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Texas Education Agency
Division of Federal and State Education Policy
1701 North Congress Avenue
Austin, TX 78701

COMPLAINT

Disability Rights Texas (DRTx), Texas Appleseed, Texas Civil Rights Project (TCRP), and the National Center for Youth Law (NCYL) bring this complaint on behalf of students with disabilities who are disproportionately forced-out of school and into truancy court by Corpus Christi Independent School District (CCISD).¹ This complaint describes CCISD's discriminatory practices based on the organizations' court observations, data collected from public information requests, and stories from students forced-out of school and into truancy court by CCISD. The Complainants request that the Texas Education Agency (TEA) investigate this systemic practice and issue remedial measures to ensure students with disabilities are provided with the necessary education services required by law.

I. INTRODUCTION

CCISD discriminates against students with disabilities by forcing them out of school through court proceedings for truant conduct. The district has failed to initiate evaluations to determine whether students in the district have disabilities that contribute to their struggles in school, including truancy. These students then miss school because of their disabilities and the District's failure to provide them access to appropriate special education and related services. Rather than provide them with these necessary evaluations and services, CCISD refers these students and their parents to truancy court proceedings. In these proceedings, parents are subjected to fines and court costs and CCISD often recommends that the student be ordered to disenroll from school to obtain a GED.

Through these actions, CCISD has violated the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the American with Disabilities Act (ADA), and Texas law. **First**, CCISD has failed its child find obligations under the IDEA and Section 504 by failing to identify

¹ See §§34 C.F.R. 300.151(a)(1) and 300.153(a) (state complaints may be filed by an organization).

and evaluate students who were suspected of having disabilities before referring them to truancy court. **Second**, CCISD has further violated the IDEA and Section 504 by failing to reevaluate students previously identified as having disabilities before CCISD makes a significant change in these students' placements. **Third**, CCISD has violated the IDEA, Section 504, and the ADA by failing to provide students with disabilities special education and related services to remedy attendance issues prior to referring them to truancy court. **Fourth**, CCISD has failed to provide reasonable accommodations in violation of Section 504 and the ADA. **Fifth**, CCISD has violated Texas law by failing to implement truancy prevention measures.

CCISD has failed to meet its obligations under law to students whose disabilities may underlie their truant conduct. The students below are representative of the many students with disabilities who find themselves funneled into the court system for truancy rather than receive a free, appropriate public education ("FAPE"):²

- H.G. has dyslexia and depression. Although H.G. has a 504 plan for dyslexia,³ CCISD has not identified her for services under the IDEA nor has H.G. been provided an Individualized Education Plan ("IEP").⁴ In September of 2022, when she was fourteen years old and in eighth grade, H.G. provided her CCISD campus with a discharge note from a behavioral hospital in San Antonio demonstrating her struggles with depression.⁵ The school did not reevaluate her 504 Plan or evaluate her for additional services under the IDEA. Instead, just two months after H.G. was released from a mental health hospital, CCISD filed a truancy complaint against her.⁶ In the truancy proceeding, the judge made clear that, had H.G. been sixteen years of age, the judge would have ordered her into a GED program.⁷
- D.O. has been diagnosed with depression for two years after being removed from her primary home by Child Protective Services ("CPS") and still struggles to get out of bed.⁸ Despite knowing about D.O.'s depression, and her removal from her home, CCISD did not institute a 504 or IDEA special education evaluation. Instead, CCISD referred D.O. to court for truancy resulting from her disability. Because D.O. was not offered any services to help with her depression, her absences continued, and she was held in contempt.

² The information in this complaint comes from court observations of Truant Conduct and Parent Contributing to Nonattendance dockets in Nueces County Justice of the Peace 2-2; interviews with students, parents, and officials; and data collection and analysis.

³ See App. at 16-21 (H.G.'s 504 Plan Annual Review from Nov. 15, 2022).

⁴ *Id.* at 18.

⁵ *Id.* at 60.

⁶ *Id.* at 63.

⁷ This information comes from courtroom observations conducted by the undersigned organizations.

⁸ Counsel for D.O. sent a records request to Corpus Christi ISD for all of D.O.'s educational records but received few responsive records. As such, the facts described herein relevant to D.O.'s experience are based on firsthand courtroom observations and an interview with D.O. and her guardian.

- A.C. has Attention Deficit Hyperactivity Disorder (“ADHD”) and anxiety.⁹ Despite A.C.’s difficulties in reading comprehension, there is no evidence CCISD ever evaluated her for an IEP or implemented legally required services, instead referring her to truancy court. At her truancy proceeding, she was court-ordered to complete a GED program.¹⁰

These students exemplify how CCISD has excessively used the truancy court process to discriminate against students with disabilities instead of initiating required procedures under the IDEA, Section 504, and the ADA to ensure they have meaningful access to special education, related services, and accommodations and receive FAPE in the least restrictive environment (“LRE”).

II. PARTIES

DRTx, Texas Appleseed, TCRP, and NCYL bring this complaint on behalf of students with disabilities who are disproportionately forced-out of school and into truancy court by CCISD.

DRTx is a nonprofit legal service organization that advocates for people with disabilities in Texas. DRTx protects the rights of groups of people through the court system and directly represents individuals with disabilities, including students in educational settings.

Texas Appleseed is a public interest law center that has published reports that describe how Texas’ overreliance on truancy court causes financial hardship for families and perpetuates the school-to-prison pipeline. Texas Appleseed advocated for the decriminalization of truancy and continues to advocate for students with disabilities who are unjustly forced-out of school.

TCRP serves Texas communities by providing legal representation and strategy for social justice movements. TCRP publishes reports, community resource guides, and files litigation to challenge injustice in courts and conditions of incarceration. TCRP works with communities in Texas to end school policing.

NCYL is a nonprofit legal organization that has worked for over five decades to ensure that every child thrives and has a full and fair opportunity to achieve the future they envision for themselves. NCYL advocated for the decriminalization of truancy in Texas and advocates for student behavior to be addressed through evidence-based supports rather than through fines and court fees that are unaffordable for many families.

