

**Special Education Complaint Investigative Report**  
**October 15, 2015**

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Local Educational Agency (LEA): Clear Creek ISD Co-Dist: 084-910  
FY: 2014-2015  
Complaint: 201510710

To the Individuals Addressed:

The attached report is the written decision of the Texas Education Agency (TEA) regarding the above-referenced complaint.

**Allegations, Conclusions, and Reasons for TEA's Decision**

TEA investigated the following allegations.

Allegation One: Did the student's attendance issues during the 2014-2015 school year warrant the need for a reevaluation, and, if so, did the LEA conduct the reevaluation? [34 CFR §300.303]

Allegation Two: Did the LEA ensure that the student's individualized education program (IEP) was developed, reviewed, and revised to address the student's attendance issues between June 1, 2014, and June 1, 2015? [34 CFR §300.324]

Allegation Three: Did the LEA ensure that any changes in placement with regard to the student between June 1, 2014, and June 1, 2015, were made by a properly constituted admission, review, and dismissal (ARD) committee? [34 CFR §300.116, 19 TAC §89.1050(a)(6)]

Allegation Four: Did the LEA ensure that it implemented the student's individualized education program (IEP) with regard to providing the student with transportation between the first day of the LEA's 2014-2015 school year and October 13, 2014? [34 CFR §300.323]

The following noncompliance was determined.

The LEA does not always ensure that it initiates reevaluations of students to address students' needs in accordance with 34 CFR §300.303.

The LEA does not always ensure that it develops, reviews, and revises students' IEPs to address students' needs in accordance with 34 CFR §300.324.

TEA required corrective actions of the LEA. If a party to a complaint believes that TEA's written report includes an error that is material to the determination in the report, the party may submit a signed, written request for reconsideration to TEA by mail, hand-delivery, or facsimile within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with TEA. The other party may respond to the reconsideration request within five calendar days of the date on which TEA received the request. TEA will consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by TEA.

This concludes TEA's investigation. The attached investigative report is TEA's final written decision. Questions regarding this letter or the attached report may be directed to me at (512) 463-9414.

Respectfully,



Keith Swink  
Division of Federal and State Education Policy

enclosure: satisfaction survey

cc:

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This report is the written decision of the Texas Education Agency (TEA) regarding the third-party complaint filed on behalf of multiple students, one of whom attended the Clear Creek Independent School District (ISD), herein referred to as the local educational agency (LEA), during the 2014-2015 school year. For the purposes of confidentiality, student gender pronouns are made neutral. Brackets have been removed from quotes with regard to substituting gender pronouns for the purposes of readability. The complaint alleges violations of federal and state special education laws and the implementing regulations pertaining to the Individuals with Disabilities Education Act (IDEA), Texas Education Code (TEC), and/or the Texas Administrative Code (TAC).

The four specific allegations and TEA's findings of fact and conclusions, together with the reasons for TEA's final decision, are as follows.

**Allegation One**

Did the student's attendance issue during the 2014-2015 school year warrant the need for a reevaluation, and, if so, did the LEA conduct the reevaluation? [34 CFR §300.303]

**Allegation Two**

Did the LEA ensure that the student's individualized education program (IEP) was developed, reviewed, and revised to address the student's attendance issues between June 1, 2014, and June 1, 2015? [34 CFR §300.324]

**Statement of the Complaint for Allegations One and Two**

The complaint, which was received by TEA on June 1, 2015, alleges that the LEA failed to provide the student with appropriate special education and related services to address the student's chronic absenteeism. The complaint alleges that, instead of convening an admission, review, dismissal (ARD) committee meeting to consider the student's attendance issues and possible need for a reevaluation, the LEA attempted to force the student out of school and into a general education development (GED) program by filing a truancy complaint against the student.

**Findings of Fact for Allegations One and Two**

1. The student transferred to the LEA from an out-of-state district during the 2011-2012 school year when s/he was in 7<sup>th</sup> grade. The student had previously been identified as eligible for special education services under the category of other health impairment (OHI). The previous district was in the process of reevaluating the student when s/he moved to Texas and provided the LEA with data it had collected.
2. The LEA completed an evaluation of the student. The full and individual evaluation (FIE) report dated June 1, 2012, reflects that the student has a long history of serious behavioral difficulties in the educational setting, including stealing, threatening peers and adults, bringing knives to school, starting a fire in a school restroom, and exposing himself/herself to peers.
3. The FIE report reflects that there is a history of mental illness on both sides of the student's family and that both of the student's parents are disabled due to medical conditions.
4. The FIE report includes the following information regarding the student's hospitalizations and diagnoses:

[The student] has been hospitalized several times over the last few years. Each time, s/he has received various diagnoses, including the following: Asperger's Disorder (by three providers), attention deficit hyperactivity disorder (ADHD) combined type (by four providers), conduct disorder (by three providers), Reactive Attachment Disorder (by one provider). . . [The student] has also been diagnosed with Bipolar Disorder (Type-1 with psychosis).

5. The FIE report reflects that the student takes multiple medications for ADHD and other conditions.
6. The FIE report states that the student transferred with good grades but that his/her grades have been problematic due to a lack of effort and attendance. The report provides no additional details regarding the student's attendance issues.
7. The FIE report states that the student's scores on the Attitude to School, Anxiety, and Somatization Scales of the Behavior Assessment System for Children Second Edition (BASC-2) fell in the "clinically significant range."
8. The FIE report describes the student's results on the Revised Children's Manifest Anxiety Scales-2 (RCMAS-2) as follows:

Although no scales fell significantly on this measure. . . [the student] also indicated that s/he spent a lot of time feeling worried, s/he worries that kids will laugh at him/her in class or tease him/her, and worries about something bad happening. . . [The student] also exhibited many physical difficulties including feeling sick, with both headaches and stomachaches, difficulty sleeping, and feeling tired.

