

National Center for Youth Law

May 27, 2015

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

RE: Systemic Complaint Regarding Use of Court Truancy Processes to Force Students with Disabilities Out of School, in Violation of the Individuals with Disabilities Education Act

Dear Ms. Swain:

We write to complain about school districts that have unlawfully forced their most vulnerable students out of school through court truancy processes. The students who bring this complaint are students with disabilities who are, or should have been identified as, eligible for special education services.¹ Rather than providing these students with the special education and related services to which they are entitled—services which would allow them to stay in school and access their education—their school districts have referred them to court for the Class C misdemeanor of Failure to Attend School (“FTAS”). Once in court, the school districts actively force students out of their regular education programs, in violation of the students’ rights under the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.* (“IDEA”). We additionally complain about TEA’s violation of its affirmative obligation to ensure that these students with disabilities receive an appropriate education under the IDEA.

I. INTRODUCTION

Texas is punishing children for failing to attend school by forcing them out of school.² Many school districts across the state drive this force-out, particularly for

¹ Throughout this complaint, the terms “students with disabilities” and “student with a disability” are used to describe: (1) students who have been identified as eligible for special education and related services and (2) students who should have been identified as eligible for special education and related services.

² TEXAS APPLESEED, CLASS, NOT COURT: RECONSIDERING TEXAS’ CRIMINALIZATION OF TRUANCY at 6 (2015). Available at

students with disabilities. These school districts fail to provide students with necessary special education services and then penalize them when they inevitably struggle in school as a result. When the students subsequently miss school, either because of their disability or out of frustration that their education is inaccessible given the lack of appropriate special education and related services, the school districts then criminalize their behavior by referring them to court for FTAS.³

The court process varies among jurisdictions, but in all cases school districts play a crucial role in forcing students out of school. School districts make the initial referrals to the courts.⁴ Once a student has been summonsed to court, school district representatives make recommendations to the prosecutor or judge regarding the case outcome. Many courts almost always follow these recommendations, so the school district's recommendation frequently becomes the court order.

Disability Rights Texas ("DRTx"), the National Center for Youth Law ("NCYL"), and Texas Appleseed (collectively, the "Organizations")⁵ bring this complaint on behalf of seven students and all similarly situated students. The students bring this complaint against Texas Education Agency ("TEA") and Abilene, Austin, Clear Creek, Conroe, Ector County, Fort Bend, Fort Worth, Galena Park, Galveston, Houston, Pasadena, San Antonio, and Victoria Independent School Districts ("ISDs") (collectively, "the Districts").⁶ The students named in this

http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=1208 [hereinafter, TEXAS APPLESEED].

³ Certain school districts (e.g., Dallas) employ automated attendance systems that refer students to court automatically once the student reaches a certain number of absences; relegating attendance reporting to such a system means there is no room for correction if an absence should be excused because it is related to a student's disability.

⁴ TEX. EDUC. CODE § 25.0951.

⁵ DRTx is the federally mandated protection and advocacy system for people with disabilities in the state of Texas. Texas Appleseed promotes social and economic justice for all Texans by leveraging the skills and resources of volunteer lawyers and other professionals to identify practical solutions to difficult systemic problems. NCYL is a non-profit organization that uses the law to ensure that low-income children have the resources, support, and opportunities they need for a fair start in life. All three organizations have investigated the harm caused by Texas's truancy system for over three years.

⁶ On April 27, 2015, Ford Bend ISD Superintendent Charles Dupre announced in an email to parents of students in the district that Fort Bend ISD was "perform[ing] a complete review of the District's truancy procedures" and was immediately suspending its truancy procedures during the review. Our organizations and the Complainants urge that investigation into and relief against Fort Bend ISD are still warranted. The district could voluntarily cease its review and resume truancy referrals at any time. Additionally, the Superintendent's email did not expressly address how, during the pendency of its review, Fort Bend ISD will handle students for whom truancy referrals are required under TEX. EDUC. CODE § 25.0951. Finally, students have already been harmed based on Fort Bend ISD's practices, and no information that Fort Bend ISD has provided to the public indicates that the district has incorporated changes aimed directly at remedying the harms to students with disabilities that this complaint seeks to remedy.

complaint represent the many students with disabilities who find themselves funneled into the court system for truancy and then forced out of school:⁷

- J.W., a student with severe Attention Deficit Hyperactivity Disorder (“ADHD”), who was ordered to enroll in a GED program upon recommendation from a Houston ISD Truancy Officer;
- R.W., a student with an intellectual disability and mental health diagnosis, who was forced into a homeschool program by Houston ISD;
- M.P., a student with significant learning disabilities, who is at imminent risk of force out through Houston ISD’s threats that he will be ordered to enroll in a GED program;
- Y.C., a student with severe ADHD, who was told by Fort Bend ISD that she should enroll in a homeschool program;
- C.D., a student with ADHD and depression, who is at imminent risk of being ordered by a Pasadena ISD Truancy Officer to enroll in a GED program when he turns 16 years old;
- X.S., a student with bipolar disorder and ADHD, who was administratively withdrawn from school multiple times by his school in Galena Park ISD; and
- R.S., a student with Asperger’s Syndrome, bipolar disorder, and ADHD, who is at imminent risk of being forced out by a Clear Creek ISD Truancy Officer, who has threatened that he will be ordered to enroll in a GED program.

These students exemplify a few of the many ways in which school districts use the court truancy process to force students with disabilities out of school and into settings where the students do not receive a free, appropriate public education (“FAPE”).

Complainants use the term “force-out” to describe how school districts pushed them out of school and/or forced them to drop out through the truancy process. Like other Texas students, complainants were forced out through one of three methods: (1) to take the General Educational Development (“GED”) test rather than obtain a high school diploma; (2) to be home-schooled, frequently through online courses that provide little to no interaction with live instructors; or (3) to enroll in alternative schooling such as an online/drop-in program or a boot camp where the student must live away from home for months at a time. None of these methods provide students with disabilities with necessary special education and related services. Consequently, all these types of force-out equate with or are likely to result in these students dropping out of school.

The “forced” aspect of school force-out may be overt or subtle. In overt cases, after being summonsed to court for FTAS, a student may be court-ordered to withdraw from school or may agree to withdraw as part of a plea deal or a deferred

⁷ The information in this complaint comes from court observations of Failure to Attend School and Parent Contributing to Nonattendance dockets in counties across the state; interviews with students, parents, and officials; and data collection and analysis.

disposition. More subtly, a student may be forced out of school even where he or she appears to voluntarily withdraw from school. Students may do so to avoid further FTAS fines that their families cannot afford because: they do not know their rights; they feel that they have no other options; and/or their school districts have failed to provide them with necessary special education services and so remaining in school feels hopeless or frustrating. For the purposes of this complaint, we refer to all of these denials of educational services as “force-out.”

Forcing students with disabilities to leave school in any of these ways violates the students’ rights under IDEA and, beyond that, defies logic. On multiple occasions, our organizations witnessed students explain in court that they wanted to remain in school and earn a high school diploma, only to have the school district recommend that the student be forced out and the court then order it. Available data reveals the frequency and inappropriateness of forcing these students to leave school. For instance, from 2010 to 2013, 1,247 special education students in Texas were court-ordered to drop out of school to take the GED test and then failed it.⁸ Although students without disabilities are also forced out of school through the truancy process, force-out disproportionately impacts students with disabilities. From 2010 to 2013, 19.4 percent of students who failed the GED test after being court ordered to drop out of school were students with disabilities, even though they comprised only 8.5 percent of the student population.⁹ Because school districts often do not track special education status when they refer students to court for FTAS and because school districts fail to identify all students with disabilities who need special education, these numbers are almost certainly underestimates.¹⁰

Students with disabilities should never be forced out of school as part of the truancy process. The alternative options to which they are referred cannot provide them with access to the special education and related services to which they are entitled. School districts that use the truancy process to force students with disabilities out of their educational placements violate the central tenet of IDEA that placement decisions for students with disabilities must be made through their Admission, Review and Dismissal (“ARD”) teams. These violations deprive students of any opportunity for educational benefit, any access to the general curriculum, any related services, and any transition services. School districts cannot escape their affirmative obligations to identify and appropriately serve all students with disabilities by forcing students out of services in all the ways identified in this complaint.

Additionally, TEA cannot escape its affirmative responsibilities to ensure that these students receive FAPE by turning a blind eye to this force-out. TEA has failed to provide districts with sufficient guidance to ensure that court truancy processes do not violate students’ rights to FAPE. TEA has failed to create a sufficient data

⁸ TEXAS APPLESEED, *supra* note 2, at 31. This data covers a three-year period.

⁹ *Id.* at 4.

¹⁰ See § II.A.4, *infra*.

monitoring system to track and investigate districts that force out students with disabilities through the truancy process. And TEA has actively disincentivized districts from identifying students with disabilities, resulting in the force-out of students with disabilities who have not been identified for special education services. Consequently, students with disabilities statewide have been, or are at risk of being, forced out of their education.

