



Texas Education Agency

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Michael Williams
Commissioner

**Special Education Complaint Investigative Report
September 30, 2015**

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Local Educational Agency (LEA): Pasadena ISD Co-Dist: 101-917.
FY: 2014-2015
Complaint: 201510719

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 allegation.

Did the LEA ensure that it identified, located, and evaluated the student for special education services during the 2014-2015 school year? [34 CFR §300.111]

TEA determined the following noncompliance and required corrective actions of the LEA.

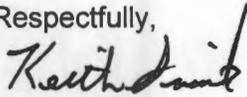
The LEA does not always ensure that it identifies, locates, and evaluates students in accordance with 34 CFR §300.111.

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.

Pasadena ISD Co-Dist: 101-917
FY: 2014-2015
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Page 2 of 2

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

Allegation

Did the LEA ensure that it identified, located, and evaluated the student for special education services during the 2014-2015 school year? [34 CFR §300.111]

Statement of the Complaint

The complaint, which TEA received on June 1, 2015, alleges that the student has been diagnosed with attention deficit hyperactivity disorder (ADHD) and depression. The complaint further alleges that, despite receiving documentation of the student's ADHD diagnosis and failing grades, the LEA has failed to evaluate the student for special education services. The complaint also alleges that the LEA has filed truancy charges against the student three times.

Findings of Fact

1. The student has never been evaluated for special education eligibility.
2. At the beginning of the 2013-2014 school year, the parent completed a *Health Inventory* form for the student that indicates no medical issues.
3. During the fall semester of the 2013-2014 school year, the student had more than 10 unexcused absences, and the LEA filed a truancy complaint against the student.
4. At a court hearing on November 12, 2013, the judge ordered the student to attend a psychological assessment at what is now the Harris Center for Mental Health and IDD.
5. Truancy records reflect that, during a follow-up court hearing on April 15, 2014, the parent stated that the student had been diagnosed with ADHD.
6. There is no evidence in the record reflecting that the LEA requested a copy of the student's psychological assessment or information regarding the student's ADHD diagnosis.
7. The student passed all classes except math during the 2013-2014 school year.
8. School health records include an entry from June 2014 reflecting that the student was receiving medication at home for ADHD.
9. The student attended a different LEA campus for the 2014-2015 school year.
10. At the beginning of the 2014-2015 school year, the parent completed a new *Health Inventory* form that indicates that the student has a history of ADHD, but is not receiving medical care for the condition. The form also reflects that the student is not taking medication.

11. The fall semester of the 2014-2015 school year ran from August 26, 2014, to December 19, 2014. The student had 13 unexcused absences during the semester. Some absences were for the entire day, and some were for portions of the day.
12. The student earned credit for all classes but Algebra I during the fall semester. The student's semester grades were two As, four Cs, and one F.
13. The spring semester of the 2014-2015 school year ran from January 6, 2015, to June 4, 2015. At the end of the first grading period of the semester, the student had 20 unexcused absences, and his/her grades were one A and six Fs.
14. Truancy records include a section titled "Documentation of Truancy Prevention Measures" that documents a phone call between an assistant principal and the student's parent on January 14, 2015. This record includes a comment stating "mom is upset because she brings student to school every day." The record further reflects that the parent said "well we will let judge decide what to do with [him/her]."
15. The LEA filed a truancy complaint against the student on January 15, 2015.
16. Truancy records reflect that, during a February 17, 2015 court hearing, the student stated that s/he wakes up late, and the parent stated that she has to go to work in the morning. The records further reflect that the parent stated that she cannot control the student.
17. The student's 2014-2015 report card includes comments from two teachers. During the third grading period, one teacher entered the code indicating that behavior was affecting the student's work. During the fourth grading period, this same teacher entered codes indicating that more effort was needed, that absences were affecting the student's work, and that the student had low test scores and/or incomplete assignments. A second teacher also entered the code indicating that the student had low test scores and/or incomplete assignments during the fourth grading period.
18. A *GradeSpeed Monitor* document reflects that a third teacher at some point entered the code indicating that absences were affecting the student's work.
19. Truancy records document a phone call between the student's theater arts teacher and the student's parent on February 25, 2015. The record includes a note reading, "Mom is concerned student is depressed and is taking him/her to be evaluated next week."
20. The LEA contends in its response to the complaint that, on February 27, 2015, a school counselor met with the student and does not recall the student saying anything about ADHD or depression or otherwise explaining his/her absences. There is no documentation in the record to support this claim.
21. The LEA also claims that the school counselor left a voicemail message for the student's parent, but never heard back from her. There is no documentation in the record to support this claim.
22. On or about April 8, 2015, complainant Disability Rights Texas, the federally designated legal protection and advocacy agency for people with disabilities in Texas, sent a letter to the LEA stating that it was assisting the student's parent and requesting copies of certain student records, including documentation relating to the student's medical conditions, any assessments and evaluations, discipline and behavior records, report cards, and attendance records.
23. Along with its letter, complainant Disability Rights Texas provided an *Authorization to Release Confidential Information* form signed by the student's parent. The form indicates "Legal Purppses" as the reason for the parent's release.
24. Truancy records include a section titled "Documentation of Truancy Prevention Measures" that documents a second phone call between the assistant principal and the student's parent on April 27, 2015. This record includes a comment reflecting that