9. The FIE report states that the student's difficulties in the educational setting appear to be attributable to his/her significant difficulties with attention, impulsivity, and over activity coupled with his/her anxiety and possible serious mental health issues, which have included psychotic type behaviors. The report concludes that the student appears to be eligible for special education services under the category of OHI based on his/her ADHD diagnosis and also under the category of emotional disturbance (ED). The ED determination is based on the student's exhibiting inappropriate types of behavior or feelings under normal circumstances as well as an inability to build and maintain satisfactory interpersonal relationships with peers and teachers.
10. The student failed to meet the passing standards for the reading and math portions of the 8th grade state assessment. On May 1, 2013, the student's ARD committee met to discuss the student's assessment results and to consider accelerated instruction. The IEP reflects that the student had been receiving instruction in the general education curriculum and had taken the general state assessment. The ARD committee revised the student's IEP to provide modified curriculum in the core subject areas and to require that the student take the modified versions of the state assessments for the second administration of the 8<sup>th</sup> grade assessment and for the next school year.
11. Significantly, the transition plan in the May 1, 2013 IEP reflects that the student's strengths are that s/he "has good attendance, gets to class on time, [and] has personal interests and hobbies."

13. During the 2013-2014 school year, the student was in 9<sup>th</sup> grade at an LEA high school. The student's disciplinary record reflects that the student engaged in various types of misconduct during the school year, including threatening to fight another student, fighting with another student, being disrespectful, having a verbal altercation with another student, leaving campus at lunch, selling cigarettes to another student, being in possession of cigarettes, and smoking. The student received detention, in-school suspension, and out-of-school suspension for some of these disciplinary infractions.
14. The student's first semester grades for the 2013-2014 school year were two As, four Cs, and one F. The student had 10 to 15 absences per class during the semester.
15. On January 13, 2014, the student was assigned to a disciplinary alternative education placement (DAEP) for 60 days for being under the influence of marijuana.
16. On March 20, 2014, the student's ARD committee conducted an annual review and revision of the student's IEP for the remainder of the 2013-2014 school year and for the 2014-2015 school year. The adopted IEP reflects that the student would receive 60 percent or more of his/her instruction in the special education setting and would participate in two general education electives with "intensive [behavioral] support." The IEP also indicates that the student would receive 60 minutes of psychological services and 15 minutes of consultation psychological services per nine weeks.
17. The student's IEP includes behavior goals and a behavior intervention plan (BIP) that target the student's non-compliant behaviors and verbal aggression. The IEP does not include any goals or strategies to address the student's attendance issues.
18. The student's IEP reflects that the student passed six out of seven classes during the first semester and was passing six out of seven classes at the time of the ARD committee meeting. The IEP also reflects that the student passed the modified version of the 8<sup>th</sup> grade reading assessment, but failed the modified version of the 8<sup>th</sup> grade math assessment.
19. The IEP indicates that no additional evaluations were needed and that a reevaluation would be due on May 31, 2015.
20. The county district attorney's office sent the student's parent a "warning letter" dated May 19, 2014, stating that the student had three unexcused absences in April and that additional unexcused absences would result in a criminal charge being filed.
21. During the spring semester, the student had 48 to 50 absences per class. A majority of these absences were unexcused.
22. The student passed six out of seven classes during the 2013-2014 school year. However, his/her second semester grades, six Cs and one F, were lower than his/her first semester grades. The student's art teacher included a comment on the student's report card that reads, "Excessive absences and/or [tardiness], zeroes on assignments."
23. The student enrolled in another LEA high school for the 2014-2015 school year.
24. The first day of the school year was August 25, 2014. The student attended the first week of school and was absent one day during the second week.
25. During the third week of school, the student came to school only one day (September 11), but was sent home due to illness by the clinic aide.
26. The LEA's response to the complaint states that a campus administrator spoke with the student about his/her attendance issues on September 11, 2014. Emails from the administrator to the truancy officer on September 25 and October 16, 2014, conflict with this claim. See Findings of Fact 28 and 34.

28. The student's three-week progress report dated September 12, 2014, reflects that the student was passing physical education (PE), barely passing science, and failing art, math, English II, and English. No grade was included for history. One teacher commented that the student had excessive absences and/or tardies.
29. On September 23, 2014, the campus attendance officer emailed several campus staff members stating that the student had not been to school.
30. An email exchange between the truancy officer and a campus administrator on September 25, 2014, reflects that the truancy officer advised the administrator that the student had over 10 unexcused absences and asked if the administrator had any information regarding the student. The administrator responded that he did not have "any information on that student being absent for any reason." The truancy officer stated that the student had a truancy case filed against him/her in May 2014. In a subsequent email, the truancy officer informed the administrator that she had called the student's parent and that the parent said the student had been ill since September 12. The truancy officer stated that she informed the parent that if a doctor's note does not cover all of the student's absences, a truancy complaint would be filed.
31. The county district attorney's office sent the student's parent a warning letter on September 25, 2014, stating that the student had three unexcused absences and that additional unexcused absences would result in a criminal charge being filed.
32. A memorandum of understanding (MOU) between the LEA and the county district attorney's office states that, within five days of the issuance of a warning letter, the LEA agrees to attempt to meet with the student and the student's parents regarding the attendance problem. There is no evidence reflecting that the LEA complied with this term of the MOU.
33. The student went to the school clinic on September 30, 2014, and was dismissed from school due to illness by the clinic aide.<sup>1</sup>
34. Attendance records show that the student had 18 state-reported absences during September 2014.
35. The student's six-week progress report dated October 2, 2014, reflects that the student was passing PE, barely passing science, and failing art, math, English II, and English. No grade was included for history. Two teachers commented that the student had excessive absences and/or tardies.
36. An email exchange between the truancy officer and a campus administrator on October 15 and 16, 2014, indicates that the student had over 10 unexcused absences, and the truancy officer was preparing to file a truancy complaint. The truancy officer asked whether the administrator had ever met with the student regarding his attendance. The administrator responded that he had spoken to the student, but could not remember when. The administrator further stated that the