II. FACTS

A. Background Facts

1. Truancy Laws and Potential Punishments

Texas law requires students to attend school between ages six and eighteen.¹¹ Parents are required to ensure that their children attend school during this time.¹² If a student has three or more unexcused “days or parts of days” in a four-week period, a school district may refer the student and/or parents to court for truancy.¹³ If a student has ten or more unexcused days or parts of days in a six-month period, the school district must either file an FTAS complaint against the student or refer the student to juvenile court as a “Child in Need of Supervision” (“CINS”).¹⁴ School districts may file FTAS complaints on students who are twelve or older, meaning that the students face their own criminal charges.¹⁵ School districts may also file a Parent Contributing to Nonattendance (“PCNA”) complaint on the parent of a child age six to eighteen.¹⁶ Both FTAS and PCNA are Class C Misdemeanors in Texas.¹⁷

Municipal and justice of the peace courts are adult criminal courts with original jurisdiction over FTAS and PCNA cases; large counties can also create specialized truancy courts.¹⁸ Although school districts may refer a student’s truancy case to juvenile court rather than adult court, they rarely do so. In 2012 and 2013, for instance, school districts referred 1,011 and 1,014 CINS cases, respectively, to juvenile court for truancy.¹⁹ This is compared with the roughly 115,000 FTAS complaints filed with municipal or justice courts in each of fiscal years 2012 and 2013.²⁰

¹¹ TEX. EDUC. CODE § 25.085.

¹² TEX. EDUC. CODE § 25.093.

¹³ TEX. EDUC. CODE §§ 25.091(a)(2)(B); 25.0951; 25.093, 25.094.

¹⁴ *Id.*; TEX. FAM. CODE § 51.03(b)(2).

¹⁵ TEX. EDUC. CODE § 25.094.

¹⁶ TEX. EDUC. CODE §§ 25.085; 25.093.

¹⁷ TEX. EDUC. CODE §§ 25.093(c); 25.094(e).

¹⁸ *See* TEX. CODE CRIM. PROC. *see ch. 45* (Two counties, Fort Bend and Dallas, have established specialized truancy courts that hear only FTAS and PCNA cases).

¹⁹ TEXAS APPLESEED, *supra* note 2, at 40.

²⁰ This figure includes the total number of cases filed annually in justice courts, municipal courts, and the Fort Bend and Dallas County truancy courts. TEXAS OFFICE OF CT. ADMIN., JUSTICE COURTS, SUMMARY OF JUDICIAL OR MINOR ACTIVITY BY COUNTY at 9 (2014), *available at*

Potential punishments for FTAS or PCNA cases range from fines to possible imprisonment. The maximum fine for an FTAS or PCNA charge is \$500 each.²¹ Court costs totaling around \$80 may also be levied.²² At the extreme end, FTAS or PCNA charges may result in arrest and incarceration. A student who is seventeen or older may be arrested and jailed for failing to pay the fines in his or her FTAS case, or for contempt if they do not comply with all the terms of the court's order.²³ Similarly, if a student fails to appear in court to face his or her FTAS charges, a warrant may be issued for the student's arrest if he or she is over seventeen.²⁴ Students may also be referred to juvenile court and detained for failure to comply with court orders in FTAS cases. In some jurisdictions, younger students are also handcuffed and brought to court if they fail to appear in response to an FTAS filing.²⁵ Parents may also be incarcerated for failing to appear in court, to pay fines associated with their PCNA cases, or to comply with other truancy-related court orders.²⁶

School districts have broad discretion in filing FTAS and PCNA complaints. First, school districts have discretion in determining whether to file an FTAS complaint with adult court or a CINS complaint in juvenile court. Second, in referring an FTAS complaint, school districts can often choose among a number of justice of the peace and municipal courts, enabling the school districts to refer to judges who are likely to accept their recommendations. Third, except for certain absences defined as "excused" under Texas law, school districts hold discretion in

http://www.txcourts.gov/media/739287/8_juvenile_activity-by-county-2013.pdf (showing 70,003 FTAS cases filed in FY 2013); *see also* TEXAS OFFICE OF CT. ADMIN., MUNICIPAL COURTS, SUMMARY OF JUDICIAL OR MINOR ACTIVITY BY CITY 28 (2014), *available at* http://www.txcourts.gov/media/739135/8-Juvenile_Activity_ByCity_2013-pdf.pdf (showing 15,562 FTAS cases in FY 2013); *see also* TEXAS OFFICE OF CT. ADMIN., JUSTICE COURTS, SUMMARY OF JUDICIAL OR MINOR ACTIVITY BY COUNTY 9 (2014), *available at* http://www.txcourts.gov/media/739262/8-Juvenile_Activity_ByCounty2012.pdf (showing 68,189 FTAS cases filed in FY 2012); TEXAS OFFICE OF CT. ADMIN., MUNICIPAL COURTS, SUMMARY OF JUDICIAL OR MINOR ACTIVITY BY CITY 28 (2014), *available at* http://www.txcourts.gov/media/739238/8-Juvenile_Activity_ByCity2012.pdf (showing 13,272 FTAS cases filed in FY 2012); LEGISLATIVE BUDGET BOARD, TEXAS STATE GOV'T EFFECTIVENESS AND EFFICIENCY REPORT: SELECTED ISSUES AND RECOMMENDATIONS 10 (Jan. 2015) (showing Dallas County truancy court FTAS filings of 25,495 cases in FY 2013 and 28,506 cases in FY 2012, and showing Fort Bend truancy court FTAS filings of 4,722 cases in FY 2013 and 5,190 cases in FY 2012).

²¹ *See* TEX. PENAL CODE § 12.23; TEX. CODE CRIM. PROC. art. 45.041(b)(2).

²² TEXAS APPLESEED, *supra* note 2, at 30.

²³ *See* TEX. CODE CRIM. PROC. art. 45.050; TEX GOV'T CODE § 21.002(c); *cf.* Tex. Att'y Gen. Op. No. GA-0131, *available at* <https://www.oag.state.tx.us/opinions/opinions/50abbott/op/2003/htm/ga0131.htm>.

²⁴ TEX. CODE CRIM. PROC. art. 45.060.

²⁵ DRTx, Texas Appleseed, and NCYL court observations.

²⁶ TEX. EDUC. CODE § 25.093(g); TEX. GOV'T CODE § 21.002; TEX. CODE CRIM. PROC. art. 45.054(b). In February 2015, in a Harris County Justice of the Peace Court, a mother of a special education student in middle school shared the details of her recent arrest. She was arrested and spent one day in jail after failing to appear for a PCNA. She had never received the notices, because the school had sent them to the wrong address. She never received a phone call from the school to inform her about the referral and was not aware that she had received a ticket until after she was arrested.

determining whether to excuse an absence, so school district policy determines when a student has reached the statutory prerequisite for truancy.²⁷ Fourth, the law does not define a “part” of a day, so school district policy sets the number of minutes missed that results in an FTAS filing. Despite guidance from the Texas Attorney General and TEA that student tardies should not result in FTAS filings, our organizations observed many filings based on tardies.²⁸ Fifth, for students over age twelve, school districts also determine whether they will file a PCNA case against the parent as well as an FTAS case against the student; our organizations have observed some school districts who choose to file PCNA charges against both parents along with an FTAS charge against the student. Thus, the school district controls whether the maximum possible fine will be \$500 or up to \$1500 per family.²⁹ Sixth, school districts also decide how they will file complaints regarding subsequent absences—for instance, if a student misses fifteen days or parts of days, the school district could file one consolidated case covering all the absences.³⁰ However, our organizations have also heard of school districts that would file these same fifteen absences as multiple separate cases.³¹

School districts exert enormous influence in their recommendations to courts regarding the additional conditions that may be imposed through the truancy process. This includes the three primary methods of forcing students out of schools that this complaint challenges:

1. GED Programs: Students age sixteen or older may be forced to withdraw from school and enroll in a GED program.³² For students with disabilities, a GED program is almost never appropriate, as

²⁷ See TEX. EDUC. CODE § 25.087; 25.094(f).

²⁸ Texas Attorney General Dan Morales opined that tardiness was not an unexcused absence because it signifies the youth is “present in the school building” and simply late getting to class, whereas the term “unexcused absence” signifies “a child is not present in the school building for a certain period of time.” Tex. Att’y Gen. Op. No. DM-200 (1993), *available at* <https://www.oag.state.tx.us/opinions/opinions/48morales/op/1993/htm/dm0200.htm>. A 2001 TEA guidance letter citing this opinion states that “school districts should not routinely classify each instance of tardiness as an absence for purposes of truancy.” Letter from David A. Anderson, Gen. Counsel, Tex. Educ. Agency, to Administrators (Nov. 13, 2001), *available at* <http://ritter.tea.state.tx.us/taa/legal011113.html>. Both the AG Opinion and the 2001 TEA letter are cited in a 2012 TEA guidance letter noting, “Tardies are generally not considered absences for purposes of compulsory attendance enforcement.” Letter from David A. Anderson, Gen. Counsel, Tex. Educ. Agency, to Administrators (Aug. 2, 2012), *available at* <http://www.tea.state.tx.us/index4.aspx?id=2147508100>. Texas school districts bypass this guidance by defining a window within which youth are “tardy” and another within which they are counted absent.