the student had missed 31 days since the last court hearing and that the parent stated that she was having trouble getting the student to listen to her and that she had the student in therapy. There are no comments reflecting that the assistant principal inquired further about the student's therapy or about whether the student had been diagnosed with depression or any other condition.

25. The LEA filed another truancy complaint against the student on April 27, 2015.
26. Truancy records reflects that, during an April 28, 2015 court hearing, the student's parent stated that she had requested that the school test the student for ADHD. The LEA asserts that this is first time that it was notified that the parent wanted the student evaluated.
27. The record does not include any evidence reflecting that the student's parent requested that the LEA evaluate the student for special education eligibility before the April 28, 2015 court hearing.
28. The LEA's response to the complaint states that it did not request parental consent to evaluate the student for special education eligibility during the 2014-2015 school year "as there were no behavioral or academic reasons in the school setting that would justify such an evaluation."
29. The LEA filed another truancy complaint against the student on May 27, 2015.
30. The student had 61 absences during the spring semester and passed only one class.
31. The student's 2014-2015 disciplinary record primary reflects attendance issues. The student spent several days in in-school suspension (ISS) for tardies and spent one day in ISS for truancy. Additionally, the student once brought a telecommunication device to school.
32. The LEA claims that it has made multiple efforts to contact the parent for additional information, including medical information, and to request permission to consult with any professional working with the student but the parent has not responded. The LEA has not provided any documentation of these efforts.
33. There is no evidence in the record that reflects that LEA staff members met to discuss the student's attendance and/or academic performance problems. There is also no evidence that any LEA staff members requested a conference with the parent to discuss the student's attendance and/or academic performance problems.
34. The LEA provided a copy of an *RTI Overview* training document. This document reflects that attendance is a behavior and that, if a student is absent three or more days in a six-weeks grading period, the teacher must call or contact the student's parent. The document further states that the teacher must send an email to the attendance clerk and assistant principal with any notes the teacher received from the parent when contacted.
35. The LEA provided excerpts from an employee handbook that reflects that, if a student is absent from class, it is best practice for the teacher to try to determine the student's whereabouts and to contact the student's parent. The document also reflects that a teacher should contact the student's parent if the student has three or more absences.
36. The record reflects that the only contact the student's parent received from a teacher regarding the student's absences was the February 25, 2015 phone call described in Finding of Fact 19.

Conclusions and Reasons for TEA's Final Decision

Authority: 34 CFR §300.111

34 CFR §300.111 places an affirmative duty on the State and LEAs to have policies and procedures to ensure that all students with disabilities residing in the State and who are in

need of special education and related services, are identified, located, and evaluated. This "child find" provision applies to, among others, students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade. LEAs are responsible for conducting child find and identifying all IDEA-eligible students that reside in their jurisdiction. Because the child find duty is an affirmative one, a parent is not required to request that an LEA evaluate a student.¹ The threshold for "suspicion" is relatively low. The inquiry is not whether the student actually qualifies for special education services, but rather, whether the student should be referred for an evaluation. As explained below, TEA concludes that the LEA failed to meet its child find obligation with regard to the student in the instant complaint.