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<sup>1</sup>A campus administrator's statement claims that the student rarely attended class, but was often seen on campus, even on days when the student's parent indicated the student was home sick. The administrator states that, on September 30, the psychologist tried to find the student. The student was not in class, but had been seen on campus. The administrator implies that the student was skipping classes and that a doctor's note provided by the parent stating that the student had pharyngitis, a cough, nausea, and vomiting on September 30 through October 2 was untruthful. Attendance records reflect that, on September 30, the student went to first period, missed second and third periods, attended fourth period, and then missed the remainder of the day. Records reflect that the student went to the clinic at 10:47 AM, was dismissed from school due to illness by a clinic aide, and was picked up by the parent. Though it is unclear whether the student missed his/her second and third period classes due to skipping or due to illness, the doctor's note is not inaccurate in stating that the student was ill on September 30.

student was choosing not to attend school and directed the truancy officer to move forward with the filing of the truancy complaint.

37. The LEA's response to the complaint states that a campus administrator spoke with the student about his/her attendance issues on October 16, 2014. An email from the administrator to the truancy officer on October 16, is inconsistent with this claim. See Finding of Fact 34.
38. The student's nine-week report card reflects that the student barely passed PE and had failing grades in all other classes.
39. On October 20, 2014, the student became ill at school and was sent home by the school counselor.
40. On October 21, 2014, the LEA filed a truancy complaint against the student.
41. The student's IEP progress reports dated October 24, 2014, include general comments stating, "There is insufficient data to determine mastery due to [the student] missing 30 out of 43 days of school."
42. Attendance records show that the student had 16 state-reported absences during October 2014.
43. On November 5, 2014, the student was suspended for three days. A discipline referral form indicates that the student was in possession of two baggies that contained a green leafy substance and that the student admitted to selling some of these baggies to another student. The form also reflects that the student was in possession of a folding knife. The form indicates that the student would be assigned to a DAEP.
44. On November 10, 2014, the campus special education team leader emailed the special education teacher who was assigned as the student's caseworker stating that the teacher had put in a staffing request for Positive Approach to Student Success (PASS) support for the student and that the student's parent called on November 6 "to request more support for between classes (like someone walking him/her to class) and bus support (someone walking him/her to the bus and making sure s/he go on it)." The team leader then asked whether she should schedule the PASS support in light of the student's upcoming manifestation determination meeting.
45. The special education teacher responded that she and a behavior specialist had discussed the possibility of additional support and then stated:

We have attempted to do this and s/he has run from us or refuses to move from his/her current position each time. Walking him/her will also not solve him/her carrying weapons or drugs. S/he is currently already PASS, my concern is how much more restriction are we needing to put on him/her because of him/her not attending class.

46. On November 12, 2014, the student's ARD committee met to conduct a manifestation determination to determine whether the student's bringing drugs and a knife to school had a direct or substantial relationship to his/her disabilities. The committee concluded that the student's misconduct did not appear to be related to his/her disabilities.
47. The ARD committee determined that the student's IEP was appropriate and was appropriately implemented when the student attended school. The ARD committee added of a behavior goal to the IEP to address the student's disciplinary infractions. Though documentation from the meeting notes that the student had a high number of absences and had been to court for truancy, the ARD committee did not revise the IEP to address the student's absenteeism.

48. Attendance records reflect that the student had 46 state-reported absences out of the 60 days s/he was enrolled during the 2014-2015 school year. Some of the absences were for the entire day, and some of them were for parts of the day. It appears that the student came to school on some days and attended some classes and skipped others.
49. The student's parent submitted notes for some of the student's absences. Some of the absences appear to be for valid reasons, but several do not. A campus administrator declined to excuse some of the absences.
50. Approximately 15 of the student's absences appear to be due to acute illnesses such as diarrhea, nausea, vomiting, and upper respiratory infections.
51. On November 11, 2014, the student was arrested for aggravated robbery.
52. On November 19, 2014, the student was withdrawn from the LEA and enrolled in the county juvenile justice alternative education program (JJAEP).
53. On November 21, 2014, the student's ARD committee conducted a manifestation determination to determine whether the student's arrest for aggravated robbery had a direct or substantial relationship to the student's disabilities. The committee determined that the misconduct was unrelated to the student's disabilities.
54. The ARD committee determined that the student's IEP should remain in effect with the addition of a behavior goal relating to the student's illegal activities. Documentation from the meeting notes the student's truant behavior, but the ARD committee did not revise the IEP to address the student's absenteeism.
55. After the ARD committee meeting, the campus principal sent the student's parent an *Order of Expulsion and Placement* stating that she was ordering the student's expulsion and placement at the county JJAEP. The document also states that a student arrested, charged, or adjudicated for aggravated robbery may be subject to a JJAEP placement until the student graduates from high school, the charges are dismissed or reduced to a misdemeanor offense, or until the student completes the term of placement or is assigned to another program.
56. The LEA's response to the complaint contains the following statement relating to Allegation One:

The ARD committee did not specifically consider whether [the student's] attendance issue warranted a new evaluation. The investigation by [campus staff] into [the student's] absences during the 2014-2015 school year, both before and after the truancy referral, did not reveal any reason to suspect that [the student's] absences were related to a disability or an inappropriate education program/services. Because the LEA did not suspect an additional disability or that [the student's] educational or related service needs warranted a reevaluation on the basis of his/her attendance issues it did not request an ARD meeting to consider further evaluation. Similarly, [the student's] parent did not request or suggest additional assessments or a reevaluation to consider the attendance issue.