⁹ App. at 26.

¹⁰ *Id.*

III. FACTS

A. Background

1. Schools' Legal Obligations to Implement Truancy Prevention Measures

Texas law requires students to attend school between ages six and eighteen.¹¹ Parents are required to ensure that their children attend school during this time.¹² Prior to the 2015 Session of the Texas Legislature, truancy was a Class C misdemeanor. The Texas Legislature, however, decriminalized truancy in 2015 and implemented a new system that put an affirmative obligation on schools to adopt truancy prevention measures and “minimize the need for referrals to truancy court.”¹³

A student violates the compulsory attendance law when the student “fails to attend school on 10 or more days or parts of days within a six-month period in the same school year.”¹⁴ But even before that, if a student misses three or more “days[,] or parts of days” of school within a four-week period, the school “shall initiate truancy prevention measures”¹⁵ including imposing a behavior plan, school-based community service, or referring the student to services.¹⁶ Schools must also notify parents of their child’s nonattendance if the child engages in truant conduct or misses three days or parts of days within a four-week period.¹⁷

Only after a school implements one or more truancy prevention measures may the school initiate a truancy court referral. Each referral to truancy court must include a statement certifying that the school applied the truancy prevention measures, and that such measures failed to meaningfully address the student’s attendance.¹⁸ Each referral must also specify whether the student is eligible for or receives special education services.¹⁹ These obligations are in addition to the affirmative obligations placed on schools under state and federal disability law.

2. Schools have Broad Discretion and Influence in Truancy Case Referrals and Outcomes

School districts have broad discretion in referring truancy and parent contributing to non-attendance (PCNA) cases to truancy court. First, school districts

¹¹ TEX. EDUC. CODE § 25.085(b); Tex. Fam. Code § 65.003(a).

¹² TEX. EDUC. CODE § 25.093.

¹³ *Id.* § 25.0915(a).

¹⁴ TEX. FAM. CODE § 65.003(a).

¹⁵ TEX. EDUC. CODE § 25.0915(a-4) (emphasis added).

¹⁶ *Id.* § 25.0915(a-1).

¹⁷ *Id.* § 25.095(a-b).

¹⁸ *Id.* § 25.0915(b)(1).

¹⁹ *Id.* § 25.0915(b)(2).

have discretion in determining whether to file a truancy complaint in adult municipal or Justice of the Peace (JP) courts or a Child in Need of Supervision (CINS) complaint in juvenile court. Second, in filing a truancy complaint, school districts can often choose among a number of justices of the peace and municipal courts, enabling the school districts to refer to judges who are likely to accept their recommendations. Third, except for certain absences defined as “excused” under Texas law, school districts hold discretion in determining whether to excuse an absence, so school district policy determines when a student has reached the statutory prerequisite for truancy.²⁰ Fourth, the law does not define a “part” of a day, so school district policy sets the number of minutes missed that results in a truancy filing. Fifth, for students over age twelve, school districts determine whether they will file a PCNA case against the parent as well as a truancy case against the student; our organizations have observed CCISD file PCNA charges against both parents along with a truancy charge against the student.²¹ Sixth, school districts decide how they will file complaints regarding subsequent absences—for instance, if a student misses fifteen days or parts of days, the school district could file one consolidated case covering all the absences.²²

Once a referral is made, school districts exert enormous influence in their recommendations to courts regarding the conditions that may be imposed through the truancy process. In CCISD, as in many districts across the state, students and/or parents are referred to municipal and justice of the peace courts. Judges have significant discretion on what remedial measures to order as punishment and, as a practical matter, school districts have significant ability in the hearings to craft a measure they deem appropriate.²³ In proceedings referred by CCISD, the judge who presides over the vast majority of truancy cases from the district frequently threatens students with GED orders and highly encourages students to enroll in a half-day charter school.²⁴ If a student fails to comply with a truancy court order, the student may face a \$100 fine, have their license suspended, or be referred to juvenile probation.²⁵

In truancy proceedings, students and families do not receive appointed counsel and, based on our observations and conversations with families, are seldom aware of their rights.²⁶ Although the court procedures vary from court to court and

²⁰ *See id.* § 25.087.

²¹ School districts have financial incentive to file truancy cases on families. By statute, half of the fines collected from parents charged with the crime of Parent Contributing to Nonattendance go to the school district’s operating fund. TEX. EDUC. CODE § 25.093(d)(1).

²² TEX. EDUC. CODE § 25.093(c-1).

²³ TEX. FAM. CODE § 65.103(a) (listing remedial measures for students).

²⁴ This is based on dozens of court observations involving CCISD students conducted by the Organizations across the last two years. (For example, the Complainants observed a CCISD student who had a 504 plan for ADHD. The judge found the student truant and ordered him to attend school. The judge said he would order him to attend a GED program if he had any unexcused absences, expulsion, or suspension.)

²⁵ TEX. FAM. CODE § 65.251.

²⁶ Students with disabilities, who may have a range of disability-related difficulties processing verbal or written information, are even less likely to be aware of their rights in truancy proceedings. Even

county to county, school districts play an active role in truancy court proceedings statewide.²⁷ For example, in Nueces County JP 2-2, we observed that the judge works in close relationship and lockstep with CCISD staff, sometimes calling them from the bench of the courtroom in addition to reviewing information they sent to the court. The judge then threatens or orders students into GED programs or highly encourages families to send their child to an alternative or charter school.

School force-out may occur either before or after conviction. Our organizations witnessed students who were forced out of school by agreeing to drop out of school in exchange for reduced fines or dismissal of truancy/PCNA charges. Our organizations also witnessed students who were forced out after pleading true to the truant conduct charge via a court order to withdraw from school. As noted above, a student may be forced out of school in ways that the data do not capture. For instance, a student with a disability who has not been identified for special education services may have no interest in attending classes that are not appropriate for the student's needs, and so agrees with the school district's recommendation of withdrawal. We also spoke to numerous families who reported being forced out due to fear of additional truancy or PCNA charges and fines.