The fact that a student is frequently absent from school does not automatically mean the LEA must refer the student for a special education evaluation. If a student's absenteeism is accompanied by a decrease in academic performance and information connecting the absenteeism to a disability, an LEA's child find obligation may be triggered.² In this case, the LEA learned that the student had been diagnosed with ADHD near the end of the 2013-2014 school year. The record reflects that the ADHD diagnosis may have resulted from a psychological evaluation ordered by a judge in a truancy proceeding. While ADHD is not a specific disabling condition under the IDEA, a student with ADHD may be eligible under one of the specific disability categories by reason of his or her ADHD. There is no evidence in the record reflecting that the LEA requested any information about the student's ADHD diagnosis or that it considered whether the student's ADHD may have contributed to the student's absenteeism during the end of the 2013-2014 school year.

During the fall semester of the 2014-2015 school year, the student had 13 absences and passed all classes except Algebra I. This may indicate that the student's ADHD was not having a significant effect on his/her absenteeism or educational performance. On the other hand, it is also possible that the student's ADHD played a role in his/her absenteeism, poor performance in Algebra I, and average grades in four classes. There is insufficient information to know whether, or to what extent, the student's ADHD affected his/her learning or behavior during this time period.

By the end of the first grading period of the spring semester of the 2014-2015 school year, things changed. The student's attendance and grades had plummeted. In fact, the student had more absences this grading period than s/he had the entire fall semester, and the student went from *passing* all but one class to *failing* all but one class. While it may seem logical to attribute the student's poor grades entirely to his/her lack of attendance, the matter is not that simple. Chronic absenteeism is complicated and can involve many factors, including an undiagnosed disability, emotional disturbance, academic difficulties,

¹See *C.C. Jr. v. Beaumont Indep. Sch. Dist.*, 65 IDELR 109 (E.D. Tex. 2015, unpublished).

²See e.g., *Broward County (FL) Sch. Dist.*, 61 IDELR 265 (OCR 2013)(OCR concluded that an LEA that failed to evaluate two frequently absent kindergartners within a reasonable period after learning that they were being treated for bipolar disorder violated its child find duty.); *M.M. and I.F. v. New York City Dep't of Educ.*, 63 IDELR 156 (S.D.N.Y. 2014)(The student's prolonged absence, coupled with her failure to earn enough credits to move on to the next grade, should have prompted the LEA to find her eligible for special education.); *Hilliard City School District*, 112 LRP 53622 (SEA OH 2012)(An LEA that failed to refer a truant student for an evaluation despite having knowledge that the student had been diagnosed with anxiety and depression, failed to meet its child find obligation.). *But see e.g., Southwest Indep. Sch. Dist.*, 39 IDELR 203 (SEA TX 2003)(The LEA did not violate child find with respect to a student whose social and family circumstances caused her to attend just 16 days of school from January to September 2002.).

bullying, home problems, social maladjustment, drug problems, economic issues, and even boredom.

The record reflects that the LEA did little in terms of investigating the root cause of the student's absenteeism. There were very few contacts between LEA staff and the student's parent. Only three phone calls are documented for the entire 2014-2015 school year despite the fact that the employee handbook and RTI procedures reflect that teachers must contact a student's parent if the student is absent for three or more days. The three phone calls are referred to as "truancy prevention measures." Given that two of the calls coincided with the filing of a truancy complaint, it is unclear how the calls could reasonably be expected to *prevent* truancy.

In the one phone call made by a teacher, the student's parent stated that she thought the student was depressed and that she was going to have him/her evaluated. Even if a school counselor subsequently attempted to contact the parent and did not get a response, this does not explain why the school counselor or another LEA staff member did not make other attempts to contact the parent. The LEA also claims that the school counselor reached out to the student and that she "does not recall" that the student said anything about ADHD or depression or other issues that may have contributed to his/her absences. Aside from the fact that it can reasonably be expected that many students would be reluctant to disclose information about their mental health issues or home lives, the LEA's response suggests that the school counselor may not have even asked the student whether s/he was depressed or tried to elicit information regarding the reasons the student was barely attending school.

