

National Center for Youth Law

July 1, 2013

Ms. Anurima Bhargava
Chief, Educational Opportunities Section
Civil Rights Division
United States Department of Justice
601 D Street, N.W., Ste. 4300
Washington, DC 20004

Dear Educational Opportunities Section:

After filing our June 12, 2013 complaint related to the Dallas County truancy courts and the four school districts (Dallas, Garland, Mesquite and Richardson ISDs) that use the court system, numerous parents and students contacted us about experiences that comport with the concerns expressed in the original complaint. The following three students asked to be included as complainants. All three new complainants are students with disabilities who were subjected to conviction, fine, and arrest in the same school-to-prison pipeline described in our original complaint. The stories of these youth further illustrate the violations alleged in the initial complaint and the need for a thorough Department of Justice investigation.

P.J.

P.J. is a 12-year-old, sixth grade student at Webb Middle School in GISD. P.J. loves to play football, and is recognized by his teachers as a bright student – his mother refers to him as a “brilliant child” noting how well he did on his standardized tests this year. Prior to the 2012-13 school year, P.J. was receiving special education services for a speech impairment; however, those services were discontinued at the end of the 2011-2012 school year. P.J. also has ADHD and currently receives no services from GISD to accommodate the impact of his disability on his education.

During the 2012-2013 school year, P.J.’s older brother was being bullied at school, including being threatened by other students, and was consequently skipping school. P.J.’s mother, C.S., was trying to make sure that she took care of her older son’s needs. She acknowledges that much of her attention, as a single parent, was focused on this while the crisis was continuing. She was trying to get her older son to school, but also keep him safe. She eventually had to transfer her older son to a different school, which took a great deal of time to arrange.

As a consequence of the crisis with her older son, C.S. did not always get P.J. to school on time. At P.J.'s school, being late more than ten minutes counts as a tardy; three tardies count as an unexcused absence. Though P.J.'s attendance report also shows unexcused absences for some days, C.S. believes this must be in error, because though he was sick (he had the flu this year) or missed some days due to an ankle injury, they turned in doctor's notes for those days. C.S. says P.J. did not have any whole days missed without an excuse, though he did have multiple tardies.

As a result of these tardies and the alleged absences, the school filed an Failure to Attend School ("FTAS") case against P.J. At P.J.'s initial appearance, he pleaded "no contest." He was ordered to pay \$207 in fines and court costs. He was also ordered to complete a 500-piece puzzle, a 500-word essay, and fifteen hours of tutorials.

Although P.J.'s mother paid his fine, he missed his review hearing because C.S. could not take off any additional days from work that month since she had already gone to court three days for her two sons. (P.J.'s older brother also had an FTAS case, stemming from skipping school to avoid his bullies.) At P.J.'s initial appearance, the judge had been very focused on fines so C.J. had assumed that paying the fine would end the case.

However, on May 10, 2013, a constable arrived at P.J.'s classroom and arrested him in front of his classmates. The constable took P.J. to truancy court, where he was allowed to call his mother. She left work immediately to go to court.

Both P.J. and C.S. were incredibly upset by his arrest and C.S. held P.J. in her arms as they cried. The truancy court judge had his constable physically separate them. C.S. tried to explain to the judge the amount of stress that her family had experienced due to her older son's situation and pointed out that since her older son had changed schools, P.J. had only been tardy twice, but the judge told her that it wasn't his problem. The judge told P.J. that if "he couldn't get to school on time, he didn't deserve to be in the free world." The judge had P.J. go sit apart from the other students who were in court, and told P.J. that he would "have TYC come pick him up."

C.S. and P.J. were so terrified that P.J. would be sent to juvenile detention that C.S. pled with the judge to send her to jail instead. She told the judge that P.J. missing the review hearing was her fault and that she should be held responsible for this, instead of her child. The judge then told her that he wasn't going to release P.J. to her care. After C.S. continued to plead with the judge, he finally told P.J. that he would get one last chance but that if he didn't complete his order, he would spend the summer in juvenile detention. The judge did not provide P.J. with a new copy of his order so he could see what he still needed to complete. As they were leaving, the judge told C.S. and P.J. that he "knew how long it took to get from court to Webb" and that if they were not there within that time, he would have P.J. re-arrested.

