data to identify those students and then connect them with resources to improve their attendance.[361] But, districts can only implement targeted data-driven interventions if they collect the necessary data and understand the nature of the problem.

IV. Negative Consequences from Student Court Referrals

The fact that African-American, Hispanic, and special education students are being sent to court for FTAS is even more troubling when it is considered in the context of a compelling and growing body of research that suggests referral to court, in and of itself, can make dropout more likely and increase the likelihood of future juvenile and adult criminal justice system involvement rates. Research shows that court involvement—even one single court appearance—can increase the likelihood of dropping out.[362] Court involvement may have a more negative impact on youth than arrest has, in terms of increasing the risk of dropout.[363] Even more alarming, the likelihood of dropout is magnified in youth who have had no previous juvenile justice system involvement.[364] **In short, sending a child—particularly a child who has had no prior exposure to the justice system—to court for a relatively minor problem like missing school may actually increase that child's likelihood of dropping out, rather than improve his or her chances of graduating.**

Additionally, court referrals for minor offenses like truancy may increase the risk of future juvenile justice system involvement.[365] Research of youth charged with low-level crimes has demonstrated a link between court involvement and future juvenile justice system involvement,[366] with formal justice system processing itself actually harming the youth and increasing the likelihood of future justice system involvement.[367] As the length of court involvement increases, so does the likelihood that a youth will enter the juvenile

360 *See* Chang et al., *supra* note 4.

361 *See id.*

362 Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23(4) Justice Quarterly 462, 463 (Dec. 2006) *available at* http://www.masslegalservices.org/system/files/library/H.S.ed_and_arrest_-_ct_involvement_study_by_Sweeten.pdf.

363 *Id.* at 473-74.

364 *Id.* at 477-78.

365 Nat'l Standards, *supra* note 47, at 24 ("Involvement in the court system for a status offense can lead to deeper justice system involvement.").

366 *Id.* at n. 18 (citing A. Petrosino, et al., *Formal System Processing of Juveniles: Effects on Delinquency*, Campbell Systematic Reviews (2010)).

367 *Id*. *supra* note 47, at 52.

justice system.[368] And as intensity of juvenile justice system intervention intensifies so does the likelihood of involvement in the adult criminal justice system.[369] Research has consistently shown community-based approaches that divert children from court are more effective to prevent future juvenile justice and criminal justice system involvement.[370]

Truancy is a status offense, that is, an offense only prohibited by law because of the age of the offender. Status offenses, like truancy, running away, or violating curfew, are different from other delinquent behaviors because the behavior is not criminalized for adults but just for youth of a certain age. The *National Standards for the Care of Youth Charged with Status Offenses*, recently promulgated by the Coalition for Juvenile Justice with the input of juvenile justice experts and practitioners from around the country, advocates that status offenses be dealt with outside of the court system whenever possible.[371] The Standards explain that "[y]outh alleged to have committed status offenses who are formally processed through the court system may be more likely to re-enter the justice system and experience other negative individual and family outcomes, such as increased tension between family members or negative educational or mental health outcomes."[372]

Additionally, Texas still allows for the detention of youth who have been truant under certain circumstances, as discussed in Chapter 2. Since the 1970's, state courts and federal policymakers have sought to distinguish youth who commit delinquent offenses from youth who commit status offenses, given that the latter are non-criminal infractions that would not be offenses but for the youth's age.[373] In 1974, Congress affirmed and encouraged state trends toward decriminalizing status offenses by including in the Juvenile Justice and Delinquency Prevention Act (JJDPA), the Deinstitutionalization of Status Offenders as a central component.[374] Essentially, this meant that states who receive federal funds under the JJDPA cannot incarcerate status offenders.[375] One key exception has developed: When a youth violates a valid court order (VCO) that is in place as a result of a status offense, he or she may be found in contempt of the order and be confined.[376] In such a case, state courts technically are sending the youth to detention for violation of the court order—not the underlying status offense. So, Texas juvenile courts may detain youth for contempt of a court order even when the contempt arises from a status offense like truancy, despite the prohibition in the JJDPA.

However, the detention of a juvenile for a status offense runs completely counter to the available research about the effect that detention may have on that juvenile. Both research and practice demonstrate that responding to children at home and in their communities is "more cost effective, developmentally appropriate, and ethical than

368 *Id.*

369 Uberto Gatti, et al., *Iatrogenic effect of juvenile justice*, 50:8 J. of Child Psychology and Psychiatry 991, 995 (2009) *available at* https://www.acgov.org/probation/documents/EffectsofJuvyJusticeonYouth.pdf.