3. CCISD's Truancy Procedures Force Students with Disabilities Out of School

First, CCISD initiates truancy procedures by referring students to truancy courts.²⁸ After the initial referral, CCISD representatives make recommendations to the prosecutor and judge regarding the case outcome.²⁹ CCISD's recommendations often include out of school placement including GED programs.³⁰ Simultaneously, CCISD files truancy charges against a student's parent or guardian, subjecting the family to significant fines and court costs.³¹

Complainants use the term "force-out" to describe how CCISD forces students out of school or coerces them into leaving school by denying them educational services and subjecting them to court proceedings that risk incurring significant fines and court costs. During these court proceedings, Nueces County Justices of the Peace typically offer one of three alternative methods of schooling: (1) order students to take the General Educational Development ("GED") test rather than obtaining a high

when we observed courts providing students information about these rights, we never observed a court modifying its presentation of that information to accommodate the needs of students with disabilities or checking to ensure that a student with a disability understood his or her rights. We observed courts where students were only provided written information about their rights in the court proceedings and the judge then accepted pleas in written form without verifying that the student could read sufficiently to understand the proceeding.

²⁷ DRTx, Texas Appleseed, TCRP and NCYL court observations (January to May 2023).

²⁸ TEX. EDUC. CODE § 25.0951.

²⁹ DRTx, Texas Appleseed, TCRP and NCYL court observations (January to May 2023).

³⁰ *Id.*

³¹ *Id.*

school diploma; (2) enroll the student in a district operated alternative school setting; or (3) encourage the student to enroll in a half-day charter school that does not offer transportation.

After being summoned to court for Truant Conduct (“truancy”), CCISD students may be forced out in less overt ways than the programs mentioned above. A student may be forced out of school even where there is a voluntary withdrawal because this is often done to avoid further fines that their families cannot afford and out of fear of their legal guardian being convicted, losing public benefits or housing due to the conviction, and even imprisoned for inability to pay the fines.³² Because these students and their families do not know their educational rights, they feel that they have no other options. CCISD has failed to provide them with necessary special education services to help them succeed, so remaining in school feels hopeless and frustrating. These students, too, are students whom CCISD has “forced-out.”

CCISD has violated students’ rights under the IDEA, Section 504, the ADA, and Texas law by referring students to truancy court and forcing students with disabilities to leave school. In opening presentations, the presiding judge hurriedly informed students and their parents that mental health concerns are a viable defense in truancy proceedings. In virtually all the cases that our organizations observed, however, the court did not conduct any inquiry of whether an individual student’s mental health was related to their truancy, even when the underlying facts of the truancy charges supported a finding that a student was experiencing mental health struggles. Nor did CCISD present information to the court regarding students’ known mental health needs. On multiple occasions, our organizations witnessed students explain in court that they wanted to remain in school and earn a high school diploma, only to have the school district recommend that the student be forced out and the court then order it.³³

4. CCISD Disproportionately Refers Students to Truancy Court and Recommends Them to GED Programs

School districts in Nueces County refer students to truancy court at higher rates than other districts in Texas. Data from the JP Courts reveals that students in Nueces County, where CCISD is located, are disproportionately referred to court for truant conduct. In 2022 Nueces County made up 1% of the total Texas population reported by Justice of the Peace Courts; however, 11% of all truant conduct cases in

³² This is based on the Complainants’ court observations. The Complainants observed a judge mention these consequences to everyone in court on January 26, 2023.

³³ For example, the Complainants observed a CCISD student in truancy court who stated that she does not go to class because of her anxiety. The student expressed that she wants to earn her high school diploma and become a doctor. While the judge did not order her to attend a GED program because it was her first time in truancy court, the judge encouraged GED programs or a half-day charter school as options.

Texas, 1,008 cases, were filed in Nueces County.³⁴ The 2022 rates are not outliers. Justice of the Peace Court data reveals similar trends from 2016 through 2021 in which the percentage of Texas truant conduct cases filed in Nueces County ranged from 8%, 606 cases, in 2016³⁵ to 11%, 1,233 cases, in 2018.³⁶

Justice of the Peace Court Pct. 2-2 (JP 2-2) handles most truancy cases in Nueces County.³⁷ From November 2015 through December 2022 at least 4,037 truancy cases were filed in JP 2-2,³⁸ and that court ordered at least 242 students to attend a GED program.³⁹ Although most CCISD cases are handled in JP 2-2, truancy cases are also handled by other courts including Justice of the Peace Courts Pct. 1-1, Pct. 1-3, and Pct. 5-1.⁴⁰

Many of the students in Nueces County who were referred to truancy court attend school in CCISD. From the 2015-2016 school year (SY16) to 2021-2022 school year (SY22), CCISD referred 6,785 students to truancy court with the number of referrals steadily increasing over time with a brief drop only during the COVID-19 pandemic.⁴¹ From SY16 to SY22, 780 of the students CCISD referred to truancy court received special education services.⁴² The most recent data reveals that during SY22, CCISD referred 1,146 students to truancy court.⁴³ Of those students referred to truancy court, CCISD reported that 152 students, 13% of students referred to truancy court, received special education.⁴⁴ However, the number of students with disabilities that CCISD refers to truancy court is likely higher because of their failure to identify, evaluate, and provide students special education and related services.⁴⁵

³⁴ App. at 342, 348 (Justice Courts, *Summary of Juvenile or Minor Activity by County Jan. 1, 2022-Dec. 31, 2022*).

³⁵ *Id.* at 364, 370 (Justice Courts, *Summary of Juvenile or Minor Activity by County Jan. 1, 2016-Dec. 31, 2016*).

³⁶ *Id.* at 378, 384 (Justice Courts, *Summary of Juvenile or Minor Activity by County Jan. 1, 2018-Dec. 31, 2018*).

³⁷ *Id.* at 187 (“Justice of the Peace Pct. 2–2 handles the majority of truancy cases in Nueces County”); JP 2-2 court observation on May 17, 2022.