C.S. describes the court hearing as the "most traumatic experience that we've ever

had" and said that it was especially bad because the judge and the constable seemed amused by the family's distress. Adding to P.J.'s distress, by the time he returned to school, the whole school knew about his arrest. P.J. met with a school counselor because he was so upset; the counselor later reported to C.S. that "[P.J.] was very upset when he came to my office. There was so much going on in his mind about what had happened in court that he was overwhelmed by it all."

Since his arrest, C.S. reports that P.J. has woken up in the middle of the night frequently with panic that he has overslept and will be late to school, in violation of his court order. She says that she feels like her son lives in a state of panic now. He is afraid to go to school. P.J. has completed his 500-piece puzzle, essay, and tutorials, with the help of his guidance counselor and teachers. He does not have to return for another review hearing, but the \$50 warrant fee for his arrest and transport to court remains outstanding.

C.S. says that the truancy system is not helping students: "That's not going to make them think positively about school." She thinks that "[m]ost little children would just give up [when faced with this system]... nine times out of ten, these kids are just going to give up." She is concerned that P.J. will continue to think about this for the rest of his life and that it will impact his college opportunities if they see that he has a criminal record.

In addition to his truancy case, the 2012-13 school year has been difficult for P.J., since he has been "thrown in" without special education services for the first time. As a student with Attention Deficit Hyperactivity Disorder ("ADHD"), his transition from elementary school to the multiple-classroom schedule of middle school was hard. The family was also trying to treat his ADHD without medication since they had not been able to find a good fit for medication for him. P.J. struggled to learn the expectations of seven different teachers and to handle transitions between classes. Some of these difficulties have led to time in in-school-suspension. When C.S. protested one of the ISS referrals, noting that the referral stemmed from the longest class during the school day and raising P.J.'s ADHD, the principal of Webb said to her, "A lot of kids are ADHD. It's not an excuse." Although the school knows that P.J. has ADHD, they have made no mention of 504 accommodations for him.

P.W.

P.W. is a 16-year-old student who is finishing her sophomore year at John Horn High School in MISD. She has been entrenched in truancy court hearings since the seventh grade when her attendance was affected by depression and serious migraines that occurred as frequently as three days per week. The severity of her condition led her to take substantial time off from school, occasionally requiring successive weeks at a time to recuperate at home. Despite these barriers to attendance, P.W. continues to do well in school academically. She has never had any disciplinary incidents, and P.W.'s mother, G.W., describes her as a "great kid."

Despite a standing letter from her counselor regarding her ongoing condition, P.W.'s disability-related absences counted against her because school policy required her to provide a separate doctor's letter for each day of absence. While P.W.'s teachers were more sympathetic to the barriers to her attendance, the school administrators were unwilling to offer any flexibility in their approach. Last year, when P.W. was out due to an extended bout of depression, her school un-enrolled her without contacting her.

Due to this inflexible attendance policy, P.W. has had several FTAS cases filed against her in truancy court, forcing her to appear in court for each of these cases separately. G.W. has also had "Parent Contributing to Nonattendance" ("PCNA") cases filed against her. P.W. and G.W. face thousands of dollars in fines as a result of the cases that remain pending against them. They also note that P.W. has often been required to complete classes and programs that "have nothing to do" with her attendance barriers, but also required a fee.

As a result of these court cases, she has missed school to be in court several times during each school year since her first referral – time that is crucial for her to catch up academically. Each day that P.W. feels capable of engaging in school, she wants to be there to catch up. However, when P.W. and G.W. have tried to explain her situation to the court, they've encountered a similarly unyielding attitude. G.W. notes, "It seemed like no matter which way we went, it was a brick wall."

At her most recent appearance in truancy court, P.W.'s charges remained the same even when the judge was given a doctor's note to prove the absences were related to depression. The judge told her that she has to be in school, "even if she's having a bad day." In describing the court process and the way children waive their rights and enter pleas, G.W. noted the court's attitude to be like "dishing out playing cards." Though they would have liked to contest the charges, hiring an attorney to help P.W. was simply not an option financially.