370 *See* Allina Boutilier & Marcia Cohen, U.S. Dept. of Justice Office of Juvenile Justice and Delinquency Prevention, Diversion Literature Review 3 (2009) *available at* http://www2.dsgonline.com/dso/Diversion.pdf ("Research has *also* shown that juvenile justice and criminal justice systems may actually delay development and disrupt the natural engagement with families, school, and work, which will reduce the likelihood of the youth's successful transition to adulthood."); *see also* Salsich & Trone, *supra* note 293, at 4-6.

371 Nat'l Standards, *supra* note 47, at 51.

372 *Id.*

373 *Id.* at 10-11.

374 *Id.* at 11.

375 *Id.*

376 *Id.*

incarceration when a young person poses no risk to public safety."[377] In fact, spending time in a juvenile correctional facility is likely to exacerbate whatever problems a youth may have.[378] Incarcerating youth—often in facilities that also house youth accused of more serious offenses—"increases the likelihood that they will be converted from today's status offenders to tomorrow's serious offenders, instead of being shepherded toward productive lives as young adults."[379] Additionally, the confinement of status offenders increases the difficulty children have returning to their homes and schools, and increases the likelihood of recidivism.[380] Many in-home and community-based interventions are more cost-effective, provide better options for families, and contribute to lower recidivism rates.[381]

Overall, the research shows that court involvement, particularly for a relatively minor offense like truancy, makes negative outcomes like dropout and further justice system involvement more likely. And yet, Texas relies on court intervention almost exclusively to address truancy. Furthermore, Texas schools are sending African-American, Hispanic, and special education students to court at a greater rate, compounding the risk that they will drop out and enter the justice system. To increase the likelihood that these students will graduate and succeed, policymakers must develop a new approach to the way that Texas handles truancy.

377 Salsich & Trone, *supra* note 293, at 4; *see also* Nat'l Standards, *supra* note 47, at 12.

378 Salsich & Trone, at 4.

379 Marc Levin & Derek Cohen, Texas Public Policy Foundation, Kids Doing Time for What's Not a Crime: The Over-Incarceration of Status Offenders 3 (2014).

380 *Id.*

381 *Id.*

CHAPTER 7

CONCLUSIONS & POLICY RECOMMENDATIONS

Truancy in both elementary and secondary grades is associated with negative outcomes for students, and in particular, is a risk factor for dropout. Yet, truancy is most often due to a combination of personal, family and school factors that have either prevented a child from attending school or caused the child to disengage from school. The previously held belief that "playing hooky" is the reason for chronic absence has been debunked by research. Hence, effective interventions will break down the barriers to a child's school attendance by addressing the individual factors that are leading to a child's absences. Successful programs to reduce truancy, like several found in Texas, generally provide an individualized assessment of the barriers to each student's school attendance; encourage collaboration between students, families, schools, and the community; and connect students to resources to overcome barriers.

Rather than encouraging individualized interventions, current Texas law requires students who are truant to be referred to court after a certain number of absences, where the case is most often handled as a misdemeanor in adult criminal court. A school is required by law to file charges against a student (or the student's parent, or both) if the student misses 10 days or parts of days in six months; a court referral following three absences in four weeks is within the school's discretion. Justice (JP) courts and municipal courts, as well as juvenile courts, have jurisdiction over the offense of truancy under certain circumstances, but these cases are overwhelmingly adjudicated as Class C misdemeanors in the JP and municipal courts.

The JP and municipal courts lack the protections of juvenile courts, such as the automatic appointment of counsel. Without counsel advocating for them, children's constitutional rights are consistently violated. Conviction of Failure to Attend School (FTAS) carries a potential penalty of a $500 fine plus court costs, as well as other potential punishments like community service, special program participation, and even court-ordered dropout and GED attainment. More than 6,000 students were ordered to take the GED and failed the test over the course of three school years. Collateral consequences of an FTAS

charge may include difficulties obtaining employment, applying for college, and serving in the military.