57. The LEA's response to the complaint includes the following statements relating to Allegation Two:

[T]he ARD committee [from the previous campus that met on March 20, 2014] considered the student's behavior problems and recommended behavioral goals and positive behavioral supports and



strategies to encourage [the student's] compliance and appropriate interactions at school. The ARD committee also recommended counseling services, both direct and indirect to support the student's educational needs. The ARD committee did not recommend any particular supports [that] were needed related to [the student's] truancy problems.

Although [the LEA] never proposed disciplinary action related to [the student's] truancy, it was considered in detail at ARD meetings held [in November 2014]. At those meetings, it was not determined that [the student's BIP] or behavior goals needed to be modified to address his/her nonattendance.

After [the student] began attending [the JJAEP] in November 2014, [the LEA] was no longer responsible for convening ARD meetings and providing [the student] with a [free appropriate public education (FAPE)].

58. According to the LEA, the student's parent and the student no longer live in the LEA's geographic boundaries.

### **Conclusions and Reasons for TEA's Final Decision for Allegation One**

Authority: 34 CFR §300.303

34 CFR §300.303 requires that an LEA ensure that a reevaluation of each student with a disability is conducted, in accordance with 34 CFR §§300.304 through 300.311, if the LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the student's parent or teacher requests a reevaluation.<sup>2</sup> A reevaluation may occur not more than once a year, unless the parent and the LEA agree otherwise, and must occur at least once every three years unless the parent and the LEA agree that a reevaluation is unnecessary.

In the case of a student with chronic absenteeism or truant behavior, an LEA may need to reevaluate the student in order to properly address the matter in the IEP.<sup>3</sup> In this report, chronic absenteeism refers to excessive absences during the school year for any reason. In Texas, chronic absenteeism generally refers to a student who absent for 10 percent or more of the days a class is offered.<sup>4</sup> Thus, a student who is absent 18 or more times during a 180-day school year is considered chronically absent. Truancy refers to a certain number or certain frequency of unexcused absences. In Texas, truant conduct is defined as failing to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year.<sup>5</sup>

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<sup>2</sup>See *Shelby S. by Kathleen T. v. Conroe Indep. Sch. Dist.*, 454 F.3d 450 (5th Cir. 2006) ("The IDEA states that a reevaluation is warranted when the school district requires evaluation materials that are essential to assessing a child's special education needs.")

<sup>3</sup>See *West Lyon Cmty. Sch. Dist.*, SE-311, 48 IDELR 232 (SEA IA 2007) (Noting that the student attended only three full days and seven half days of school between August and March, the hearing officer concluded that the LEA should have conducted a psychological evaluation and revised the student's IEP.)

<sup>4</sup>See TEX. EDUC. CODE §25.092 (generally provides that a student may not be given credit or a final grade for a class unless the student is in attendance for at least 90 percent of the days the class is offered).

<sup>5</sup>See TEX. FAM. CODE §65.003(a).

The student's 2012 FIE report notes that the student's attendance adversely affected his/her grades in the past, but does not address the extent of the student's absenteeism or the extent to which it had affected the student's grades. The FIE report also reflects that the student suffers from anxiety and experiences physical difficulties, including feeling sick, having difficulty sleeping, and feeling tired, but does not state whether these physical difficulties would cause the student to be absent from school. Apparently, the student's attendance was not considered a significant problem at that time the FIE was conducted.

During the 2012-2013 school year, the ARD committee noted that the student's strengths included his/her good attendance and punctuality. During the first semester of the 2013-2014 school year, the student was absent from each class anywhere from 10 to 15 times. During the second semester, the student's absence rate more than tripled. Despite the significant decline in the student's attendance, the ARD committee did not address the matter when it revised the student's IEP in March 2014. It also did not meet to discuss the student's absenteeism before or after a truancy complaint was filed against the student in May 2014.

Not long into the 2014-2015 school year, the student began missing school. Three weeks into the school year, the student was failing four classes, and one teacher noted in the student's progress report that the student had excessive absences and/or tardies. Six weeks into the school year, two teachers commented in the student's progress report that the student had excessive absences and/or tardies. The student ultimately received failing grades in six out of seven classes for the first nine-week grading period. The student had 18 state-reported absences by the end of September, which meant that s/he was already chronically absent for the school year and at risk of not earning credits.

Though it was evident after the first grading period that the student's chronic absenteeism was affecting his/her educational progress, the LEA did not convene an ARD committee meeting. If the ARD committee had met, it should have determined that additional evaluative data were needed in order to revise the student's IEP. The 2012 FIE report is not informative regarding the student's attendance issue. The student's chronic absenteeism arose during the 2013-2014 school year; this change in the student's attendance coupled with the complex nature of the student's psychological and behavioral issues indicated a need for a reevaluation. For these reasons, TEA concludes that the LEA should have initiated a reevaluation of the student. Allegation One is substantiated.