²⁹ It is worth noting that school districts have some financial incentive to file truancy cases on families. By statute, half of the fines collected from parents charged with the crime of Parent Contributing to Nonattendance (*see* § II.A.1, *infra*) go to the school district’s operating fund. TEX. EDUC. CODE § 25.093(d)(1).

³⁰ TEX. EDUC. CODE § 25.094.

³¹ TEX. EDUC. CODE § 25.094.

³² TEX. CODE CRIM. PROC. art. 45.054 (a)(1)(B), (C).

GED programs are not designed to provide special education services and accommodations. Additionally, in the past year, the GED has become significantly more difficult to pass. Passage rates dropped from 74 percent in 2013 to 51 percent in 2014.³³ This raises further questions about whether the GED is appropriate for students with disabilities, particularly in the absence of necessary services.

2. Homeschooling: In FTAS proceedings, some courts have required parents to withdraw their children from public school and homeschool them without the support or resources of the public school system. In Texas, parents may choose to homeschool their children, and thus be exempt from compulsory attendance laws, as long as they are taught a bona fide curriculum designed to meet certain educational goals, including a study of good citizenship.³⁴ However, parents who homeschool a student with a disability are treated as though they have placed their student in a unilateral private placement, thereby terminating the student's right to receive some or all of the special education and related services that he or she would otherwise receive if enrolled in a public school.³⁵ Courts who order parents to withdraw their students and homeschool them may mistakenly believe they have the authority to do so under TEX. CODE CRIM. PROC. art. 45.054(a)(2), despite no explicit provisions allowing them to order a student to drop out of school and be homeschooled.

Some courts and school districts pressure parents into homeschooling their students, threatening that they will continue to face future truancy charges and fines unless enrolled in homeschooling.³⁶ Feeling pressured, overwhelmed, and

³³ TEXAS APPLESEED, *supra* note 2, at 31.

³⁴ TEX. EDUC. CODE § 25.086; *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432 (Tex. 1994).

³⁵ 19 TEX. ADMIN. CODE § 89.1096.

³⁶ DRTx, Texas Appleseed, and NCYL court observations (February to May 2015). In March 2015, in a Harris County Justice of the Peace Court, one family shared their previous court experiences with a truancy officer from Deer Park Independent School District (Deer Park ISD). Despite having a well-documented medical condition, this child has received three FTAS complaints, because the school refuses to excuse her absences even though documentation provided to school showed that absences were due to her medical condition. Under pressure from the school truancy officer and assistant district attorney, she pled guilty to the first ticket and paid a fine. For the second ticket, she pled not guilty and a trial date was set. When she and her parents appeared for trial, the judge was not present. Only the school truancy officer, assistant district attorney, and court clerk were present. The school truancy officer told her family that there was no need for a trial, because she had already been found guilty. She received a fine and community service. For the third ticket, she has pled not guilty and a trial date has been set, but she does not expect the outcome to differ from her previous experience. At the end of March, she plans to un-enroll and sign up for a homeschool program, because her family cannot afford to continue to pay the fines associated with these complaints.

discouraged by the lack of assistance from the school, parents are coerced into agreeing to withdraw their students from public school and forgo their student's right to receive a free, appropriate public education, even when the parents have no desire, ability or plan to provide meaningful homeschooling to a student with a disability.

3. Alternative Schooling: School districts in FTAS proceedings also make broad recommendations to force students into alternative schooling or programs such as boot camp or other alternative programs. For example, our organizations observed a school district recommend that several students be sent to the Texas ChalleNGe Academy, a boot camp run by the Texas National Guard. This twenty-two-week long camp is located almost 400 miles away from the county in which the students lived. Our organizations spoke to a judge who mentioned sending several students to attend this program, thus causing them to withdraw from their home schools and relocate to a new environment far away from their families and support systems. We also spoke to a family who reported that the school district representative had threatened her son with being ordered to boot camp if he had any more absences. According to the Texas ChalleNGe Academy, students there prepare for the GED test.³⁷

Students may also be forced out of school into programs such as Twilight High School in Houston ISD.³⁸ This program is comprised of online classes with the option to drop in and receive support from teachers in the evening. Enrolling in the "school" requires withdrawing from Houston ISD and being classified as a homeschool student. As with GED programs and homeschooling, students with disabilities almost certainly cannot receive a free, appropriate public education in these settings, because the majority of instruction occurs independently away from school and away from an instructor and because special education and related services and accommodations are not available.

2. Court Procedures for Truancy Cases

³⁷ See [TexasChallengeAcademy.com](http://www.texaschallengeacademy.com), *Core Components & Goals of Challenge*, <http://www.texaschallengeacademy.com/about-us/core-components/> (last visited April 7, 2015).

³⁸ In 2011-2012, 53 students receiving special education services left their high school and enrolled in the Twilight Program. In 2012-2013, 44 students receiving special education services left their high school and enrolled in the Twilight Program. Truancy officers do refer children to this program.. HOUSTON INDEP. SCHOOL DIST., DEP'T OF RESEARCH AND ACCOUNTABILITY, TWILIGHT HIGH SCHOOL PROGRAM, PROGRAM EVALUATION 2011-12 at 6-7 (2012).

In FTAS proceedings, students and families do not receive appointed counsel and, based on our observations and conversations with families, are seldom aware of their rights.³⁹ Although the court procedures vary from court to court and county to county, school districts play an active role in truancy court proceedings statewide.⁴⁰ In some courts, students accept plea deals on the recommendation of the school district without ever appearing before the judge. In these courts, the student appears with a prosecutor and representative of the school district before the judge takes the bench. If the student accepts the prosecutor and school district's recommendation, he or she may never see the judge, or may only see the judge for a cursory plea acceptance. Thus, some students agree to drop out of school at the school district's behest without the court ever making a finding as to the student's guilt or innocence. In other courts, the judge may take the bench but will defer to the prosecutor and school district as to the outcome for the student.⁴¹ Our organizations witnessed judges accept school district recommendations to order students into GED programs, homeschooling and alternative programs over families' objections.

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

In jurisdictions where multiple justice of the peace and municipal courts hear FTAS cases, school districts have discretion to choose where to refer their FTAS complaints. Upon information and belief, many of the school districts that force out numerous students choose to refer to courts that accept without question the school district's recommendations regarding forcing students out of schools. One justice of the peace informed our organizations that several school districts in Harris County stopped referring cases to that judge's precinct because the judge did not always

³⁹ Students with disabilities, who may have a range of disability-related difficulties processing verbal or written information, are even less likely to be aware of their rights in FTAS proceedings. Even when we observed courts providing students information about these rights, we never observed a court modifying its presentation of that information to accommodate the needs of students with disabilities or checking to ensure that a student with a disability understood his or her rights. We observed courts where students were only provided written information about their rights in the court proceedings and the judge then accepted pleas in written form without verifying that the student could read sufficiently to understand the proceeding.

⁴⁰ DRTx, Texas Appleseed, and NCYL court observations (February to May 2015).

⁴¹ DRTx, Texas Appleseed, and NCYL court observations (February to May 2015).

accept the school district's recommendations. Similarly, elsewhere in the state, municipal courts indicated that schools stopped referring FTAS complaints to their courts because they preferred justice of the peace courts that imposed higher fines and were willing to order students to withdraw from school and enter GED programs.

3. State and District Data⁴²

i. TEA's Failure to Ensure Accurate Reporting

School districts are required to track the number of students they refer to court for truancy each year, and to report this number to TEA as part of their Public Education Information Management System (PEIMS) data report.⁴³ Additionally, districts must report whether each FTAS filing was mandatory or discretionary, and whether each case resulted in a fine.⁴⁴ Texas Appleseed requested PEIMS data from TEA on the number of truancy cases filed for the 2010-2011, 2011-2012, and 2012-2013 school years, for every school district in the state.⁴⁵ In response, Texas Appleseed received data reflecting fewer than half of the school districts in the state.⁴⁶ For example, during the 2012-2013 school year, TEA reported there were 1,026 school districts in Texas, but only 323 school districts reported court referrals for truancy.⁴⁷

Yet other data suggest that other Texas school districts did in fact file FTAS cases during the 2012-2013 school year. For the 2012-2013 school year, school districts reported a total of 50,153 FTAS filings to TEA.⁴⁸ In contrast, Office of Court Administration (OCA) records, combined with specialized truancy court data from Fort Bend and Dallas, reflect nearly 115,000 FTAS cases filed for FY 2013.⁴⁹ This large discrepancy shows that TEA data do not include all FTAS filings statewide. These findings are consistent with those of the Legislative Budget Board in the 2015 Government Effectiveness and Efficiency Report ("GEER"), which described the problem of inaccurate truancy data.⁵⁰ These inaccuracies persist despite TEA's claim

⁴² Data in this section was obtained by Texas Appleseed through public records requests, both during research for its CLASS, NOT COURT report and in preparation for this complaint.