The frequency with which FTAS charges are filed against Texas students cannot be overstated. Texas prosecutes a staggering number of children for FTAS, with an estimated 115,000 cases filed annually in recent years—much greater than the entire juvenile court docket. Texas prosecutes more than twice the number of truancy cases as are filed in the juvenile courts of all other states combined. While this huge number of cases filed demonstrates Texas' reliance on the court system to address truancy, school districts' reliance on the court system is also evidenced by the fact that more than a third of all reported cases were filed for as few as three unexcused absences. A meaningful intervention is impossible in such a short time frame. Review of the truancy interventions provided in a number of school districts confirms that many are not attempting any meaningful intervention with students and families before sending them to court.

While an estimate of the total number of FTAS cases is possible through statewide data, it is more difficult to discern what is happening on an individual school district level. The data that school districts are required to report to the Texas Education Agency (TEA) about their total court filings for truancy is woefully incomplete, with many districts underreporting their court referrals and others completely failing to report court referrals at all. Data requests to individual school districts confirm that the majority of school districts are failing to keep the type of data that would allow them to effectively address the truancy problems facing their students. Based on the data that large districts were able to provide, it is apparent that tremendous variation exists among the largest school districts' rates of truancy court referrals. Some large districts send a very large number of students and parents to court each year, while some file only a handful of cases.

On the whole, court is an ineffective intervention for truancy that provides a one-size-fits-all punitive approach, rather than the individualized interventions needed to remove students' attendance barriers. As a result, attendance rates and graduation rates are not necessarily higher in those districts that send more students to court. Additionally, the overwhelming majority of students prosecuted for FTAS are economically disadvantaged students. Four in five students referred to court statewide for truancy are economically disadvantaged, despite the fact that only three in five of the statewide enrollment are economically disadvantaged. The fact that economically disadvantaged children are disproportionately charged with truancy is cause for great concern, particularly given the finding that most cases result in a fine. These students and their families are the ones that will struggle the most to pay the fines. Fining children and their families does nothing to address the reasons a student is repeatedly absent, and in many cases exacerbates an already very difficult financial situation.

Additionally, special education, African-American, and Hispanic students are being disproportionately sent to court for FTAS. In recent years, between 13 percent and 15 percent of reported truancy cases statewide were filed against special education students, despite the fact that these students made up only 8.5 percent of the total student enrollment. Furthermore, during the 2013-14 school year, about 20 percent of reported truancy cases were filed against African-American students despite their representing less than 13 percent of the student body; almost 64 percent of reported truancy cases were filed against Hispanic students despite their representing only about 52 percent

of the student body. These student populations are already more vulnerable to negative outcomes like dropout and juvenile justice system involvement due to the fact that they are disproportionately suspended and expelled. Their disproportionate referral to court for truancy compounds these risks, given what research shows about the connection between court involvement and dropout and juvenile justice system involvement.

Texas must do better by its students. The state must move away from a system that sends 115,000 cases—disproportionately filed against low-income students, special education, African-American, and Hispanic students—to adult criminal court each year, doing nothing to help improve students' school attendance. Interventions that occur outside of the court system will provide the greatest benefit, and the state must move toward a system where schools, students and families solve truancy problems, and court is used only as a last resort in truancy cases. Most often, truancy can be addressed at the school level without any court referral needed, improving students' school attendance and keeping them on track to graduate.

Based on the findings in this report, Texas Appleseed recommends the following policy changes.

Legislative Recommendations

1. Decriminalize Failure to Attend School & Parent Contributing To Nonattendance

   Truancy should no longer be adjudicated as a crime in the adult criminal courts. To achieve this, the Class C misdemeanors of Failure to Attend School (FTAS) and Parent Contributing to Nonattendance (PCN) should be eliminated from the Texas Education Code. Truancy would then be treated as a Child in Need of Supervision (CINS) offense, and the current fines and criminal convictions associated with the offense would be eliminated.

2. Make All Court Referrals Discretionary

   Schools should not be mandated by law to file a complaint against a student for 10 or more absences in a six-month period, but should retain the discretion to determine whether the court referral is appropriate in each case after at least as many absences. For example, if an intervention is improving a student's attendance, but the student is still occasionally absent, the school may decide that continued intervention is more helpful than court referral. In such a case, court referral may put the student at odds with the school and make the student entirely unreceptive to further intervention.

   Furthermore, the option to file a complaint against a student after three unexcused absences in a four-week period should be eliminated. Rather than court referral, three unexcused absences should trigger truancy intervention measures.