### **Conclusions and Reasons for TEA's Final Decision for Allegation Two**

Authority: 34 CFR §300.324

34 CFR §300.324 requires that, in developing each student's IEP, the ARD committee consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student. The ARD committee must in the case of a student whose behavior impedes the student's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. The LEA must ensure that the ARD committee reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved and revise the

IEP, as appropriate, to address any lack of expected progress toward the annual goals. For a student who is eligible under IDEA and whose chronic absenteeism adversely affects learning, the duty to address the absences in the IEP may exist regardless of whether they stem from a disability.<sup>6</sup>

At the end of the first grading period of the 2014-2015 school year, the student had failing grades in six classes. Several of the student's teachers had commented in the student's progress reports that the student had excessive absences or tardies, and the student's IEP progress reports indicate that the student was not making progress toward his/her IEP goals due to his/her absenteeism. Despite all of this, the LEA did not convene an ARD committee meeting. Furthermore, when the student's parent contacted the school in November to request that the student be walked to class and the bus, the special education teacher who was assigned as the student's caseworker was dismissive of the request.

The LEA also failed to meaningfully address the student's absenteeism outside of the ARD committee process. The record reflects few contacts between LEA staff and the student's parent. The only phone call that is documented is the call by the truancy officer on September 25, 2014. The only documented "truancy prevention measures" are the phone call and the warning letter from the county attorney's office. It appears that the LEA failed to schedule a meeting with the student and his/her parents in accordance with its MOU with the county attorney's office. It also appears that no LEA staff members requested a conference with the parent to address the student's failing grades. Though the LEA claims that a campus administrator spoke with the student about his/her attendance on September 11, 2014 and on October 16, 2014, evidence in the record disputes this. Specifically, the administrator advised the truancy officer on September 25 that he did not have any information on the student's absences. On October 16, the administrator advised the truancy officer that he had spoken with the student once but could not recall when.

The student's ARD committee met for the first time on November 12, 2014, to conduct a manifestation determination after the student brought marijuana and a folding knife to school. The ARD committee developed a new goal to address the student's disciplinary infractions, but did not make any revisions to the IEP to address the student's chronic absenteeism, truant behavior, and lack of progress. The ARD committee met a second time in November to conduct another manifestation determination and again did not revise the IEP to address the student's absenteeism, truancy, and lack of progress. Following this meeting, the student was expelled and placed at the JJAEP. Sending the student to the JJAEP with an IEP that failed to address behaviors that impeded the

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<sup>6</sup>See *Larimer County Sch. Dist., Poudre*, 2013: 502, 113 LRP 17986 (SEA CO 2013)("Because truancy is a behavior that impedes learning, Student's attendance problems could have resulted in liability under IDEA if the District had ignored or otherwise failed to address this behavior through the IEP process."); *Urban Pathways Charter Sch.*, 2617/11-12-AS, 112 LRP 27526 (SEA PA 2012)("The Charter School was responsible for addressing Student's attendance issues through a study of the reasons behind the truancy, followed up with a positive behavior support plan to assist Student in achieving expected attendance. The behavior of truancy was affecting Student's learning, as noted in the Charter School's own progress reports."). See also *Downingtown Area Sch. Dist.*, 13375/12-13-KE, 113 LRP 34703 (SEA PA 2013)(The hearing officer denied the parents' claims noting that the LEA took a variety of steps to secure the student's attendance long before it filed truancy charges, including by developing multiple attendance plans, providing small-group therapy, and having the parents call the assistant principal when the student was refusing to leave home.).

student's educational progress was a disservice primarily to the student and the student's parents, but also to the JJAEP.<sup>7</sup> For these reasons, TEA concludes that the LEA failed to ensure that the ARD committee appropriately developed, reviewed, and revised the student's IEP. Allegation Two is substantiated.

### **Allegation Three**

Did the LEA ensure that any changes in placement with regard to the student between June 1, 2014, and June 1, 2015, were made by a duly constituted ARD committee? [34 CFR §300.116] [19 TAC §89.1050(a)(6)]

### **Statement of the Complaint for Allegation Three**

The complaint alleges that the student's placement was changed from a self-contained behavior support classroom at one LEA campus to general education at another LEA campus outside of the ARD committee process. According to the complaint, the student's parent was notified during the summer that the student would need to attend the other campus because the student resided within the attendance zone of that campus. The complaint further alleges that a truancy officer recommended that the court order the student to attend a GED program without the student's ARD committee discussing whether a GED program was appropriate for the student.

### **Findings of Fact for Allegation Three**

1. At the beginning of the 2013-2014 school year, the student's parent lived within the attendance zone of Clear Falls High School ("Falls"). According to the LEA, the student's ARD committee determined that the student should attend Clear Creek High School ("Creek") for the 2013-2014 school year because it had a social development (SD) class that was not offered at Falls.
2. Documents in the record reflect that the student lived at an address within the attendance zone of Clear Lake High School ("Lake") in March 2014.
3. The schedule of services page in the student's IEP dated March 20, 2014, indicates that the student would receive special education instruction in a special education setting for five core classes with modified content for the remainder of the 2013-2014 school year and for the 2014-2015 school year. The IEP also reflects that the student would receive SD behavior support for 80 minutes per week for the remainder of the 2013-2014 school year and PASS behavior support for 120 minutes per week for the 2014-2015 school year.
4. The student's IEP contains a section titled "PLACEMENT OF SERVICES" that reflects that the ARD committee determined that services would be provided at Creek for the remainder of the 2013-2014 school year and for the 2014-2015 school year. The instructional setting code listed is "44-self-contained M/M Regular Campus more than 60%." The section incorrectly reflects that Creek is the campus that the student would attend if not disabled and is as close as possible to the student's home.