³⁸ See App. at 100–185 (Documents responsive to requests filed by Texas Appleseed with Nueces County Justice of the Peace Pct. 2-2) (additional cases may have been filed in other Justice of the Peace Courts, *id.* at 187).

³⁹ Data includes GED orders from September 2015 to December 2022. See *id.* at 75-99 (Documents responsive to requests filed by Texas Appleseed with Nueces County Justice of the Peace Pct. 2-2) (additional cases may have been filed in other Justice of the Peace Courts, *id.* at 187).

⁴⁰ See *id.* at 187 (Documents responsive to requests filed by Texas Appleseed with Nueces County Justice of the Peace Pct. 2-2).

⁴¹ See *id.* at 4-15 (Documents responsive to requests filed by Texas Appleseed with CCISD).

⁴² See *id.*

⁴³ See *id.*

⁴⁴ See *id.*

⁴⁵ Nat’l Center for Educ. Stat., *Dist. Demographic Dashboard 2017-21 Corpus Christi Independent School District, Texas*, INSTITUTE OF EDUC. SCIENCES, <https://nces.ed.gov/Programs/Edge/ACSDashboard/4815270> (The National Center for Education Statistics reports that between 2017 and 2021 3.8% of students in Corpus Christi ISD had an identified disability).

CCISD refers more students to truancy court than other districts in Nueces County. During SY22,⁴⁶ West Oso Independent School District (West Oso ISD) referred 16 students to truancy court, which is 0.8% of the students enrolled in the district.⁴⁷ During the SY22 school year, Flour Bluff Independent School District (Flour Bluff ISD) referred 75 students to truancy court,⁴⁸ which is 1% of the students enrolled in the district.⁴⁹ In contrast, CCISD referred 1,146 students to truancy court,⁵⁰ which is 3% of the students enrolled in CCISD.⁵¹

CCISD consistently recommends that the JP court order students to drop out of school to attend a GED program at a much higher rate than other Nueces County school districts. From SY16 to SY22, CCISD recommended that the JP court order 456 students to drop out of school and attend a GED program.⁵² During that time, 65 of the students CCISD recommended to a GED program received special education.⁵³ During SY22 CCISD recommended 66 students for GED programs and 6 students, or 9% of students recommended for GED programs, were documented as receiving special education services.⁵⁴ The number of students with disabilities that CCISD recommends to drop out of school and attend a GED program is likely higher due to their failure to identify and provide special education and related services. Comparatively, Flour Bluff ISD recommended only four students enroll in a GED program since 2018.⁵⁵ Even when controlling for the difference in student population size, CCISD recommends that the court order GED programs for a higher percentage of students than nearby districts.

Data from TEA reveals that from the 2016-2017 school year to the 2020-2021 school year, 117 CCISD students who were court-ordered to attend a high school equivalency program did not earn a Texas Certificate of High School Equivalency.⁵⁶ This data includes ten junior high school students.⁵⁷

⁴⁶ The response to Complainants' record request only provided data for the 2022 school year.

⁴⁷ See App. at 3 (Documents responsive to requests filed by Texas Appleseed with West Oso ISD).

⁴⁸ See *id.* at 2 (Documents responsive to requests filed by Texas Appleseed with Flour Bluff ISD).

⁴⁹ TEA, *2022 Snapshot Flour Bluff ISD (17814)* – Nueces County, https://rptsvr1.tea.texas.gov/cgi/sas/broker?_service=marykay&_program=perfreet.perfmast.sas&_debug=0&ccyy=2022&lev=D&id=178914&prgopt=reports%2Fsnapshot%2Fsnapshot.sas (last visited Jan. 9, 2024) (5,523 students were enrolled in Flour Bluff ISD as of the 2021-2022 school year).

⁵⁰ See App. at 4–15 (Documents responsive to requests filed by Texas Appleseed with CCISD).

⁵¹ TEA, *2022 Snapshot Corpus Christi ISD (178904)* – Nueces County, https://rptsvr1.tea.texas.gov/cgi/sas/broker?_service=marykay&_program=perfreet.perfmast.sas&_debug=0&ccyy=2022&lev=D&id=178904&prgopt=reports%2Fsnapshot%2Fsnapshot.sas (last visited Jan. 9, 2024) (33,107 students were enrolled in CCISD as of the 2021-2022 school year).

⁵² See App. at 4-15.

⁵³ See *id.*

⁵⁴ See *id.*

⁵⁵ See *id.* at 2 (Documents responsive requests filed by Texas Appleseed with Flour Bluff ISD).

⁵⁶ See *id.* at 188-331 (Documents responsive requests filed by Texas Appleseed with TEA).

⁵⁷ See *id.*

Because school districts often do not track special education status when they refer students to court for truancy and because school districts fail to identify all students with disabilities who need special education, these numbers are almost certainly underestimated.⁵⁸ Students with disabilities should never be forced out of school as part of the truancy process. The alternative options to which truancy courts refer them do not provide them with access to the special education and related services to which they are entitled. CCISD's use of the truancy process to force students with disabilities out of their educational placements violates the central tenet of the IDEA that placement decisions for students with disabilities must be made through their Admission, Review and Dismissal ("ARD") teams. CCISD also discriminates against students with disabilities in violation of the ADA and Section 504. These violations deprive students of any opportunity for educational benefit, any access to the general education curriculum, any related services, and any transition services.

CCISD cannot escape its affirmative obligations to identify and appropriately serve all students with disabilities by forcing students out in through truancy proceedings. Additionally, TEA cannot escape its affirmative responsibility to ensure that these students receive FAPE by ignoring this force-out and blatant disregard for the necessary accommodations and services for students with disabilities that are required by law.

B. Student Facts

The following students exemplify the CCISD failures that force students with disabilities out of school through the truancy process:

1. H.G.

H.G. is a fifteen-year-old student in the eighth grade at Haas Middle School in CCISD.⁵⁹ H.G. struggles to attend school regularly and attain passing grades due to her dyslexia and depression and the district's longstanding failure to evaluate and serve all of her disability-related needs. H.G. has a 504 plan for dyslexia, but CCISD has failed to evaluate her in any other areas despite her attendance, academic, and mental health challenges.⁶⁰

H.G. accumulated absences throughout the 2022-2023 school year due to her disabilities. H.G. was absent for 631 periods, and of those absences 457 were unexcused and 165 were excused.⁶¹ H.G.'s attendance records indicate that she has missed one period for a medical appointment, but it is not documented whether any

⁵⁸ See *infra*. § IV.A.