3. Require Effective School-Based Truancy Prevention & Intervention

   A referral to court should only be used as a last resort. To accomplish this, the law should require that the truancy prevention and intervention measures employed by school districts are meaningful and effective. School districts should be required to

employ a system of graduated or tiered interventions triggered by a certain number of unexcused absences. The interventions should increase in intensity if the student continues to accumulate unexcused absences despite the interventions, and should be based on best practices and diversion programs that have proven successful. If the graduated interventions fail to improve a student's attendance, the school district could then choose to refer the child to juvenile court.

4. Require Development of Standards for School-Based Interventions & Submission of Truancy Intervention Plans

The Texas Education Agency (TEA) should be required to develop standards for the types of truancy prevention and intervention measures attempted before a court referral is made. School districts that fail to implement interventions meeting these standards, as well as districts that send a high percentage of students to court for truancy, should then be required to submit school-based truancy intervention plans to TEA for their approval to reduce the number of court referrals.

5. Prohibit the Use of Detention or Confinement as a Result of Truancy

The law should be amended to eliminate the Valid Court Order exception, so that the juvenile courts are prohibited from detaining any juvenile as a result of contempt stemming from an underlying truancy charge. Additionally, so long as truancy cases are adjudicated in JP and municipal courts, those courts should be prohibited from confining any individual, even those who have reached the age of criminal responsibility, for contempt of an order stemming from a truancy charge.

6. Prohibit Suspension as Punishment for Truancy or Nonattendance

Current Texas law allows for schools to suspend children to punish them for truancy or other categories of nonattendance (cutting class, leaving campus, etc.). School districts are sending students to in-school suspension or out-of-school suspension for being tardy to class or missing class or school entirely. Suspension does nothing to address the underlying issues with a truant student and fails to improve attendance, and schools should not be permitted to use it to punish truancy or absence from school or class.

7. Prohibit Court-Ordered Dropout as a Consequence for Truancy

Enforcement of compulsory school attendance laws should be designed to encourage students to regularly attend school—not push them out of school entirely when they have attendance problems. The law should be amended so that courts cannot order students charged with truancy to unenroll from school and take the GED. This authority is leading to thousands of dropouts annually. Such an order is particularly inappropriate for special education students, whose passage of the GED is even less likely than their peers.

Texas Education Agency Recommendations

1. Require Schools to Produce Data

School districts are already required to report truancy data to TEA through the Public Education Information Management System (PEIMS), and TEA may factor a district's failure to report data into its accreditation status, which TEA is responsible for determining. Given this authority, TEA should ensure that school districts are fully reporting data in a timely manner on truancy cases as required, and downgrade the status of those districts that fail to report complete data.

2. Develop & Highlight Best Practices

TEA already maintains a Best Practices Clearinghouse on a number of topics, one of which is dropout prevention. Given the strong link between truancy and dropout, TEA should include best practices from around the state addressing truancy in its Clearinghouse, so that school districts can learn from each other about the most effective ways to divert students from court while improving attendance.

School District Recommendations

1. Recognize the Critical Role of Schools in Addressing Truancy

Regardless of whether truancy is decriminalized, school districts and campuses should undertake efforts to understand and address the truancy problems in their districts. A first step is to collect data about student absenteeism and truancy, including demographic data on the students who are absent and truant, as well as data on the effectiveness of school-based interventions. This data should be systematically collected and analyzed by the district, as well as made publicly available for parents and other interested parties. Schools should also map the resources and programs currently available for students within the school setting, as well as in the broader community, to determine what resources are already in place to address truancy and what needs improvement.

2. Develop Truancy Intervention Measures that Provide Individual and Family-Based Assessments Within a Tiered or Graduated Framework

School districts should develop meaningful truancy intervention measures based on best practices. At the lowest tier, schools need to implement truancy prevention measures, such as educating students and parents on the importance of school attendance and the links between attendance and dropout. When students accumulate unexcused absences, individualized interventions should begin that involve the student's family, such as a parent and student conference to develop solutions to the attendance problems, and an attendance contract outlining the school's, student's and family's responsibilities. For those students who do not respond to low-level intervention, more intensive interventions that include individual and family assessments to identify the underlying causes of each student's absences from school may be necessary. These students should then be referred to appropriate services. In order to connect students with the services that they need, school districts should harness relationships with community service

providers and other existing resources. Additionally, school districts should pay special attention to students with disabilities who already receive special education services and should work to identify those students who would benefit from such services.