⁴³ TEX. EDUC. CODE §42.006; TEXAS EDUCATION AGENCY, PEIMS DATA STANDARDS, *available at* http://tea.texas.gov/Reports_and_Data/Data_Submission/PEIMS/PEIMS_Data_Standards/PEIMS_Data_Standards/

⁴⁴ See LEGISLATIVE BUDGET BOARD, TEXAS STATE GOV'T EFFECTIVENESS AND EFFICIENCY REPORT: SELECTED ISSUES AND RECOMMENDATIONS at 8-9 (Jan. 2015).

⁴⁵ TEXAS APPLESEED, *supra* note 2, at 50.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* [This figure includes 85,565 FTAS cases reported in OCA records plus specialized truancy court data from Dallas County and Fort Bend County].

⁵⁰ LEGISLATIVE BUDGET BOARD, TEXAS STATE GOVERNMENT EFFECTIVENESS AND EFFICIENT REPORT, at 1-20 (2015).

that “[f]ailure of a LEA to submit required data for a particular collection will result in the LEA being referred to the TEA General Counsel for further action.”⁵¹

Critically, school districts claim to be unaware that they are required to submit truancy data through PEIMS: the Legislative Budget Board found that some school districts failed to enter truancy data because they did not know that they were required to do so.⁵² If school districts are unaware of their obligation to report truancy data, they likely have not been appropriately trained to collect and submit this data, and the Education Service Centers (ESC) likely are not competently verifying the information submitted.⁵³

Moreover, we have no evidence to suggest that school districts are tracking this data separately from PEIMS. In response to Texas Appleseed’s requests for data regarding the special education status of students referred to court for FTAS, fewer than half of Texas’s twenty largest school districts were able to provide a complete set of data.⁵⁴ Of those that did, several showed discrepancies between the data they provided to Texas Appleseed, and the numbers they reported to TEA, with most underreporting their numbers to TEA.⁵⁵ This suggests a wholesale failure of the school districts and ESCs to appropriately track, report, and verify data related to court referrals for FTAS, as well as TEA’s failure to enforce data collection requirements.

ii. Districts that do Collect or Report

Of the districts that are collecting and reporting data, many show an overrepresentation of special education students in FTAS cases. The data collected from TEA indicate that approximately 13 percent of reported FTAS cases were filed against students identified with disabilities, even though these students make up approximately 8.5 percent of the Texas student body.⁵⁶ Data that Texas Appleseed collected directly from school districts also indicate an overrepresentation of students with disabilities with FTAS cases.

Not all districts were able to report data from the 2013-2014 school year: for those that did, the overrepresentation of special education students in FTAS case filings continues, and in some cases, worsens.

⁵¹ TEA, PEIMS Data Standards, PEIMS Submission and Resubmission Policy, *available at* <http://ritter.tea.state.tx.us/peims/standards/wedspre/index.html>

⁵² LEGISLATIVE BUDGET BOARD, TEXAS STATE GOV’T EFFECTIVENESS AND EFFICIENCY REPORT: SELECTED ISSUES AND RECOMMENDATIONS, at 8-9 (Jan. 2015).

⁵³ *See* PEIMS Data Standards, Education Service Center Responsibilities, *available at* <http://ritter.tea.state.tx.us/peims/standards/wedspre/index.html>. Under the Standards, TEA has contracted with the ESC for certifying the accuracy of school district data. Through the electronic signature during the submission process, the ESC director certifies that the accuracy and authenticity of the district’s data has been verified. *Id.*

⁵⁴ TEXAS APPLESEED, *supra* note 2, at 70.

⁵⁵ *Id.* at 52, 85.

⁵⁶ *Id.* at 69.

Chart 1: Overrepresentation of Special Education Students in FTAS Case Filings 2012-2013⁵⁷

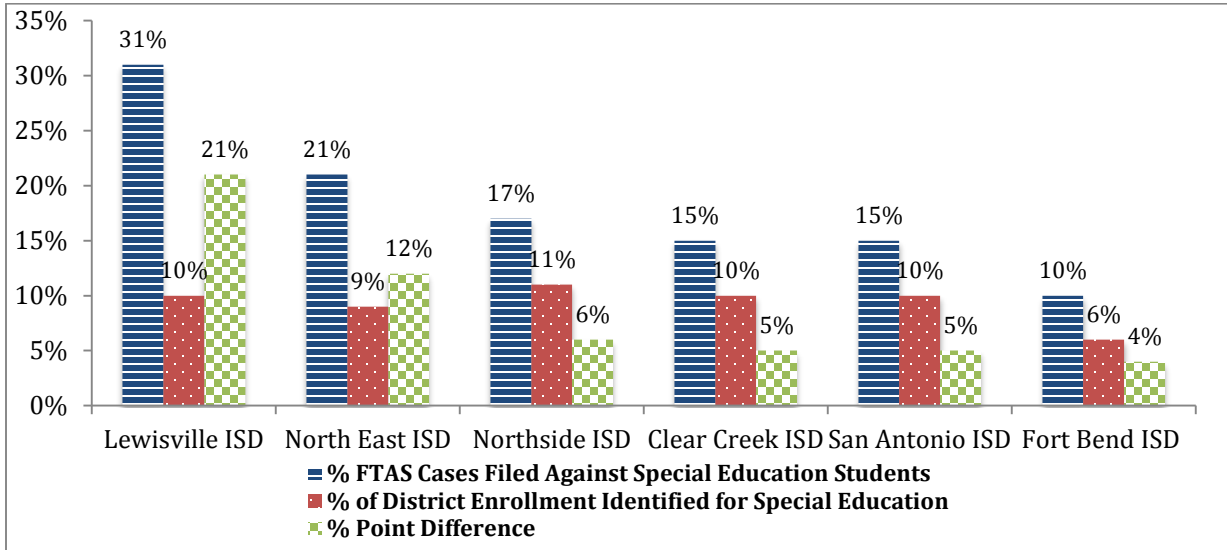
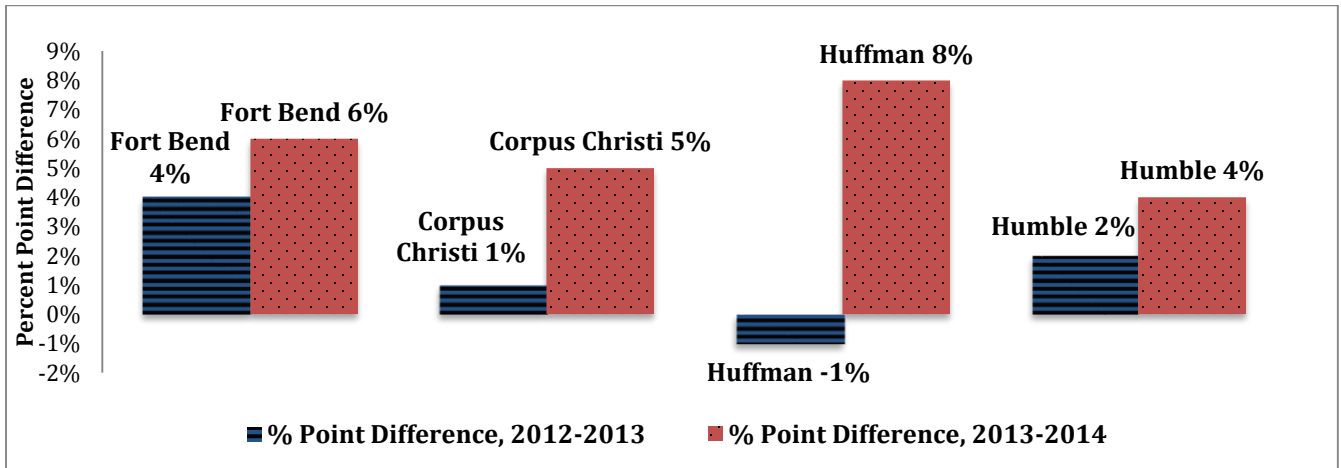


Chart 2: Overrepresentation of Special Education Students in FTAS Case Filings, 2012-2013 v 2013-2014⁵⁸



These charts and table illustrate both the population and overrepresentation of students with disabilities in FTAS filings, for the 2012-13 and, where available,

⁵⁷ This chart shows that students with disabilities were overrepresented in FTAS case filings, compared to their enrollment during the 2012-2013 school year, in select school districts. The numbers represent the difference between the percent of FTAS cases filed against special education students, and the percent of total student enrollment identified as special education.