⁵⁹ See App. at 50 (Documents responsive to requests filed by TCRP with CCISD).

⁶⁰ See *id.* at 16-21 (Documents responsive to requests filed by TCRP with CCISD).

⁶¹ See *id.* at 60 (Documents responsive to requests filed by TCRP with CCISD).

of H.G.'s excused absences were due to illness as a result of her disability.⁶² School officials have noted on H.G.'s attendance records that her grandmother informed the school that she was absent due to medical appointments on numerous occasions including a week-long absence from September 21, 2022, to September 28, 2022, when H.G. was in a behavioral hospital.⁶³ H.G.'s attendance records indicate that CCISD has told H.G.'s grandmother that she has to submit a note from a medical professional to get the absences excused.⁶⁴

Prior to her absences, H.G. struggled academically in reading and math, and she continued to struggle academically during the 2022-2023 school year. H.G. received a grade of 70% or below in each of her subjects for at least one grading period.⁶⁵ H.G.'s 504 team met for an annual review on November 15, 2022,⁶⁶ where the 504 team determined that H.G.'s dyslexia substantially limits her reading, learning, thinking, communicating and concentration abilities and she continues to need accommodations.⁶⁷ To accommodate for H.G.'s dyslexia, the 504 team determined that H.G. would receive peer tutoring/paired working arrangement, teacher check for understanding and reteach/reread materials as indicated, extra time for completing assignments and tests, and oral administration of test questions and answers.⁶⁸ However, the 504 team failed to assess whether H.G. was eligible for special education under the category of Specific Learning Disability or hold an ARD meeting to consider her eligibility and special education needs despite her continued attendance, academic, and mental health struggles.

H.G. informed her school and the court that her absences have become worse after witnessing one cousin get shot and then another have a heart attack. In her communication she made clear that she is struggling with her mental health and the demands of helping out with younger children at home that no longer have caregivers. Instead of evaluating her for disability-related mental health needs and potentially providing counseling, social work and other related services to help her attend school, CCISD and the court have relied on purely punitive approaches. The school referred her to truancy court, thereby subjecting her grandparent who is the legal guardian for H.G. and D.O. (below) to a \$500 fine plus \$100 court costs for both children, totaling \$1,200 with the only alternative being 24 days in jail.

H.G. is at imminent risk of being forced out of school and court-ordered into a GED program. The judge dealing with H.G.'s case made clear in her court appearance, that had she been sixteen years old she would have been ordered into the GED program. At court the only assistance she was offered from a case manager was a packet of alternative schooling options.

⁶² *See id.*

⁶³ *See id.* at 52 (Documents responsive to requests filed by TCRP with CCISD).

⁶⁴ *See id.* at 51-52 (Documents responsive to requests filed by TCRP with CCISD).

⁶⁵ *See id.* at 50 (Documents responsive to requests filed by TCRP with CCISD).

⁶⁶ *See id.* at 16 (Documents responsive to requests filed by TCRP with CCISD).

⁶⁷ *See id.* at 16-21 (Documents responsive to requests filed by TCRP with CCISD).

⁶⁸ *See id.*

2. D.O.

D.O. is a fourteen-year-old student in the eighth grade at Haas Middle School in CCISD.⁶⁹ D.O. is at risk of being forced out of school due to the school's disregard for her need for a special education evaluation.

D.O. has had difficulty remaining settled in a stable environment after CPS removed her from her mother's custody. Since then, she has suffered from severe depression that causes her to struggle to get out of bed. The school is aware of this but failed to institute any 504 or special education evaluation and provided no mental health referral. Instead, the school only provided a court referral for truancy. The court fined her grandmother (mentioned above under H.G.) and held her in contempt. D.O. was given a \$100 fine or eight hours of community service.

During the 2022-2023 school year D.O. faced attendance, academic, and behavior challenges due to CCISD's failure to evaluate her for special education or 504 services. D.O. was absent for 469 periods including 80 excused absences, 360 unexcused absences, 14 out-of-school suspensions, and 15 unexcused testing absences.⁷⁰ D.O.'s challenges were reflected in her grades as she received a grade of 70% or below in seven subjects for at least one grading period.⁷¹ D.O. has behavioral referrals for August 19, 2022, September 23, 2022, November 28, 2022, November 30, 2022, and December 13, 2022.⁷² Despite the mental health diagnosis and clear difficulties within the classroom, the school failed to provide counseling services or a mental health referral.

3. A.C.

CCISD forced A.C. out of King's High School when she was seventeen years old in the eleventh grade.⁷³ At a truancy proceeding at the beginning of last school year in fall 2022, she was court-ordered to complete a GED program because she had a mental health and substance use crisis.⁷⁴ In her first attempt at fulfilling the program requirements, she started a G.E.D. program referred to by the court at Del Mar College, which provides technical training, associate degrees, and a Bachelor of Science in Nursing program.⁷⁵ She was unsuccessful due to the persistent harassment directed towards her by older men, which was so severe that she stopped attending. A.C. was determined to return to regular school.⁷⁶

⁶⁹ See *id.* at 62 (Documents responsive to requests filed by TCRP with CCISD).

⁷⁰ See *id.* at 72 (Documents responsive to requests filed by TCRP with CCISD).

⁷¹ See *id.* at 62 (Documents responsive to requests filed by TCRP with CCISD).

⁷² See *id.* at 22-24 (Documents responsive to requests filed by TCRP with CCISD).

⁷³ See *id.* at 26 (Documents responsive to requests filed by TCRP with CCISD).

⁷⁴ This information is based on court observation and interview conducted with A.C. and her parent on April 28, 2023.