3. Avoid the Use of Suspension as Punishment for Nonattendance

Sending students to in-school suspension or out-of-school suspension for being tardy to class or missing class or school does nothing to address the underlying issues with a truant student and fails to improve attendance. Schools should not use suspension to punish truancy, absence, or tardiness from class but should instead devise sanctions, where appropriate, that require more learning, not less.

4. Evaluate Truancy Intervention Measures

Essential to any truancy intervention program or measure being implemented in a school district is an evaluation of the outcomes to determine whether the measures are effective. Primary to tracking effectiveness is collecting data on a student's attendance, but school districts should track other relevant variables, such as a student's grades, course failures, grade retention, and graduation or dropout, to see how well students are actually progressing.

5. Refer Students to Court Only as a Last Resort

School districts and campuses should intervene to address truancy issues with children and their families directly, rather than relying on law enforcement or the court system to address their truancy problems. Filing a petition in court should be used only as a last resort, after the school's intervention measures fail to improve a student's attendance. This requires the development of meaningful interventions as discussed in the previous recommendation, but also a commitment on the part of the school administrators to keep kids out of court whenever possible and to redesign the interventions if they are failing.

Additionally, court referral should not signal to a school that the schools' involvement is no longer necessary. Schools should be particularly aware of the resources and services that a student who has been referred to court needs in the school setting, since these students may be the ones experiencing the most serious problems.

6. Adopt Positive, Evidence-Based Approaches to School Discipline and Improve School Climate

Punitive discipline models are expensive and ineffective and can exacerbate truancy problems by making students feel isolated and disengaged. Districts should adopt positive disciplinary models like PBIS and restorative justice that have been shown to improve student behavior across the board and reduce reliance on exclusionary discipline, hence improving student engagement and reducing truancy.

APPENDIX

Methodology

Texas Appleseed collected data from numerous sources for this report. In January 2014, Texas Appleseed submitted a Public Information Act request to the Texas Education Agency (TEA) seeking data regarding disciplinary referrals for truancy for the 2010-11, 2011-12, and 2012-13 school years. Around the same time, Texas Appleseed also submitted a Public Information Act request to the 20 largest school districts in the state requesting data concerning the total number of court referrals for truancy, as well as demographic and other data (i.e., race/ethnicity, special education status, and eligibility for free/reduced lunch) of the students and parents referred to court. As part of that request, Texas Appleseed also requested information from those districts concerning any truancy prevention and intervention programs conducted by the districts prior to court referral. In November 2014, Texas Appleseed requested additional data from TEA concerning the total disciplinary referrals for truancy on a statewide basis for the 2011-12, 2012-13 and 2013-14 school years, as well as demographic and other data (i.e., race/ethnicity, special education status, and eligibility for free/reduced lunch) of the students. Additional data included in this report was obtained from the Texas Office of Court Administration and the Texas Juvenile Justice Department.

In addition to the data obtained through Public Information Act requests, Texas Appleseed also observed court in at least 15 JP courts in 10 counties across the state. Appleseed had countless in-person and phone conversations, including many in-depth interviews, with students and parents of students who were prosecuted for truancy. Appleseed also regularly consulted with attorneys who were representing students in truancy prosecutions. Appleseed conducted in-person and phone interviews with individuals associated with many of the most promising truancy intervention programs across the state. Finally, the authors reviewed the available research and literature reviews regarding truancy, including its causes and successful interventions.

Additional Data for Chapter 4

CASES REPORTED TO TEA THROUGH PEIMS VS. CASES REPORTED TO TEXAS APPLESEED, 2012-13

DISTRICT	TRUANCY CASES REPORTED TO TEXAS APPLESEED	TRUANCY CASES REPORTED TO TEA	PCN CASES REPORTED TO TEXAS APPLESEED	PCN CASES REPORTED TO TEA
San Antonio ISD	6,273	1,349	6,059	910
Dallas ISD	23,100	8,969	6,345	1,554
Houston ISD	*	691	*	176
Northside ISD	3,368	0	4,719	1
Fort Bend ISD	4,378	5,690	217	59
Pasadena ISD	*	2,454	*	314
Cypress-Fairbanks ISD	1,631	0	2,022	106
Katy ISD	*	0	*	0
Fort Worth ISD	1,471	671	1,006	417
Klein ISD	521	150	841	26
Brownsville ISD	506	250	629	18
El Paso ISD	*	8	*	0
Arlington ISD	817	1	152	0
Plano ISD	*	0	*	0
Aldine ISD	244	127	332	222
Austin ISD	249	247	26	27
Lewisville ISD	45	43	62	60
North East ISD	57	58	7	7
Conroe ISD	**	0	**	0
Garland ISD	***	4,054	***	868

* Did not separate FTAS & PCN cases in report to Texas Appleseed.