⁵⁸ This chart shows that students with disabilities are overrepresented in FTAS case filings, compared to their enrollment. Critically, in the selected districts, this overrepresentation increased during the 2013-2014 school year. The numbers represent the difference between the percent of SpEd FTAS cases filed, and the percent of SpEd enrollment. The chart depicts these numbers for both the 2012-2013 and 2013-2014 school years.

the 2013-2014 school year. Practices in some districts have resulted in vastly disproportionate outcomes for students with disabilities. Data reported for the 2013-2014 school year show that the disparity for students with disabilities is increasing in some districts. In three districts – Corpus Christi ISD, Huffman ISD, and Humble ISD – total filings decreased, but the number of cases filed against students with disabilities actually increased in 2013-14. These increased disparities suggest that students with disabilities are not benefiting from any reforms that have decreased the total number of FTAS filings in these districts.

iii. Court-Ordered Dropouts

Despite its failure to appropriately track and report the number of FTAS cases filed, TEA does collect some data that shows how school districts are using the truancy process to force students with disabilities out of school. Texas Appleseed uncovered TEA data on the number of students who were ordered to withdraw from school as part of the truancy process and take the GED but ultimately, never earned their GED.⁵⁹ In January 2015, Texas Appleseed was given statewide data for this dropout code, disaggregated by special education status, race, and ethnicity for the 2010-11, 2011-12, and 2012-13 school years. Over this three-year period, 6,423 students were ordered by Texas courts to drop out of school and take the GED, but never earned a GED.⁶⁰ Of these, 1,247 – about 1 in 5 – were students with disabilities.⁶¹

Table 1: Statewide Court-Ordered Dropouts, 2010-13

| | 2010-11 | 2011-12 | 2012-13 | Total |
|-------------------|---------|---------|---------|-------|
| General Education | 2000 | 1644 | 1532 | 5,176 |
| Special Education | 504 | 418 | 325 | 1,247 |
| Total | 2,504 | 2,062 | 1,857 | 6,423 |

After receiving this statewide data, Texas Appleseed requested the same data disaggregated by school district. After nearly four months and multiple requests, TEA finally produced the data, but at significant cost to the requester because TEA had to have two different divisions work to create the report. TEA’s difficulty in producing this report shows that it is not regularly using this data to monitor school districts, ensure districts comply with IDEA requirements, and protect students with disabilities from force out through truancy court.

The district-level data TEA produced reveal that more than 100 school districts had at least one student with a disability ordered to drop out of school and

⁵⁹ These students are tracked through a specific dropout code within the PEIMS system.

⁶⁰ *Id.*, at 31.

⁶¹ *Id.*

take the GED who never earned a GED.⁶² During the 2012-13 school year, several districts forced a significant number of students with disabilities out of school through this mechanism.

**Table 2: Court-Ordered Dropouts,
Districts with More than Five Special Education Students Reported, 2012-13**

| School District | General Education | Special Education | Total |
|----------------------------------|-------------------|-------------------|-------------|
| Abilene ISD | 34 | 13 | 47 |
| Austin ISD | 27 | 10 | 37 |
| Clear Creek ISD | 28 | 14 | 42 |
| Conroe ISD | 91 | 6 | 97 |
| Ector County ISD | 85 | 16 | 101 |
| Fort Worth ISD | 116 | 19 | 135 |
| Galveston ISD | 32 | 7 | 39 |
| Houston ISD | 145 | 27 | 172 |
| Pasadena ISD | 63 | 13 | 76 |
| San Antonio ISD | 48 | 15 | 63 |
| Victoria ISD | 48 | 10 | 58 |
| Total of 11 Districts | 717 | 150 | 867 |
| Statewide Total | 1532 | 325 | 1857 |

Almost half of all students forced to dropout of school through a court-ordered GED in 2012-13 attended these 11 school districts. This is true for students with disabilities as well as general education students. For both groups of students, these districts are responsible for approximately 46 percent of those ordered to drop out, who then never earned a GED.

iv. Administrative Withdrawal and Homeschooling

TEA also produced data related to school force out that substantiate the complainants' concerns. In addition to the GED data, Texas Appleseed received data showing that students with disabilities are overrepresented in administrative withdrawals and withdrawals to homeschooling statewide.

⁶² See Appendix.

Table 3: Statewide Administrative/Homeschooling Withdrawals, 2012-13

| | Administrative Withdrawal | Withdrawal to Homeschool |
|-------------------|------------------------------|-----------------------------|
| General Education | 230 | 17,959 |
| Special Education | 50 | 2,901 |
| TOTAL | 280 | 20,860 |

Students with disabilities are 18 percent of all students administratively withdrawn, and 14% of students withdrawn to homeschool, even though they are about nine percent of students enrolled in Texas schools.

At the district level, Northside ISD stands out as having a significant overrepresentation of students with disabilities who were administratively withdrawn. Of the 11 students administratively withdrawn by Northside ISD during the 2012-13 school year, five were students with disabilities.

Many districts also reported a disproportionate number of students with disabilities who withdrew to homeschool in 2012-13.⁶³ In some districts, students with disabilities made up a third or more of students who withdrew to homeschool.⁶⁴ Further, many of the districts that forced out a high number of students with disabilities through the court-ordered dropout process, also disproportionately withdrew students with disabilities to homeschool.⁶⁵

These withdrawals may be appropriate in a limited number of cases, but the stark overrepresentation of students with disabilities in these proceedings raises concerns about school district compliance with the IDEA. These numbers also substantiated the lived experiences of the student-complainants, and the Organizations' observations in courts across the state. Time and again, the truancy court process is used to force students with disabilities out of school.

B. Complainants' Facts

The Organizations represent the following individual complainants. They request that TEA take immediate action to ensure that the practice of forcing students with disabilities out of school through the truancy process cease throughout the state so that they and all similarly situated students are provided an opportunity to attend Texas public schools and receive necessary special education and related services. In addition to the violations experienced by the named complainants, the Organizations have witnessed countless special education violations in courts throughout the state. We highlight some additional examples

⁶³ See Appendix.

⁶⁴ *Id.*

⁶⁵ *Id.*

here to demonstrate common types of violations on virtually every FTAS docket around the state and to inform TEA of its failure in monitoring school districts statewide.

1. J.W.

J.W. is a seventeen-year-old student in the ninth grade at Sterling High School in Houston ISD. He is diagnosed with severe ADHD and qualifies for special education services under the eligibility category of Other Health Impairment.⁶⁶ He appears by and through his legal guardian and next friend, Ms. K. Foley. J.W. was forced out of school through a court-order to enroll in a GED program, an order made at the recommendation of a Houston ISD Truancy Officer.

On May 15, 2014, J.W. and Ms. Foley received a summons to appear in court on June 4, 2014, because Houston ISD Truancy Officer Paula Roberson filed FTAS and PCNA complaints against them.⁶⁷ On November 18, 2014, Ms. Roberson filed another FTAS complaint against J.W. and another PCNA complaint against Ms. Foley for alleged unexcused absences on October 10, October 15, and October 17, 2014.⁶⁸ According to J.W.'s attendance records, the school took no adequate prevention measures prior to filing the complaint, nor are there any prevention measures documented after the complaint was filed.⁶⁹ J.W.'s annual ARD meeting occurred on October 17, 2014. The ARD committee failed to offer any assistance, services, or assessments to address J.W.'s attendance or implement positive behavior supports to help him overcome any obstacles preventing consistent attendance.⁷⁰

On January 16, 2015, Ms. Foley received a summons for J.W. to appear in court on February 18, 2015, because Ms. Roberson filed another FTAS complaint against him.⁷¹ On January 21, 2015, J.W. and Ms. Foley appeared in court. Ms. Roberson was present as the complainant. Upon Ms. Roberson's recommendation, the Court ordered J.W. to withdraw from school and enroll in a GED program by March 18, 2015.⁷² On January 24, 2015, J.W. received a "Juvenile Post-Judgment Order" warning him that if he failed to pay the total fine and costs assessed of \$274.90 by March 18, 2015, "a Capias Pro Fine Warrant may immediately issue for [his] arrest."⁷³

⁶⁶ ARD/IEP Team Report, for J.W., Houston ISD at 3 (October 17, 2014).

⁶⁷ Summons, Justice Court, Precinct 7, Place 1, Parent to Appear with Defendant Child, Case Number CR71C0177015 (May 15, 2015).

⁶⁸ Roberson Aff. ¶¶ 1-4.

⁶⁹ Houston ISD Campus Attendance Referral for Truancy Prevention Measures, October 20, 2014.

⁷⁰ ARD/IEP Team Report, for J.W., Houston ISD at 3 (October 17, 2014).

⁷¹ Summons, Justice Court, Precinct 7, Place 1, Parent to Appear with Defendant Child, Case Number CR71C0196186 (January 16, 2015).