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<sup>7</sup>Regarding the LEA's assertion that it was no longer obligated to convene ARD committee meetings or provide a FAPE for the student after the student was placed in the JJAEP, TEA reminds the LEA of its ongoing obligations to students with disabilities who are removed from their educational placements and placed in alternative settings for disciplinary reasons.<sup>7</sup>

6. The student's IEP reflects that the student's removal from the general education setting was based on the following reasons: (1) the modifications required for the student to achieve the goals in the IEP cannot be implemented in the general education classroom without eliminating essential components of the general curriculum/activity; and (2) the student's behavior/needs are such that the student requires a structured/specialized environment for implementation of the IEP and BIP and/or that the student and/or other students would not benefit satisfactorily from instruction in the general education classroom.
3. The student's IEP lists the following courses for the 2014-2015 school year: Special education English II, Special Education World History, Resource Geometry, Resource Integrated Physics and Chemistry (IPC), Special Education Oral interpretation, and two general education electives with intense PASS support.
7. A withdrawal form reflects that the student's parent withdrew the student from Creek on August 15, 2015. The form reflects that the student was moving to Lake.
8. According to an LEA staff member, the student's parent went to Creek in August 2014 and asked whether the student would be attending Creek or Lake. The staff member claims that she then contacted a "district specialist" who advised her that, if the student did not live in the Creek attendance zone, the student could go to his/her home campus since the program the student was enrolled in was offered at both campuses. The staff member further contends that the parent stated that the student had a cousin and sibling who attended Lake. The staff member then states "[t]he decision was made that [the parent] should enroll [the student] at his/her home campus."
9. Admission forms reflect that the student's parent enrolled the student at Lake on August 22, 2014.
10. The student's 2014-2015 progress reports and report card reflect that the student took courses at Lake that were consistent with the IEP.
11. On November 7, 2014, a campus administrator informed the truancy officer of the student's DAEP placement via email. In the email, the administrator asked whether the truancy officer could ask for the court to order the student to attend a GED program and stated that the student "does not need to be in school with this kind of track record."
12. The truancy officer responded to the email as follows:

I requested a GED in court however I had never met the student. I had spoken to the parent on the phone. We have to be careful when we file on special ed students. There is a document we sign off on before we file. The ADA [assistant district attorney] was kind of upset with me because the student is not capable of passing a GED. [The student] is bipolar and autistic and more. S/he is already under MHMR [Mental Health and Mental Retardation] with case workers. The ADA placed [the student] on a contract and [the student] has to provide proof of ongoing counseling with MHMR and have no unexcused absences. S/he had the same history at [the previous campus] last year. The only legal way for him/her to be withdrawn is if the parent decides to home school him/her. I am sorry.

14. A *Diversion Agreement* reflects that the assistant district attorney agreed to delay prosecution of the truancy charge until May 19, 2015, conditioned upon the student's completion of the following requirements:

Attend School

Attend the school in which [the student] is enrolled on and during each school day as required by law, without unexcused absences for a whole day or part of a day, for 180 day, beginning on the 11/7/2014, and ending on the 5/19/15 [at time of day]. [The student] will not change school districts without prior permission of the Judge or the Assistant District Attorney.

Comply with the following conditions:

No unexcused absences, no tardies  
Follow school rules  
Provide proof of on-going counseling

15. On November 12, 2014, the student's ARD committee conducted a manifestation determination. Documentation from the meeting reflects that the student's parent informed the ARD committee that she disagreed with the court's recommendation that the student obtain a GED and asked the ARD committee members for their opinion. A campus administrator stated that it was difficult to make a certain recommendation since school staff did not know the student well due to his/her excessive absences. The administrator also stated that, because the student struggles to attend school, obtaining a GED may be a viable option for the student. The administrator discussed GED options and a homeschool program with the parent.
16. The campus administrator who attended the manifestation determination meeting was the same administrator who emailed the truancy officer on November 7 asking if she could request that the court order the student to attend a GED program.

**Conclusions and Reasons for TEA's Final Decision for Allegation Three**

Authority: 34 CFR §300.116

34 CFR §300.116 requires that, in determining the educational placement of a student with a disability, the LEA must ensure that the placement decision is made by a group of persons, including the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The student's placement decision must be made in conformity with the least restrictive environment provisions in 34 CFR §§300.114 through 300.118. The student's placement must be determined at least annually, be based on the student's IEP, and be as close as possible to the student's home. Unless the IEP requires some other arrangement, the student must be educated in the school that he or she would attend if nondisabled.

Although the complaint refers to a "placement change," it actually alleges both a change in placement and a change in location. Generally, courts and hearing officers have said that a change in physical location does not amount to a change in placement unless the new location fundamentally changes the educational program in the student's IEP.<sup>8</sup> The

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<sup>8</sup>See, e.g., *Comb v. Benji's Special Educ. Acad.*, 745 F. Supp. 2d. 755 , 769-70 (S.D. Tex. 2010).

U.S. Department of Education has distinguished between "placement" and "location" as follows:

Historically, we have referred to "placement" as points along the continuum of placement options available for a child with a disability, and "location" as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. Public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability. However, a public agency may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement.<sup>9</sup>

Similarly, the Fifth Circuit has held that, while IDEA requires parental participation in educational placement decisions, such "placement" refers to educational programming, not the physical location or particular institution where the educational program is implemented.<sup>10</sup>

The record does not support the complainants' claim that the LEA unilaterally changed the student's educational placement from a self-contained behavior support class to general education classes for the 2014-2015 school year. Although the student had received instruction in the SD class during the 2013-2014 school year, the ARD committee did not select that placement for the 2014-2015 school year. Instead, the ARD committee determined that the student would take two general education electives and five core courses in a special education setting with PASS support. The IEP lists the courses that the student would take, and documentation reflects that the student took classes that were consistent with the IEP, although at a different campus than that specified in the IEP. It is unclear why the ARD committee did not discuss a location change at the March 2014 meeting given that the student would not be in the SD class the following year and did not live in the Creek attendance zone. Nevertheless, there is no evidence reflecting that the change from Creek to Lake changed the student's educational program or resulted in a more restrictive environment. It is understandable, though, that a parent might conclude that both the campus and the instructional setting specified in the "PLACEMENT OF SERVICES" section of the IEP constitute the student's "educational placement" and that neither should be changed outside of an ARD committee meeting. In order to avoid future misunderstandings, the LEA may want to consider revising its IEP form or adopting some other measure to clarify to parents that the LEA has the flexibility to change a student's campus assignment as long as it does not change the educational program in the IEP.