FTAS AND PCN PROSECUTIONS IN THE 20 LARGEST SCHOOL DISTRICTS, 2011-12

DISTRICT	FTAS FILINGS	PCN FILINGS	FTAS + PCN FILINGS	ENROLLMENT	FTAS + PCN FILING RATE	FTAS ONLY FILING RATE
Dallas ISD	24,628	5,775	30,403	157.575	19.29%	15.63%
San Antonio ISD	4,505	4,273	8,778	54,394	16.14%	8.28%
Northside ISD	3,130	4,313	7,443	98,110	7.59%	3.19%
Fort Bend ISD	5,059	137	5,196	69,449	7.48%	7.28%
Houston ISD	*	*	15,100	203,066	7.44%	*
El Paso ISD	*	*	3,624	64,214	5.64%	*
Klein ISD	705	1,118	1,823	46,002	3.96%	1.53%
Pasadena ISD	*	*	1,898	52,942	3.59%	*
Cypress-Fairbanks ISD	1,758	1,888	3,646	107,960	3.38%	1.63%
Katy ISD	*	*	2,088	62,414	3.35%	*
Fort Worth ISD	1,298	800	2,098	83,109	2.52%	1.56%
Brownsville ISD	612	471	1,083	49,655	2.18%	1.23%
Plano ISD	*	*	522	55,659	0.94%	*
Aldine ISD	82	141	223	64,300	0.35%	0.13%
Lewisville ISD	62	102	164	51,920	0.32%	0.12%
Austin ISD	188	29	217	86,528	0.25%	0.22%
North East ISD	93	17	110	67,439	0.16%	0.14%
Arlington ISD	**	**	**	64,703	**	**
Conroe ISD	***	***	***	52,664	***	***
Garland ISD	****	****	****	58,151	****	****

* Only provided total number of court filings, not broken down between FTAS and PCN filings.

** Did not provide data for 2011-12 and 2010-11.

***Does not keep districtwide data on the number of court filings.

**** Did not respond to open records request.

FTAS AND PCN PROSECUTIONS IN THE 20 LARGEST SCHOOL DISTRICTS, 2010-11

DISTRICT	FTAS FILINGS	PCN FILINGS	FTAS + PCN FILINGS	ENROLLMENT	FTAS + PCN FILING RATE	FTAS ONLY FILING RATE
San Antonio ISD	5,211	4,198	9,409	55,116	17.07%	9.45%
Fort Bend ISD	8,123	262	8,385	68,948	12.16%	11.78%
Houston ISD	*	*	21,019	204,245	10.29%	*
Northside ISD	2,485	3,323	5,808	95,581	6.08%	2.60%
Pasadena ISD	*	*	2,735	52,218	5.24%	*
Klein ISD	843	923	1,766	45,310	3.90%	1.86%
Katy ISD	*	*	2187	60,803	3.60%	*
Cypress-Fairbanks ISD	1,702	1,921	3,623	106,097	3.41%	1.60%
Brownsville ISD	765	826	1591	49,879	3.19%	1.53%
Fort Worth ISD	1,629	518	2,147	81,651	2.63%	2.00%
El Paso ISD	*	*	1351	64,330	2.10%	*
Plano ISD	*	*	548	55,568	0.99%	*
Aldine ISD	165	167	332	63,154	0.53%	0.26%
Lewisville ISD	68	56	124	51,484	0.24%	0.13%
North East ISD	147	5	152	66,604	0.23%	0.22%
Austin ISD	111	14	125	85,697	0.15%	0.13%
Arlington ISD	**	**	**	64,484	**	**
Conroe ISD	***	***	***	51,170	***	***
Dallas ISD	****	****	****	157,162	****	****
Garland ISD	*****	*****	*****	57,833	*****	*****

* Only provided total number of court filings, not broken down between FTAS and PCN filings.