⁷² Order Suspending Sentence and Deferring Final Dep. January 21, 2015.

⁷³ Juvenile Post-Judgment Order to Show Cause, (January 27, 2015).

On January 27, 2015, Ms. Foley received notice from Sterling High School that J.W. was being charged with another Class C Misdemeanor for FTAS. The notice alleged that he had 55 unexcused absences from August 28, 2014 to January 26, 2015.⁷⁴ According to Sterling High School attendance records, only 3 of these 55 unexcused absences were a full day.⁷⁴ For 52 of the 55 alleged unexcused absences, J.W. had attended one or more classes during the day.⁷⁵

On February 2, 2015, Ms. Foley received a letter from Principal E. Dale Mitchell, stating that J.W. had been “administratively withdrawn.”⁷⁶ Due to the court order, J.W. enrolled in the Twilight High School. Since he did not receive any individualized special education services and supports in Twilight Program, he struggled to make any progress and, in frustration, dropped out. He is currently homeless, out of school and unemployed.

2. R.W.

R.W. is an eighteen-year-old student in the twelfth grade. Until she was forced out of school through the truancy process, she was receiving special education services at Sterling High School in Houston ISD. Ms. K. Foley, R.W.’s aunt, files this complaint regarding R.W.’s force-out by Houston ISD. R.W. was forced out of school by her principal administratively withdrawing her due to absences. R.W.’s ARD did not do anything to address those absences before she was forced out of school.

On November 4, 2013, R.W. and Ms. Foley received a summons to appear on November 19, 2013, because an FTAS complaint had been filed against her.⁷⁷ On December 23, 2013, R.W. received another summons to appear on January 22, 2014, because an additional FTAS complaint had been filed against her.⁷⁸ On September 23, 2014, R.W. received a “Court Costs Bill” from the court informing her that although “the assistant district attorney opted to dismiss this case”, she still needed to pay \$85 by October 7, 2014 or she would be convicted and fined in the amount of \$585.⁷⁹ In addition, if she was unable to pay, a Capias Pro Fine Warrant for her arrest could be issued.⁸⁰

On January 27, 2015, Ms. Foley received notice from Sterling High School that R.W. was being charged with FTAS, because she allegedly had 39 unexcused

⁷⁴ Houston ISD, Warning Notice, January 27, 2015.

⁷⁴ *Id.*, at 2.

⁷⁵ Sterling High School Attendance Records for J.W, at 1-4.

⁷⁶ Letter from E. Dale Mitchell, Sterling High School Principal, to Ms. Foley (February 2, 2015).

⁷⁷ Summons, Justice Court, Precinct 7, Place 1, Parent to Appear with Defendant Child, Case Number CR71C0160171 (November 11, 2013).

⁷⁸ Summons, Justice Court, Precinct 7, Place 1, Parent to Appear with Defendant Child, Case Number CR71C0164478 (January 22, 2015)..

⁷⁹ Court Costs Bill, September 23, 2014.

⁸⁰ Court Costs Bill, September 23, 2014.

absences from October 1, 2014 to January 26, 2015. On February 2, 2015, Ms. Foley received a letter from Principal Mitchell, stating that R.W.'s enrollment had been revoked and she had been "administratively withdrawn from Sterling High School."⁸¹ The letter further stated that if R.W. could be charged with trespassing if she returned to Sterling High School.⁸²

As a result, R.W. was forced to sign up for Advanced Virtual Academy, a homeschool program through Twilight High School, and to abandon her rights to a free, appropriate public education.

3. M.P.

M.P. is a seventeen-year-old student in the tenth grade at Worthing High School in Houston ISD. He qualifies for special education under the eligibility category of Specific Learning Disability.⁸³ He appears by and through his parent and next friend, Mr. M. Porter. M.P. is at imminent risk of being forced out of school because his family cannot afford additional FTAS and PCNA fines, which appear inevitable given Houston ISD's continued refusal to correctly record his attendance.

M.P. receives pull-out educational support services in a resource class.⁸⁴ Despite being present at school, his general educational teachers continue to mark him absent when he is in the resource class. M.P. and Mr. Porter have received two FTAS and PCNA complaints. For the first FTAS and PCNA complaint, they both attempted to plead not guilty and explain the situation, but Houston ISD Truancy Officer Roberson ignored their explanation and coerced them into pleading guilty. They were both fined and are still making payments.

On November 3, 2014, the second FTAS and PCNA complaints were filed against M.P. and Mr. Porter. The Campus Attendance Referral fails to correctly identify M.P. as a student receiving special education services or show any truancy prevention measures taken prior to referral.⁸⁵ On February 18, 2015, M.P. and Mr. Porter again attempted to plead not guilty and explain the situation, but to no avail. They accepted a deferred disposition agreement.⁸⁶ M.P. was threatened by a TRIAD caseworker with being ordered to enroll in a GED program if he continues to incur absences.

In March 2015, an ARD was convened for M.P., but attendance was not discussed and no assurances were made to resolve these issues for M.P. and Mr. Porter. On April 28, 2015, DRTx appeared as pro bono counsel for M.P. and Mr. Porter. Ms. Roberson recommended that the disposition agreement be revoked and

⁸¹ Letter from E. Dale Mitchell, Principal, Sterling High School, to Parent of R.W. (February 2, 2015).

⁸² *Id.*

⁸³ ARD/IEP Team Report, for M.P., Houston ISD (October 29, 2014).

⁸⁴ ARD/IEP Team Report, for M.P., Houston ISD (October 29, 2014).

⁸⁵ Letter from Judge Hilary Chen, Justice of the Peace Precinct 7, Place 1, to M.P., (November 5, 2014).

⁸⁶ Order Suspending Sentence and Deferring Final Dep. for M.P. (February 18, 2015).

a fine imposed, because M.P. had incurred more absences. DRTx insisted that she call Special Education Department Chair Kimberly Wilson at Worthing High School to verify the alleged absences. Ms. Wilson confirmed M.P. and Mr. Porter's claims that M.P. has not had any unexcused absences from school. Although the Assistant District Attorney agreed to dismiss the complaints, the Court Clerk told M.P. and Mr. Porter that they are still required to pay court costs of \$87 each or the court will find them in violation of the deferred disposition agreement and impose a fine of \$587 each. On April 28, 2015, DRTx filed a motion to waive fines and costs and requested a hearing, but the court has not yet responded or set a hearing.

Mr. Porter recently received another warning letter for alleged unexcused absences. DRTx alerted Houston ISD Legal Counsel Hans Graff and Houston ISD Special Education Director Susan Hurta about this issue, but has not received a response on the issue.⁸⁷ Mr. Porter and M.P. are homeless and have no current income. Mr. Porter is considering un-enrolling M.P. to homeschool him, because he cannot afford to pay the fines and costs associated with additional FTAS and PCNA complaints.

4. Y.C.

Y.C. is a fifteen-year-old student in the ninth grade at Willowridge High School in Fort Bend ISD. Y.C. is diagnosed with severe ADHD. She is prescribed Vyvanse 60mg/daily and Intuniv 4mg/daily to treat her ADHD.⁸⁸ She appears by and through her legal guardian and next friend, Ms. L. Spann. Y.C. was forced out of school through the financial burden of FTAS and PCNA fines caused by Fort Bend ISD's failure to correctly identify Y.C. as a student with a disability or to correctly excuse medical absences.

On September 15, 2011, Y.C. was categorized as a Section 504 student, but Fort Bend ISD failed to ever convene a 504 meeting, develop and implement an individualized accommodation plan, or convene a manifestation determination review for any of the multiple suspensions and expulsions to disciplinary alternative

⁸⁷ Email from Shiloh Carter, Staff Attorney Disability Rights Texas, to Hans P. Graff, Houston ISD Legal Counsel (February 23, 2015).

⁸⁸ See Willowridge High School, Houston, TX, School Health Records for Y.C., (April 1, 2015) (Includes entries dated from 2010-2015 for the following conditions: Allergy, Asthma, Psychological Disorder, Vision Conditions, Pregnancy, and ADHD/ADD. Entry dated August 23, 2010 includes comment "take vyvanse 50 mg @ 0800 AM in clinic; as of 2/9/11 takes intuniv in pm also." Entry dated August 22, 2011 includes comment "vyvanse 50mg in AM @ school, intuniv 2mg @ home." Psychological Disorder entry dated December 1, 2011 includes comment "considering inpatient care; med regulation pending." Pregnancy Entry dated February 9, 2015 includes comment "Student in the clinic feels lightheaded. Medical referral given to student. Referral returned and student physician noted that student needs to eat frequent meals and stay hydrated").

education placements.⁸⁹ In addition, Fort Bend ISD has failed to ever evaluate Y.C. for special education services.⁹⁰

During the 2009-2010 school year, Y.C. failed the fourth grade.⁹¹ In 2013, she did not pass any section of the STAAR test.⁹² In 2014, Y.C. did not pass four of the five sections of the STAAR test.⁹³ During the 2014 fall semester, Y.C. failed six of her seven classes.⁹⁴ Despite a doctor's recommendation that she be evaluated for special education services when she was in elementary school, several placements at a disciplinary alternative education placement, failing the fourth grade, being socially promoted from the fifth grade to the sixth grade, and currently failing all her ninth grade classes, Fort Bend ISD continues to refuse to evaluate Y.C. for special education services.