⁷⁵ *Id.*

⁷⁶ *Id.*

A.C. had a 504 plan for ADHD and anxiety prior to being forced out, but CCISD failed to initiate a special education evaluation before referring her to truancy court.⁷⁷ Even as she described her inability to understand the meaning of what she was able to read, she received no interventions or assessments that would help identify whether she had a learning disability or whether additional services were necessary. The judge amended her order on April 28, 2023, allowing her to re-enroll in King High School, A.C. and her parents continue to fear that A.C. will not receive a special education evaluation and be given the necessary services and accommodations.⁷⁸

IV. LEGAL VIOLATIONS

A. CCISD failed its child find obligations under the IDEA and Section 504 by failing to evaluate students with disabilities for special education and related services and instead referring them to truancy court.

Under the IDEA, school districts “must maintain policies and procedures to ensure, among other things, that “[a] children with disabilities ... who are in need of special education and related services, are identified, located, and evaluated...”⁷⁹ Once a school district is “on notice of facts or behavior likely to indicate a disability,” the school district must evaluate the student for special education services.⁸⁰ “An unreasonable delay in complying with this duty ‘may constitute a procedural violation of the IDEA.’”⁸¹

Under Section 504, recipients of federal funds are prohibited from discriminating against people with disabilities.⁸² Public schools that receive federal funds are obligated to identify and evaluate students who may need special education services and ensure that those students receive FAPE through the provision of appropriate services including regular or special education and related aids and services.⁸³ After identifying students who may need special education services, public schools must evaluate the students using tests that are “validated for the specific purpose for which they are used” and “tailored to assess specific areas of educational need.”⁸⁴

CCISD violated the IDEA and Section 504 by failing to identify and evaluate students who were suspected of having a disability. The students named as examples

⁷⁷ See App. at 26.

⁷⁸ This information is based on court observation and interview conducted with A.C. and her parent on April 28, 2023.

⁷⁹ *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 790 (5th Cir. 2020) (quoting 20 U.S.C. § 1412(a)(3)).

⁸⁰ *Krawietz by Parker v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018) (quoting *Dallas Indep. Sch. Dist. v. Woody*, 865 F.3d 303, 320 (5th Cir. 2017)).

⁸¹ *Id.*

⁸² 29 U.S.C. § 794.

⁸³ 34 C.F.R. § 104.32-37; 34 C.F.R. § 104.33.

⁸⁴ *Id.* § 104.35(b)(1-2).

in this complaint were not evaluated for special education services under the IDEA and/or regular or special education and related aids and services under Section 504. For example:

- CCISD failed to evaluate H.G. in all areas of suspected disability in violation of the IDEA and Section 504. H.G. informed the school that she was diagnosed with depression and was absent from school from September 21, 2022, through September 28, 2022, because she was admitted to an in-patient behavioral health hospital. Further, H.G. informed the school that she was having mental health challenges because she witnessed her cousin's shooting and witnessed another one of her cousins have a heart attack. Prior to being diagnosed with depression, H.G. had a Section 504 plan for dyslexia. On November 11, 2022, the school reevaluated H.G. for special education for dyslexia and determined that she continued to need services. However, the school failed to evaluate H.G. for special education services related to her depression and instead the school referred H.G. to truancy court.
- CCISD failed to evaluate D.O. in violation of the IDEA and Section 504. D.O. is suspected of needing special education services because she was diagnosed with depression. In addition, the school knew that D.O. was struggling in the classroom because of behavioral incidents on August 19, 2022, September 23, 2022 and November 28, 2022, November 30, 2022, and December 13, 2022. CCISD failed to evaluate D.O. for special education services in violation of Section 504 and the IDEA even though they knew that she had severe depression and challenges in the classroom.
- Although A.C. had a 504 plan, CCISD never offered A.C. a special education evaluation under the IDEA even though she has struggled academically and has depression, ADHD, and substance abuse disorder. Additionally, she was never evaluated for a learning disability despite her family suspecting that she likely had a learning disability that impacted her reading comprehension.

Based on the undersigned organizations' observation of truancy proceedings of dozens of CCISD students, these three students are examples of the way CCISD regularly disregards clear signs of a student's disability and instead sends them to court. CCISD's child find duty "is triggered when [CCISD] has reason to suspect a disability coupled with reason to suspect that special education services may be needed to address that disability."⁸⁵ CCISD knew, or had reason to know, of H.G.'s, D.O.'s, and A.C.'s possible disabilities.⁸⁶ As evidenced by their difficulties even attending school, special education was vitally needed. CCISD's failure to offer an evaluation was unreasonable and resulted in each student being ensnared in the truancy system rather than provided services required by federal law.

⁸⁵ *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 950 (W.D. Tex. 2008).

⁸⁶ *See supra* § III. B.

B. CCISD failed to reevaluate students before a significant change of placement, a recommendation to a GED program, in violation of Section 504.

Under Section 504 public schools must reevaluate students who receive special education services periodically and before making a significant change in placement.⁸⁷ A significant change in placement includes exclusion for ten or more days or partial days of school and a change in program type.⁸⁸ CCISD failed to reevaluate students before a significant change in placement by recommending that the truancy court order students to attend GED programs without reevaluating them.

CCISD failed to reevaluate A.C. before making a significant change of placement in violation of Section 504. A.C. had a 504 plan before King High School referred her to truancy court. A.C. has depression, ADHD, substance use disorder, and learning challenges. Rather than reevaluating A.C. for 504 services, the school referred A.C. to truancy court where she was ordered to attend a GED program. Thus, the school failed to reevaluate A.C. before making a significant change in placement.

C. CCISD violated the IDEA, Section 504, and the ADA by failing to provide students with disabilities appropriate special education and related services to address and remedy attendance issues that lead to truancy charges.