** Did not provide data for 2011-12 and 2010-11.

***Does not keep districtwide data on the number of court filings.

****Data not collected for 2010-11.

***** Did not respond to open records request.

Additional Data for Chapter 5

REPORTED FTAS & PCN CASES FILED AGAINST ECONOMICALLY DISADVANTAGED STUDENTS & FAMILIES, 2011-2014

	2013-14	2012-13	2011-12
% FTAS Cases Filed Against Econ. Disad. Students	79.4%	78.5%	77.4%
% PCN Cases Filed Against Parents of Econ. Disad. Students	84.6%	83.2%	81.7%
% Enrollment Econ. Disadvantaged	60.2%	60.4%	60.4%

FTAS CASES FILED AGAINST STUDENTS ELIGIBLE FOR FREE/REDUCED LUNCH, 2011-12

DISTRICT	FTAS CASES, F/R LUNCH	FTAS CASES, NOT F/R LUNCH	PERCENT FTAS CASES, F/R LUNCH	ENROLLMENT, ECONOMICALLY DISADVANTAGED	TOTAL ENROLLMENT	PERCENT ENROLLMENT ECONOMICALLY DISADVANTAGED
Cypress-Fairbanks ISD	1,200	558	68.3%	52,394	107,960	48.6%
Northside ISD	2,340	790	74.8%	52,438	98,110	53.7%
North East ISD	62	31	66.7%	30,436	67,439	45.3%
Aldine ISD	63	19	76.8%	54,602	64,300	85.1%
San Antonio ISD	4,334	171	96.2%	50,336	54,394	92.7%
Lewisville ISD	40	22	64.5%	14,438	51,920	27.9%

PCN CASES FILED AGAINST PARENTS OF STUDENTS ELIGIBLE FOR FREE/REDUCED LUNCH, 2011-12

DISTRICT	PCN CASES, F/R LUNCH	PCN CASES, NOT F/R LUNCH	PERCENT PCN CASES, F/R LUNCH	ENROLLMENT, ECONOMICALLY DISADVANTAGED	TOTAL ENROLLMENT	PERCENT ENROLLMENT, ECONOMICALLY DISADVANTAGED
Cypress-Fairbanks ISD	1,309	579	69.3%	52,394	107,960	48.6%
Northside ISD	3,228	1,085	74.8%	52,438	98,110	53.7%
North East ISD	16	1	94.1%	30,436	67,439	45.3%
Aldine ISD	110	31	78.0%	54,602	64,300	85.1%
San Antonio ISD	4,121	152	96.4%	50,336	54,394	92.7%
Lewisville ISD	75	27	73.5%	14,438	51,920	27.9%

REPORTED FTAS & PCN CASES RESULTING IN A FINE

	2013-14	2012-13	2011-12
FTAS Cases Filed for Three Absences	54.6%	58.3%	58.3%
FTAS Cases Filed for 10 Absences	63.3%	64.0%	64.4%
Total FTAS Cases	60.5%	61.7%	62.0%
FTAS Cases Against Econ. Disad. Students	61.6%	62.3%	62.1%
Total PCN Cases	67.5%	66.7%	73.2%
PCN Cases Against Parents of Econ. Disad. Students	68.2%	68.5%	73.8%