According to the LEA, there were no behavioral or academic reasons in the school setting that justified providing the student with support services or for referring the student for a special education evaluation. TEA disagrees. The student's chronic absenteeism was a behavioral problem that warranted some type of intervention other than the filing of truancy complaints. In addition, several teachers had documented that the student's behavior and absences were affecting his/her academic performance. The student failed Algebra I in the fall and was failing many classes in the spring. The student's ADHD diagnosis, worsening absenteeism, failing grades, and possible depression should have prompted the LEA to refer the student for an evaluation.

Three events in particular stand out as times when the LEA should have referred the student for an evaluation. The first is when the student's parent disclosed that the student was going to be evaluated for depression. The second is when the LEA received the letter from complainant Disability Rights Texas, which clearly reflects that the parent was seeking legal assistance because she believed that the LEA had failed to address the student's disabilities. And the third event was when the parent stated in a court hearing that she had requested that the school test the student for ADHD. Even if the LEA firmly believed that the parent had not previously requested an evaluation, the parent's statement in court reflected that she wanted an evaluation.

For the reasons above, TEA concludes that the LEA violated its child find duty. TEA does not conclude that the student needs special education, only that the LEA had sufficient information to suspect that the student might be a student with a disability who required special education and related services. Therefore, the allegation is substantiated.

Identified Noncompliance

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

The LEA does not always ensure that it identifies, locates, and evaluates students in accordance with 34 CFR §300.111.

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 evaluate the student, a copy of the *Notice of Procedural Safeguards*, and a consent for evaluation form.

If the parent provides the LEA with written consent to evaluate the student, the LEA must complete an expedited full individual and initial evaluation of the student that includes a psychological evaluation and must provide the parent with a written report of the evaluation as soon as possible and no later than 30 calendar days following the date on which the LEA received consent unless the parent agrees to a different timeline.

The LEA must convene an admission, review, and dismissal (ARD) committee meeting to review the evaluation and to determine if the student is eligible for special education and related services as soon as possible and no later than 10 school days from the date of the completion of the evaluation report unless the parent agrees to a different timeline.

If the ARD committee determines that the student is eligible for special education and related services, the ARD committee must develop an individualized education program (IEP) for the student for the 2015-2016 school year. If determined eligible, the student is also entitled to appropriate relief to compensate for the LEA's failure to identify the student during the spring semester of the 2014-2015 school year. One-on-one algebra tutoring must be made available to the student through the end of the 2015-2016 school year in an amount and frequency to be determined by the ARD committee, considering the student's schedule and tolerance for additional services and considering the fact that the student was denied special education and related services for approximately four months during the last school year and did not have an IEP in place at the beginning of this school year. The ARD committee must determine the appropriate credentials for the tutor. The ARD committee must also consider whether compensatory education in any other academic subject area or compensatory counseling or other related services must be made available to the student.

For all students with disabilities in the LEA:

The LEA's administration shall review the district and campus policies and related guidelines pertaining to the noncompliance cited in this report and determine whether revisions are needed.

If the LEA revises its policies and related guidelines, the LEA must provide written notice of revised policy/guidelines to LEA staff who may be affected by the revisions.

The LEA must provide focused technical assistance to all special education, general education, and administrative personnel on the campus subject to the complaint to address the noncompliance cited in this report. Specifically, personnel must receive training on the procedures for addressing student absences and on identifying when a student's excessive absenteeism can trigger child find obligations.

By **October 30, 2015**, the LEA must provide TEA with a proposed timeline for completing the corrective actions or must provide TEA with the following documentation to TEA to show completion of the corrective actions.

- A copy of the prior written notice given to the parent, a copy of the written consent signed by the parent giving the LEA permission to evaluate the student, and copy of the student's initial evaluation report.
- A copy of the ARD committee report documenting the eligibility and compensatory services determination.
- A copy of service logs or other documentation showing the implementation of the compensatory services.
- A copy of any revised portions of special education policies and related guidelines.
- A copy of any relevant memoranda and/or guidance letters issued to staff.
- A copy of the training agenda describing the information presented in the staff development and a listing of the individuals, indicating their positions, who participated in the staff development.

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 **September 30, 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.