With regard to the allegation that the truancy officer recommended that the court order the student to attend a GED program, the claim does not state an IDEA violation. Nevertheless, it is very troubling that the truancy officer recommended that the court order the student to attend a GED program when, by her own admission, she did not

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<sup>9</sup>71 Fed. Reg. 46,588 (2006).

<sup>10</sup>*White v. Ascension Parish Bd.*, 343 F.3d 373, 379 (5th Cir. 2003).

know the student. It is also concerning that the campus administrator asked the truancy officer to recommend that the court order the student to attend a GED program. In the case of a student who is eligible under IDEA, LEA staff should consult with the student's ARD committee before recommending alternative schooling options for the student. In the instant case, it seems unlikely that the student would have been able to obtain a GED certificate given his/her need for specialized instruction, modified curriculum, and behavioral supports. Moreover, the LEA is reminded that students who have been court-ordered to receive GED certificates, as well as students who have received GED certificates, are eligible to return to school if they meet the other eligibility requirements.<sup>11</sup>

Furthermore, a student with a disability remains eligible to receive special education and related services until s/he is no longer age-eligible or earns a regular high school diploma. The term "regular high school diploma" does not include an alternative degree that is not fully aligned with the state's academic standards, such as a GED.<sup>12</sup>

For the reasons stated above, Allegation Three is not substantiated.

#### **Allegation Four**

Did the LEA ensure that it implemented the student's IEP with regard to providing the student with transportation between the first day of the LEA's 2014-2015 school year and October 13, 2014? [34 CFR §300.323]

#### **Statement of the Complaint for Allegation Four**

The complaint alleges that the student's IEP required that the LEA provide the student with transportation and that campus staff failed to arrange transportation for the student until September 17, 2014. The complaint further alleges that the truancy complaint filed against the student on October 21, 2014, was partially based on absences that were due the LEA's failure to provide transportation.

#### **Findings of Fact for Allegation Four**

1. The student's IEP dated March 20, 2014, reflects that the student would receive transportation to and from school.
2. The LEA's first day of school for the 2014-2015 school year was August 25, 2014.

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<sup>11</sup>2014-2015 Student Attendance Accounting Handbook, which is adopted by reference in rule, includes the following statement on p.53:

*3.3.10 Students Who Have Received a GED Certificate or Have Been Court-Ordered to Obtain a GED Certificate*

A student who has received a GED certificate or who has been court-ordered to obtain a GED certificate is still eligible to enroll in your district to complete the requirements for a high school diploma if the student chooses, provided all other eligibility requirements are met. If the student meets all other eligibility requirements, your district must not deny enrollment to the student. As with any other student, the ADA eligibility code assigned to the student depends on the number of hours the student is scheduled for and provided instruction, or on whether the student is eligible for and taking part in an alternative attendance program.

<sup>12</sup>34 CFR §300.102(a)(3).



3. An email from a Lake staff member to an LEA transportation supervisor on August 22, 2014, informed the transportation supervisor that the student had registered at Lake and that the staff member prepared a new "transportation ticket" (transportation services form).
4. A transportation services form indicates that the student attends Lake. The second page of the form, however, indicates that the student is to be dropped off at Creek, the campus the student attended during the 2013-2014 school year.
5. A second email from the Lake staff member to the transportation supervisor on August 28, 2014, contains updated information for Lake students who require transportation services. The student's name is listed in the email.
6. There is no evidence reflecting that the student boarded a bus that took him/her or attempted to take him/her to Creek instead of Lake.
7. A statement from the LEA transportation supervisor and other documents reflect that a special education bus was scheduled to pick up students from the student's apartment complex and take them to Lake at the beginning of the 2014-2015 school year. According to the transportation supervisor's statement, the error on the student's transportation services form did not disrupt in the student's transportation services. The transportation supervisor also claims that the student did not use the bus service.
8. The student's attendance records reflect that the student attended the first week and most of the second week of the school year and was absent the third and fourth weeks, except that the student came to school for part of a day during the third week, but was sent home due to illness.
9. A third email from the Lake staff member to the transportation supervisor on September 17, 2014, states that the second page of the student's ticket listed the incorrect campus and was corrected.
10. Another transportation services form indicates that the student is to be dropped off at Lake.
11. The student's parent provided three notes requesting that the student's absences during the fourth week of the school year be excused. The parent requested that the student's absences on September 16, 18, and 19, 2014, be excused because the special education bus was not running and because her car was in the shop. There is no evidence in the record reflecting that the student or the student's parent had previously advised the LEA that the student was not receiving transportation services.
12. The record reflects that campus administration did not excuse any of the student's absences during the fourth week of school.
13. The truancy complaint filed against the student on October 21, 2014, was based on absences on September 16-19, October 6-10, and October 13.

#### **Conclusions and Reasons for TEA's Final Decision for Allegation Four**

Authority: 34 CFR §300.323

34 CFR §300.323 requires that, as soon as possible following development of the student's IEP, special education and related services are made available to the student in accordance with the student's IEP.