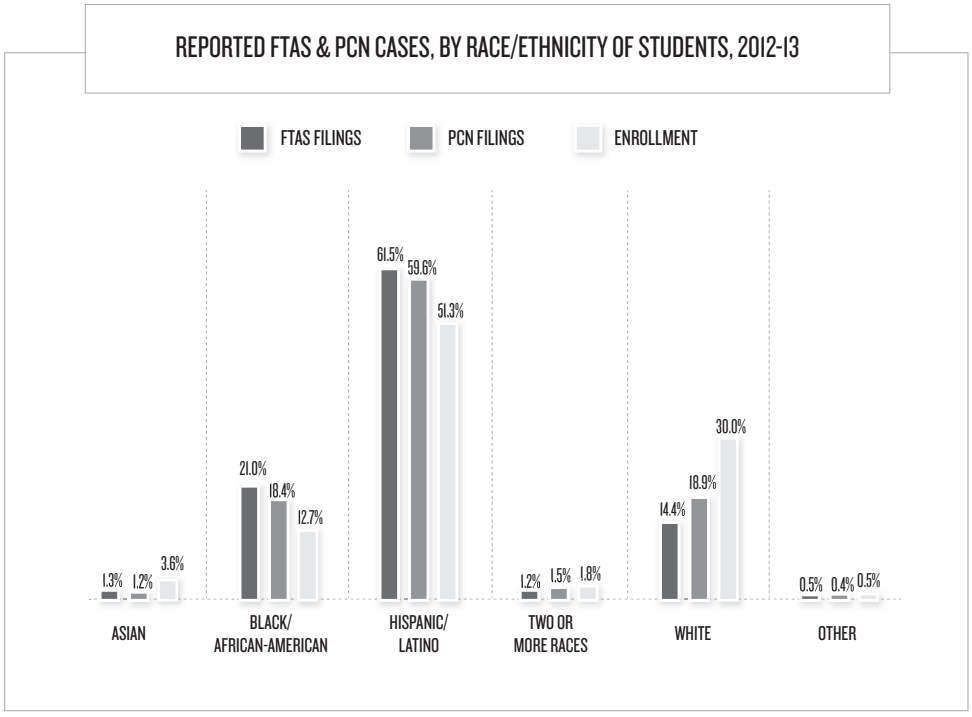
Additional Data For Chapter 6

FTAS & PCN FILINGS, SPECIAL EDUCATION STUDENTS, 2011-12

DISTRICT**	FTAS CASES, SPEC ED	FTAS CASES, NOT SPEC ED	FTAS CASES, % SPEC ED	PCN CASES, SPEC ED	PCN CASES, NOT SPEC ED	PCN CASES, % SPEC ED	ENROLLMENT, % SPEC ED
Cypress-Fairbanks ISD	155	1,603	8.8%	170	1,718	9.0%	7.2%
Northside ISD	545	2,585	17.4%	705	3,608	16.3%	11.5%
North East ISD	17	76	18.3%	4	13	23.5%	9.0%
Aldine ISD	14	68	17.1%	17	124	12.1%	6.9%
San Antonio ISD	739	3,766	16.4%	690	3,583	16.1%	10.3%
Lewisville ISD	14	48	22.6%	21	81	20.6%	9.6%
Brownsville ISD*	47	424	10.0%	*	*	*	10.3%

* FTAS cases and PCN cases reported together.

**Fort Bend ISD and Plano ISD only reported Special Education data for the 2012-13 school year.



FTAS CASES FILED BY RACE OF STUDENTS, 2011-12

	FTAS FILINGS, AFRICAN-AMERICAN	ENROLLMENT, AFRICAN-AMERICAN	FTAS FILINGS, HISPANIC	ENROLLMENT, HISPANIC	FTAS FILINGS, WHITE	ENROLLMENT, WHITE	FTAS FILINGS, OTHER RACES/ ETHNICITIES	ENROLLMENT, OTHER RACES/ ETHNICITIES
Dallas ISD	34.5%	24.4%	43.6%	68.7%	2.1%	4.7%	19.8%	2.1%
Cypress-Fairbanks ISD	20.8%	15.5%	55.1%	35.0%	19.6%	37.8%	4.6%	11.8%
Northside ISD	5.5%	6.1%	81.4%	68.3%	10.7%	19.5%	2.5%	6.1%
Austin ISD	14.3%	9.1%	74.5%	60.5%	11.2%	24.4%	0.0%	6.0%
Fort Worth ISD	39.5%	23.2%	*	59.8%	58.2%*	13.7%	2.3%	3.4%
Fort Bend ISD	51.8%	29.4%	36.4%	26.2%	6.5%	19.6%	5.3%	24.7%
North East ISD	9.7%	7.1%	67.7%	55.2%	14.0%	31.0%	8.6%	6.8%
Aldine ISD	26.8%	25.9%	73.2%	69.7%	0.0%	2.1%	0.0%	2.4%
Plano ISD	21.3%	11.0%	27.0%	21.9%	47.9%	42.8%	2.7%	24.3%
San Antonio ISD	6.7%	6.4%	91.7%	90.8%	1.0%	2.1%	0.5%	0.7%
Lewisville ISD	11.3%	8.8%	43.5%	26.0%	38.7%	51.3%	6.5%	13.9%

* Fort Worth ISD reported White and Hispanic students as a single group for tracking FTAS filings.