CCISD failed to provide students with disabilities special education and related services under the IDEA, Section 504, and the ADA by not evaluating students to identify what interventions are required to ensure that students receive FAPE. To receive FAPE, students with disabilities are entitled to special education, defined as specially designed instruction, at no cost to the parents, intended to meet the student's unique needs.⁸⁹ School districts must provide specially designed instruction that adapts the content, methodology, or delivery of instruction to address the unique needs resulting from the student's disability. This specially designed instruction is meant to ensure the student may access the general curriculum so that the student can meet the educational standards that apply to all students.⁹⁰ Schools must also provide related services, such as transportation or developmental, corrective, and other supportive services that are necessary to assist a child with a disability in benefiting from special education.⁹¹ In short, school districts must provide

⁸⁷ 34 C.F.R. § 104.35(a-b).

⁸⁸ U.S. Dep't of Educ. Office for Civil Rights, *Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973*, 1, 14 (2022), <https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf>; U.S. Dep't of Educ. Office for Civil Rights, *Protecting Students With Disabilities*, <https://www2.ed.gov/about/offices/list/ocr/504faq.html#:~:text=Section%20504%20prohibits%20discrimination%20on,by%20state%20and%20local%20governments.>

⁸⁹ 34 C.F.R. §300.39.

⁹⁰ *Id.* §300.39(b)(3).

⁹¹ *Id.* §300.34(a).

personalized instruction with sufficient support services to permit the student with a disability to benefit educationally from the instruction.⁹²

CCISD failed to provide students with disabilities special education and related services because they failed to evaluate students and therefore did not know what special education and related services students needed. It is likely that these evaluations would show that these students needed specialized transportation, specialized reading instruction, and counseling. For example:

- CCISD failed to provide D.O. with specialized transportation. D.O. does not have reliable transportation and therefore, she must rely on the bus to get to school. However, D.O. frequently misses the bus because she struggles to get out of bed due to her depression. CCISD failed to provide specialized transportation services.
- CCISD failed to provide A.C. specialized reading instruction. A.C. has difficulties understanding what she reads which might be due to her ADHD, anxiety, and substance use disorder. Because CCISD has not evaluated A.C., she has not received any specialized reading instruction.

D. CCISD violated Section 504 and the ADA by failing to provide reasonable accommodations to students who were absent from school due to their disability.

Under Title II of the Americans with Disabilities Act (“ADA”), a public entity is prohibited from excluding a “qualified individual with a disability” from “participation in or . . . the benefits of the services, programs, or activities of a public entity,” or subjecting the individual to “discrimination by any such entity.”⁹³ The ADA defines disability as “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.”⁹⁴

Under the ADA, the District is required to “make reasonable modifications in policies, practices, or procedures when such modifications are necessary” unless such modifications would “fundamentally alter” the nature of its goods, services, facilities, privileges, advantages, or accommodations.⁹⁵ The District is also required to provide reasonable modification when they know or reasonably should know that the person has a disability and needs a modification, even where the individual has not requested a modification.⁹⁶

⁹² *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester County, et al. v. Rowley*, 458 U.S. 176, 177 (1982).

⁹³ 42 U.S.C. § 12132.

⁹⁴ *Id.* § 12102(1).

⁹⁵ *Id.* § 12182(b)(2)(A)(ii).

⁹⁶ See the United States’ Findings and Conclusions Based on Its Investigation of the Minnesota Department of Corrections under the Americans with Disabilities Act, DJ # 204-39-192.

The District's attendance policy states that they will excuse all verified absences that are excused under the law.⁹⁷ Under Texas law, appointments with a health care professional must be excused and CCISD requires students to submit a doctor's note.⁹⁸ Additionally, CCISD's attendance policy requires schools to evaluate students with disabilities who are experiencing attendance issues.⁹⁹ Specifically, CCISD's policy states, "[i]f a student with a disability is experiencing attendance issues, the student's ARD committee or Section 504 committee will be notified, and the committee will determine whether the attendance issues warrant an evaluation, a reevaluation, and/or modifications to the student's individualized education program or Section 504 plan, as appropriate."¹⁰⁰

CCISD failed to make reasonable modifications for students with disabilities. For example:

- H.G. was diagnosed with depression and had a Section 504 plan in place for dyslexia. CCISD failed to convene the Section 504 committee to determine whether H.G.'s absences warranted a reevaluation or modification to her Section 504 plan. On multiple occasions, H.G.'s guardian informed CCISD that H.G. was absent from school to attend doctors' appointments. Rather than accepting verbal notice, CCISD informed H.G.'s guardian that she must turn in a medical note.
- CCISD failed to provide D.O. with transportation accommodations. D.O. struggled to get out of bed due to depression. D.O.'s caseworker informed CCISD that D.O.'s caregiver does not drive and that D.O. was struggling to get up on time for the bus. To accommodate D.O. the caseworker sought other transportation options available at CCISD but CCISD did not provide any.
- A.C. was diagnosed with ADHD, substance use disorder, and anxiety and had a Section 504 plan. CCISD failed to convene the Section 504 committee to evaluate whether A.C.'s absences warranted modification. CCISD also failed to make any modifications to its policies and procedures for truancy court referral.

E. CCISD failed to implement preventative measures prior to filing truancy cases in violation of Texas law.

Under Texas law, schools have an obligation to implement truancy prevention measures before referring students to truancy court.¹⁰¹ Schools must implement these measures after a student is absent from school for three or more full or partial

⁹⁷ See Corpus Christi Independent School District, *2019-2020 Student-Parent Handbook*, at 42-44 (2019), <https://drive.google.com/file/d/1MsvaUjPnMsKXsRRmG8ol7dtnevuKI6SI/view>.

⁹⁸ *Id.* at 43; TEX. EDUC. CODE §25.087(b)(2).

⁹⁹ Corpus Christi Independent School District, *2019-2020 Student-Parent Handbook*, at 44-45 (2019), <https://drive.google.com/file/d/1MsvaUjPnMsKXsRRmG8ol7dtnevuKI6SI/view>.