Y.C. just recently gave birth to her first child. Due to her pregnancy, she has experienced frequent nausea and has had to refrain from taking her prescribed medications for her ADHD.⁹⁵ She often misses her first period class because she is in the school bathroom or school nurse's office due to pregnancy related nausea. Willowridge High School has refused to accommodate Y.C. and excuse these absences.

Instead, Willowridge High School has referred her to the Fort Bend Truancy Court twice this year. On January 28, 2015, Fort Bend ISD Truancy Officer Rafael Rincon filed an FTAS complaint against Y.C. for ten alleged unexcused absences between December 2, 2014 and January 15, 2015.⁹⁶ According to the attendance report filed with the complaint, only three out of the ten alleged unexcused absences were full days.⁹⁷ On February 17, 2015, the Fort Bend Truancy Court entered a Deferred Adjudication Order that ordered Y.C. to successfully complete the "Saved by the Bell" Program or else pay a fine of \$295. This order requires Y.C. to pay a special expense fee of \$120 within 30 days (or \$145 after 30 days), complete eight

⁸⁹ See Fort Bend ISD Section 504 Records for Y.C.; See also Fort Bend ISD School Health Records for Y.C., April 1, 2015 (School health records for Y.C. indicate that she is not receiving 504 accommodations); See also, Fort Bend ISD Education Records for Y.C. (In 2012-2013, 2013-2014, and 2014-2015 school years, Y.C. was sent to a Fort Bend ISD DAEP, Ferndell Henry Center for Learning).

⁹⁰ Fort Bend ISD Section 504 Records for Y.C. (Listing no evaluation date).

⁹¹ Fort Bend ISD Education Records for Y.C. ⁹¹ (At Risk Screen includes entries stating the following: "Placed in Alternative Education Program", Entry Date - January 15, 2013, "Did not maintain average of 70 in 2+ courses (7-12)" Entry Date - October 28, 2012, "Did not perform satisfactorily on assessment instrument" Entry Date - November 11, 2013, "Not advanced to next grade 1+ times (K-12)" Entry Date - August 23, 2010).

⁹² Fort Bend ISD Education Records for Y.C.

⁹³ Fort Bend ISD Education Records for Y.C.

⁹⁴ Official Transcript for Y.C., March 31, 2015 (*stating* Y.C.'s grades for 2014 fall semester are the following: English 1 -57, Reading 1 - 66, Algebra 1- 3, Science IPC - 59, World Geography - 59, P.E. - 66).

⁹⁵ Y.C. Student Profile on Skyward Educator Access Plus (Y.C.'s student profile includes a "Critical Alert Information! - ADD/ADHD - not on meds due to pregnancy").

⁹⁶ Truancy Compl. Aff., Fort Bend Truancy Court (January 28, 2015).

⁹⁷ Period Attendance Report, Fort Bend ISD Complaint # C1502357.

hours of community service, and places her under the supervision of a juvenile probation officer.⁹⁸ In addition, the order threatens to hold Y.C. in contempt, if she fails to comply with it or the directions of her assigned probation officer.⁹⁹

On March 3, 2015, Mr. Rincon filed a second FTAS complaint against Y.C. for ten alleged unexcused absences from January 16, 2015 to February 23, 2015.¹⁰⁰ According to the attendance report filed with this complaint, only one of the alleged absences was a full day absence.¹⁰¹

Since Willowridge High School refused to provide attendance accommodations or excuse absences related to her pregnancy and health issues, and her family could not afford to pay court-ordered fines, Y.C.'s doctor recommended homebound education services.¹⁰² Fort Bend's Truancy Court assigned S.O.U.R.C.E. Caseworker Betsy Vasquez to Y.C.'s case. After Willowridge High School received the request for homebound education services, S.O.U.R.C.E. Caseworker Betsy Vasquez visited Y.C. at home to try to convince her to withdraw so she could enroll in a homeschool program rather than Fort Bend ISD's homebound education program.

5. C.D.

C.D. is a fifteen-year-old student in the ninth grade at South Houston High School in Pasadena ISD. C.D. is diagnosed with ADHD and depression. He appears by and through his parent and next friend, Ms. D. Garcia. C.D. is at imminent risk of being forced out through Pasadena ISD's failure to appropriately identify him as a student with a disability and its referral of C.D. for FTAS.

Despite receiving documentation of his ADHD diagnosis and failing classes for the last two years, Pasadena ISD has failed to evaluate C.D. for special education services. Currently, C.D. is failing six of his seven classes.¹⁰³ In addition, his report cards include teacher comments describing how C.D.'s behavior affects his schoolwork.¹⁰⁴

C.D. has received three FTAS complaints. Under pressure from the school Truancy Officer and Assistant District Attorney, C.D. pled guilty to all three and received fines for all three.

⁹⁸ Order Granting Deferred Adjudication, Case No. 15-JJVT1-10579 (February 17, 2015).

⁹⁹ Order Granting Deferred Adjudication, Case No. 15-JJVT1-10579 (February 17, 2015).

¹⁰⁰ Truancy Compl. Aff., Fort Bend Truancy Court (March 6, 2015).

¹⁰¹ Period Attendance Report for Y.C., Fort Bend ISD Complaint #C1504013.

¹⁰² Fort Bend ISD Request for Medical Information for Y.C. (Dr. Pappas completed the form on March 10, 2015. Dr. Pappas stated that "[d]ue to frequent nausea, she should begin homebound services at this time").

¹⁰³ Pasadena ISD Six Week 4 Report Card for C.D. 2014-2015.

¹⁰⁴ Pasadena ISD Six Week 3 & 4 Report Cards for C.D. 2014-2015.

On January 14, 2015, Ms. Garcia spoke with an administrator from South Houston High School to express her frustration with the school's failures to provide adequate supervision, because Ms. Garcia "brings [C.D.] to school every day."¹⁰⁵ South Houston High School did not offer any assistance or assurances that C.D. was adequately supervised while at school.¹⁰⁶ On January 16, 2015, Pasadena ISD Truancy Officer Susan Baker filed a complaint affidavit against Ms. Garcia and C.D. for ten alleged unexcused absences between September 19, 2014 and December 19, 2014.¹⁰⁷ Only two of the ten alleged unexcused absences were for full days.¹⁰⁸

In February 2015, Ms. D. Garcia appeared in court for a PCNA complaint, and C.D. appeared for his third FTAS complaint.¹⁰⁹ The school liaison threatened to order C.D. to enroll in a GED program when he turns sixteen years old. Ms. Garcia tried to plead not guilty, but was coerced by the school truancy officer and assistant district attorney to change her plea to no contest.¹¹⁰ She was told that, if she pled not guilty, she would have to prove her innocence by providing medical notes for every alleged absence. She was also told that the charge would not appear on her record if she pled no contest. She changed her plea to no contest and received a fine plus court costs of \$525. She requested a payment plan, but her request was denied.¹¹¹ C.D. also received a fine and court costs of \$525.¹¹²

6. X.S.

X.S. is a sixteen-year-old student in the eleventh grade at North Shore Senior High School in Galena Park ISD. He has mental health diagnoses of ADHD and bipolar disorder. He qualifies for special education services under the eligibility category of Emotional Disturbance. He appears by and through his parent and next friend, Ms. J. Simmons. X.S. was forced out of school through administrative withdrawal for absences. These absences were caused by Galena Park ISD's failure to provide X.S. with appropriate special education and related services.

Last school year, X.S. attempted suicide at school and had to be hospitalized for two weeks. X.S. struggles emotionally at school. Ms. Simmons has requested assistance from the school to help X.S. improve his attendance, such as through positive behavior supports and accommodations to attendance policies. In addition,

¹⁰⁵ Assurance of Campus Efforts for C.W. (January 15, 2015).

¹⁰⁶ Assurance of Campus Efforts for C.W. (January 15, 2015).

¹⁰⁷ Compl..for Parent Contributing to Nonattendance , Harris County Justice of Peace, Precinct 8, Place 2 (January 16, 2015).

¹⁰⁸ See Truancy Officer Packet, Attendance Information Summary for C.D. (February 12, 2015); see also Compl..for Parent Contributing to Nonattendance , Harris County Justice of Peace, Precinct 8, Place 2 (January 16, 2015).