It is undisputed that there was an error on the second page of the student's transportation services form until September 17, 2014. Nevertheless, the record does not demonstrate that the student was deprived of transportation services as a result of

the error. There is no indication that the student boarded a bus that took him/her to Creek. At the beginning of the 2014-2015 school year, a special education bus was scheduled to pick up students at the apartment complex where the student resided and take them to Lake. The student got to school during the entire first week, some of the second week, and one day of the third week either by riding the bus or by some other means. If the student had been unable to access the bus during this time period, presumably s/he or a parent would have alerted campus staff. The fourth week of school, the parent provided a note stating that three of the student's absences that week were due to the special education bus not running. The parent's failure to report the problem to campus staff on each day and the fact that the student's transportation services form had been corrected before the last two absences, undermine the claim that the student lacked access to transportation. For all of these reasons, TEA concludes that Allegation Four is not substantiated.

#### **Identified Noncompliance**

Based on the evidence and current state and federal requirements, the following noncompliance is cited.

The LEA does not always ensure that it initiates reevaluations of students to address students' needs in accordance with 34 CFR §300.303.

The LEA does not always ensure that it develops, reviews, and revises students' IEPs to address students' needs in accordance with 34 CFR §300.324.

#### **Required Corrective Actions**

In accordance with 34 CFR §300.151, TEA must address: (1) how to remediate the denial of those services based on the needs of the student and (2) appropriate future provision of services for all students with disabilities when resolving a complaint in which appropriate services were not provided. Corrective actions to achieve compliance are required of the LEA as follows.

#### **For the student subject to this complaint:**

Within 10 calendar days of the date of this report, the LEA must provide the student's parent with prior written notice of its proposal to reevaluate the student and with a parental consent form.

If the student's parent provides written consent to reevaluate the student, the LEA must provide an independent reevaluation of the student that includes a psychological assessment of the student. The reevaluation must include an assessment of the underlying reasons for the student's chronic absenteeism. The LEA must provide the parent with a written report of the reevaluation as soon as possible and not later than 30 calendar days following the date on which the LEA received consent, unless the parent agrees to a different timeline.

After the reevaluation is completed, the LEA must convene an ARD committee meeting as soon as possible and no later than 10 school days from the date of the completion of the reevaluation, unless the student's parent agrees to a different timeline. The LEA must coordinate the ARD committee meeting with the student's current school district. The ARD committee must review the reevaluation report, the student's current IEP, and any other relevant information. If the parent does not agree to a reevaluation, the ARD

committee must meet within 20 calendar days of the date of this report, unless the parent agrees to a different timeline, in order to review the student's IEP and any other relevant information.

The student is entitled to relief to compensate for the LEA's failure to address his/her attendance problems during the 2014-2015 school year. One-on-one educational tutoring must be offered and made available to the student at a location convenient for the student through the end of the 2015-2016 school year. The amount and frequency of the tutoring must be determined by the ARD committee by considering the student's schedule and tolerance for additional services and the fact that the student's IEP did not address the student's attendance issues during the 2014-2015 school year. The tutoring can be provided during or after school, but it must be in addition to the student's educational program. The ARD committee must determine the appropriate credentials for the tutor. The ARD committee must also consider whether other types of compensatory education, compensatory counseling services, and other types of compensatory related services must be made available to the student.

**For all students with disabilities in the LEA:**

The LEA must revise the LEA's and Clear Lake High School's policies, operating procedures, and guidelines to include procedures for addressing chronic absenteeism and truant conduct with regard to students with disabilities. Consistent with 34 CFR §300.324, the procedures must reflect that a student's chronic absenteeism and truant conduct generally impede the student's learning and must be addressed in the student's IEP. The procedures should also reflect that a student's absenteeism may trigger a duty to reevaluate the student. The procedures must ensure that LEA staff, including truancy officers, do not recommend alternative schooling options, including GED programs, for a student who is eligible for special education services unless the student's ARD committee has determined that the particular alternative schooling option is appropriate for the student. Finally, the procedures must state that students with disabilities who have been court-ordered to receive GED certificates, as well as students who have received GED certificates, are eligible to return to school if they meet the other eligibility requirements.

The LEA must provide written notice of the revised policies, operating procedures, and guidelines to LEA staff who may be affected by the revisions, including, but not limited to, special education personnel, counselors, truancy officers, and campus administrators.

The LEA must provide staff development training to the truancy officer, campus administrator, and all other individuals who were involved in or contributed to the noncompliance. Specifically, these individuals must receive training on when a student's excessive absenteeism can trigger the duty to reevaluate the student and/or the duty to revise the student's IEP to address the student's absenteeism. The individuals must also receive training on the procedures for addressing a student's attendance issues with the student's ARD committee.

By **November 12, 2015**, the LEA must provide TEA with a proposed timeline for completing the corrective actions or must provide TEA with the following documentation to show completion of the corrective actions.

- Provide a copy of the prior written notice and consent form sent to the student's parent.
- Provide evidence of the parent's response to the request to reevaluate the student.
- Provide a copy of the student's reevaluation report, if applicable.
- Provide a copy of the ARD committee report documenting the compensatory services determinations.
- Provide a copy of service logs or other documentation showing the implementation of the compensatory services.
- Provide a copy of the revised policies, operating procedures, and guidelines.
- Provide a copy of any relevant guidance issued to staff.
- Provide a copy of the agenda describing the information presented in the staff development training and a list with the names and positions of the individuals who participated in the training.

Further intervention by TEA may result if the LEA does not provide the requested information or respond within the required timeline. In accordance with 34 CFR §300.600(e), TEA must ensure that the LEA corrects identified noncompliance "as soon as possible, and in no case later than one year after the State's identification of the noncompliance." Therefore, all required corrective actions must be completed no later than **October 15, 2016**. Failure to correct the cited noncompliance by this date will result in an additional finding of noncompliance under 34 CFR §300.600(e) and may result in additional sanctions against the LEA as outlined in 19 TAC §89.1076.

This concludes TEA's investigation of the complaint.