¹⁰⁰ *Id.*

¹⁰¹ TEX. EDUC. CODE § 25.0915(a).

days within a four-week period.¹⁰² To fulfill their obligation, schools can impose a behavior improvement plan or school-based community service.¹⁰³ The behavior improvement plan must be signed by a school employee and the school must make a good faith effort to have the student and guardian or parent sign the plan.¹⁰⁴ The plan should include a description of the desired behavior, timeframe, and penalties.¹⁰⁵ Alternatively, schools can refer the student to services to address truancy such as “counseling, mediation, mentoring, a teen court program, community-based services, or other in-school or out-of-school services.”¹⁰⁶ Further, districts’ truancy prevention measures must meet the minimum standards that are individualized to the student’s needs. The minimum standards include:

- (1) identifying the root cause of the student's unexcused absences and actions to address each cause;
- (2) maintaining ongoing communication with students and parents on the actions to be taken to improve attendance;
- (3) establishing reasonable timelines for completion of the truancy prevention measure; and
- (4) establishing procedures to notify the admission, review, and dismissal committee or the Section 504 committee of attendance issues relating to a student with a disability and ensure that the committee considers whether the student's attendance issues warrant an evaluation, a reevaluation, and/or modifications to the student's individualized education program or Section 504 plan, as appropriate.¹⁰⁷

CCISD failed to implement truancy prevention measures before referring students to truancy court in violation of Texas law. CCISD did not meet the minimum standards for truancy prevention measures by failing to identify the individualized root causes of the student’s unexcused absences and failing to notify the ARD or Section 504 committee. For example:

- CCISD failed to implement truancy prevention measures before referring H.G. to truancy court. H.G. was absent from school from September 21, 2022, through September 28, 2022, which is more than three days during a four-week period. H.G.’s guardian informed the school that H.G. was depressed and H.G. spent one week at a behavioral hospital. Although H.G. had a 504 plan for dyslexia, CCISD failed to notify the 504 committee of her absences so the committee could consider whether to reevaluate H.G. and modify her 504 plan. The school did not implement a behavioral improvement plan or refer H.G.

¹⁰² *Id.* § 25.0915(a-4).

¹⁰³ *Id.* § 25.0915(a-1)(1).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ TEX. EDUC. CODE § 25.0915(a-1)(2).

¹⁰⁷ 19 TEX. ADMIN. CODE §129.1043.

to services to address truancy. Instead, CCISD simply put H.G. on an attendance contract.¹⁰⁸

- CCISD failed to implement truancy prevention measures before referring D.O. to truancy court. D.O. was absent from school because she struggles to get out of bed due to depression and must rely on an unreliable bus to get to school.¹⁰⁹ In the fall of 2022 D.O.'s guardian informed the school that she was diagnosed with depression. CCISD failed to identify the root causes of D.O.'s absences and notify the ARD or 504 committee so they could consider whether to evaluate D.O. CCISD simply placed D.O. on an attendance contract.¹¹⁰ CCISD failed to implement any of the available truancy prevention measures before referring D.O. to truancy court in violation of Texas law.
- CCISD failed to implement truancy prevention measures before referring A.C. to truancy court. A.C. attended truancy proceedings between September 2022 and October 2022. A.C. had a 504 plan, but CCISD failed to notify the 504 committee so they could consider whether to reevaluate A.C. or modify her services. As a result, the court ordered A.C. to attend a GED program because of her mental health and substance abuse crisis, but A.C. did not complete her GED because she faced persistent harassment while she attended the program. The court later allowed A.C. to re-enroll in King High School. King High School failed to meet its obligation to implement truancy prevention measures before referring A.C. to truancy court.

V. REMEDIES SOUGHT

The Complainants request that TEA investigate CCISD's practice of forcing students with disabilities out of school and into truancy court by denying students FAPE in violation of the IDEA, Section 504, the ADA, and Texas law. The Complainants further request that TEA issue corrective action requiring CCISD to revise its policies, procedures, and practices, and train all staff responsible for identifying and evaluating students with disabilities to reflect best practices for:

- Ensuring that students with disabilities who are suspected of needing special education services are promptly evaluated and served.
- Ensuring students are not referred to court for absences related to their disabilities.
- Creating behavior intervention plans to address students with disabilities' absences before referral to court.
- Implementing other evidence-based interventions to ensure students with disabilities can access their special education programming.
- Preventing and intervening in truancy before a court referral is made.

¹⁰⁸ See App. at 52 (Documents responsive to requests filed by TCRP with CCISD).

¹⁰⁹ TEX. EDUC. CODE § 25.0915(a).

¹¹⁰ See App. at 63 (Documents responsive to requests filed by TCRP with CCISD).

- Training school staff who attend truancy court proceedings to ensure that their recommendations are consistent with providing FAPE to students with disabilities; and
- Creating a system that ensures that students with disabilities are not referred to court without a referral to an ARD to discuss evaluation or to review their placement.

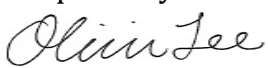
Complainants further request that TEA require CCISD to locate all students with disabilities whom it has forced out of school through the truancy court process and offer these students reenrollment, evaluations, compensatory education, and reimbursement for any fines and court costs paid by their parents/guardians.

VI. CONCLUSION

This complaint details the devastating effect of CCISD funneling students with disabilities into the truancy court process rather than taking the necessary steps to ensure these students receive the services they need to receive FAPE. As exemplified by H.G., D.O., and A.C., CCISD denies students with disabilities their right to FAPE by forcing them into GED programs or other forms of alternative schooling, and failing to intervene and provide vital supports when students are impacted by disabilities including mental health needs. With the threat of ongoing fines for their families looming, students with disabilities forced out of school through court referral for truancy are deprived of access to the general education curriculum, related services, and transition services, and are ultimately denied opportunities for any meaningful educational benefit. CCISD must be held accountable for its failure to provide special education and related services to all students with disabilities by forcing students with disabilities out of the public school system in the ways described in this complaint.

TEA is responsible for providing guidance and direction to school districts on their implementation of special education policies and procedures and must monitor all districts to ensure they meet the requirements of federal law. DTRx, Texas Appleseed, TCRP, and NCYL stand ready to assist in whatever way possible to support the investigation and to provide input into appropriate resolution of this complaint.

Respectfully submitted,



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