At age twelve, P.W. was arrested at Berry Middle School for failure to appear in court. She failed to appear that day because the court documents had been sent to an old address, and she was not aware of the notice to appear. P.W. was called to the school office that morning, told to put her hands behind her back, and handcuffed in front of her peers for a twenty minute ride to the truancy court in Garland. In court, she sat for ten to fifteen minutes with eight other children, each with their hands cuffed behind their chairs. P.W. was arrested and physically restrained due to a clerical error related to her address.

In truancy court, P.W. has pled many different ways in the hope of obtaining a kinder sentence, regardless of the circumstances behind the absences. P.W.'s priority is to hasten the closure of her cases in order to protect herself from future arrests for failure to appear, and her mother from arrests for failure to pay truancy fines. On one occasion, her mother was arrested for failure to pay fines totaling over one thousand dollars, a colossal amount for a single mother with a disability. G.W. and P.W. both have a fear of

G.W. getting pulled over and arrested on a warrant for outstanding fines in the PCNA cases, and of subsequently losing her part-time job as a result of lost work time. The fines are now so high that G.W. has no hope of paying them.

P.W. earnestly wants to attend school, but her condition actually worsens with the stress created by truancy court cases. She finds herself increasingly overwhelmed by the financial strain on her family caused by truancy fines and the anxiety regarding the potential that she or her mother might face arrest again.

S.B.

S.B. is 16 years old, and is a freshman at West Mesquite High School in MISD. S.B. is a great basketball player and his mother, S.R., notes that he is also an excellent artist whose drawing is “perfect.” S.B. is a special education student who was diagnosed with ADHD when he was seven, and a learning disability when he was eleven. S.B. was held back in sixth grade due to his ADHD and difficulty focusing.

S.B. reports that he does not like high school. The last time he remembers enjoying school was in middle school. S.R. does not believe he is getting adequate accommodations through the special education services he is receiving, and that this has affected the way S.B. feels about school. The only response to his poor grades has been to place him in content mastery class, or “CMC.” S.R. has seen no improvement in S.B.’s grades as a result of allowing him to go to the CMC.

S.B. skips classes in which he struggles to learn. S.R. ensures that he gets to school, but he leaves or skips classes after he gets there. S.R. feels that this is related to his disability and notes that she sees a pattern in the classes he skips – he will go to classes he likes, and skip the CMC or those he does not like. S.R. notes that he goes to his Nutrition and Wellness class, but not Math or Science – classes that require him to “focus.”

S.B.’s mother has pointed this out at Individualized Education Program (“IEP”) meetings. The school based members of the IEP committee have developed a behavior goal around class attendance and have incorporated some basic supports like “positive reinforcement” and “preferential seating” to help him with the goal. Unfortunately, when those interventions have proven to be insufficient, the school has relied on criminal referrals for FTAS instead of providing additional, more meaningful support to allow S.B. a real opportunity to improve class attendance.

Skipping classes has resulted in five FTAS cases being filed against S.B., and two PCNA cases being filed against his mother. At one of the hearings, S.R. told the judge that S.B. was a special education student. But S.R. observed that this did not make any difference in the way S.B.’s cases were handled by the court or school district—his cases were handled in the same way that the court processed all the other students’ cases.

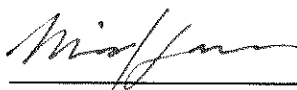
The fines for S.B.'s cases total close to \$2000, without including the fees that accumulate when the fines are not paid within thirty days. S.R. has been able to pay the fine in only one of S.B.'s cases.

At his most recent hearing, S.B. was arrested because he had missed some of his review hearings, and had continued to skip class. He was taken to the Truancy Enforcement Center ("TEC"). S.B. did not understand why he was being arrested, and the judge did not explain where the students were going when they were arrested. S.B. believed they were being taken to juvenile detention.

S.B. sat in court, handcuffed, for at least forty minutes before he and the other six students arrested that day were loaded into a van to be driven to the TEC. Once they were in the van, the constable who was driving told them that "the judge forgot to tell [them] that they weren't going to jail" and explained that they were going to the TEC which was "like another court."

At the TEC, they told S.B. and S.R. that since S.B. had an open juvenile case (a misdemeanor theft) for which he was completing deferred prosecution, his contempt case would not be handled through the TEC process. S.R. and S.B. do not yet know how the contempt case will be handled.

Respectfully submitted,



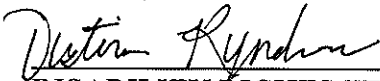
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