¹⁰⁹ Direction to Satisfy Judgment, Defendant's Acknowledgement at 1 (February 17, 2015)

¹¹⁰ See Parent/Guardian Plea of No Contest, Court Records from Harris County Justice of the Peace, Precinct 8, Place 2 (February 17, 2015). See Harris County Justice of Peace, Precinct 8, Place 2 at 2 (February 17, 2015)..

¹¹¹ See Direction to Satisfy Judgment, Defendant's Acknowledgement at 1 (February 17, 2015).

¹¹² See Direction to Satisfy Judgment, Defendant's Acknowledgement at 1 (February 17, 2015).

she requested a credit recovery program for X.S.. Galena Park ISD has denied X.S. any of the assistance requested by Ms. Simmons.

In January 29, 2015, Assistant Principal Julian Guillory administratively withdrew X.S. from school after 6 absences.¹¹³ Ms. Simmons re-enrolled her son in school, although she and X.S. were required to meet with Assistant Principal Guillory before he would allow X.S. to re-enroll. On February 3, 2015, Ms. Simmons received a letter from Assistant Principal Guillory notifying her that X.S. had been withdrawn again.¹¹⁴ The letter further stated that before Ms. Simmons could re-enroll X.S., she “must attend a meeting with the campus Truancy Officer and Administrator.”¹¹⁵ On February 10, 2015, X.S. attempted to attend school, but was told that he could not re-enroll himself and would not be allowed to attend until his mother re-enrolled him.¹¹⁶ On March 6, 2015, X.S. was administratively withdrawn again from school for non-attendance.¹¹⁷ In this current school year, according to his attendance records, X.S. has had no full day unexcused absences.¹¹⁸

7. R.S.

R.S. is a seventeen-year-old student who was in the tenth grade at Clear Lake High School in Clear Creek ISD during the fall 2014 semester. He is diagnosed with bipolar disorder, Asperger’s syndrome, and ADHD and receives special education services under the eligibility categories of Emotional Disturbance and Other Health Impairment. He appears by and through his parent and next friend, Ms. G. Walters. R.S. is at imminent risk of being forced out of school into a GED program due to Clear Creek ISD’s referral of R.S. for FTAS and its failure to provide R.S. with appropriate special education and related services.

During the 2013-2014 school year, R.S. attended Clear Creek High School in a self-contained behavior support classroom. During the summer, Ms. Walters was notified that R.S. would have to change to a general education setting at Clear Lake High School, because the behavior support program was no longer offered at Clear Creek High School and their residence was zoned to Clear Lake High School. This placement change was made outside of an ARD committee meeting or vote.

On October 21, 2014, Clear Lake High School filed an FTAS complaint against R.S. and a PCNA complaint against Ms. Walters for 10 alleged unexcused absences

¹¹³ See Attendance Interventions and Total Number of Days Missed in a Year for X.S.

¹¹⁴ Letter from Julian Guillory, Deputy Principal, North Shore Senior High School, to Parent or Guardian of X.S. (February 3, 2015).

¹¹⁵ Letter from Julian Guillory, Deputy Principal, North Shore Senior High School, to Parent or Guardian of X.S. (February 3, 2015).

¹¹⁶ See Email from Elizabeth Nettles, Behavioral Specialist for P.A.S.S. Program, to Karen Jill (February 10, 2015).

¹¹⁷ See Email from Elizabeth Nettles, Behavioral Specialist for P.A.S.S. Program, to Karen Jill (April 9, 2015).

¹¹⁸ See North Shore Senior High Day Summary (Morning Report) for X.S. (May 12, 2015).

from September 16 to October 13, 2014.¹¹⁹ According to attendance records, Ms. Walters provided notes for absences on September 3, September 15, September 16, September 17, September 18, September 19, and October 6, 2014, but Clear Lake High School refused to excuse these absences.¹²⁰ At the November 7, 2014 court date a Clear Creek ISD truancy officer recommended that R.S. be ordered to un-enroll from school and sign up for a GED course. Ms. Walters advocated against ordering R.S. to enroll in a GED program. The court threatened to order R.S. to enroll in a GED program if he obtained any additional unexcused absences.

III. LEGAL VIOLATIONS

A. The Districts have failed to identify, locate, and evaluate students with disabilities for special education and related services under IDEA before referring those students to court for FTAS.

The Individuals with Disabilities Education Act (“IDEA”) mandates that all children with disabilities, including those who are homeless or wards of the state, who are in need of special education and related services, be identified, located, and evaluated (“Child Find”).¹²¹ The Districts have failed to develop policies and procedures to ensure that all children with disabilities are identified, located, and evaluated for special education services as required by the “Child Find” laws. For some of the Districts, these failures are reflected in their significantly lower percentage of students identified for special education services than the statewide average.¹²²

For instance, Fort Bend ISD’s inadequate Child Find policies and procedures have denied appropriate education to an alarming number of children with disabilities.¹²³ During the most recent school year for which TEA has published data, Fort Bend ISD’s special education population was only 6.0 percent of the total student population,¹²⁴ less than half the national average of 12.9 percent and less than three-quarters of the state average of 8.5 percent.¹²⁵ During the 2012-2013

¹¹⁹ Compl. for Failure to Attend School, Harris County, Texas Precinct 8, Position 2 (October 21, 2014).

¹²⁰ See Student Attendance Detail for R.S., Clear Lake High School (November 6, 2014).

¹²¹ 34 C.F.R. § 300.111.

¹²² 34 C.F.R. § 300.111.

¹²³ See attachment 1, Fort Bend ISD 2011-2012 PDMAS Data interpretation, (*stating* “Although the district meets TEA’s standard of 8.5% SED representation, as a percentage of total enrollment, the district reports 6.2% of students receive services under IDEA (we have established that this is a concern)”).

¹²⁴ Texas Education Agency Snapshot School District Profiles, Fort Bend ISD 2012-2013, *available at* <http://ritter.tea.state.tx.us/cgi/sas/broker>.

¹²⁵ TEXAS EDUCATION AGENCY, ENROLLMENT IN TEXAS PUBLIC SCHOOLS, 2012-2013, (Mar. 2014), *available at* http://tea.texas.gov/acctres/enroll_index.html; TEXAS EDUCATION AGENCY, ENROLLMENT IN TEXAS PUBLIC SCHOOLS, 2013-14, (Nov. 2014), *available at* http://tea.texas.gov/acctres/enroll_index.html (national data most recently available for the 2011-2012 school year).

school year, only 811 students out of 69,123 Fort Bend ISD students were referred for evaluations and only 56 of those referrals were high school students.¹²⁶ At Willowridge High School, only five students of the total 1,256 students were referred for special education services in 2012-2013.¹²⁷ Over the last three years, Fort Bend ISD's special education population has never constituted more than 6.3 percent of the student population.¹²⁸

Houston ISD also identifies fewer students who are eligible for special education than the national and state average. In the 2012-2013 school year, the district identified only 7.7 percent of the student body as eligible for special education.¹²⁹

The Districts are required to include special education referrals as part of their overall general education or screening system, but have failed to do so.¹³⁰ Under IDEA, school districts cannot have a policy or procedure that purposefully delays or denies identification for special education.¹³¹ The current referral policies in Fort Bend ISD purposely delay evaluations in violation of IDEA.¹³² According to Fort Bend ISD's own training materials, the district suggests that students who are in kindergarten or first grade do not have enough educational opportunity to qualify for services.¹³³ Furthermore, the district instructs their staff to wait for fifth grade students to "age up a year" before referring for an initial special education evaluation or a reevaluation if students are still struggling.

The Districts' Child Find policies and general education interventions prevent students with disabilities involved in the truancy courts from being identified, located and evaluated for special education services. For example:

- Complainant Y.C. is a student in Fort Bend ISD who has never been evaluated for special education services, despite a diagnosis of severe ADHD that has been well documented with the school district for years. After failing

¹²⁶ See attachment 1, Fort Bend ISD K-12 referral data for the 2012-2013 school year, also available at <http://ritter.tea.state.tx.us/cgi/sas/broker> and Texas Academic Performance report for Willowridge High School (see attached also available at <http://ritter.tea.state.tx.us/perfreport/tapr/2013/static/campus/c079907002.pdf>). Of the 811 referred for special education services, 464 were found eligible. Only 1.17 percent of the student population is referred for services and only .67 percent become eligible each year.

¹²⁷ See attachment 3, Fort Bend ISD k-12 referral data for the 2012-2013 school year.

¹²⁸ See attachment 2, Fort Bend ISD's 2014-2015 Fast Facts report, at 2 (*indicating a special education population of 6.3%*).

¹²⁹ Texas Education Agency Snapshot School District Profiles, Houston ISD 2012-2013, *available at* <http://ritter.tea.state.tx.us/cgi/sas/broker>.

¹³⁰ 19 TEX. ADMIN. CODE § 89.1011.

¹³¹ See attachment 4, OSEP Letter 11-07, "A Response to Intervention (RTI) Process Cannot be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)" (January 21, 2011).

¹³² 34 C.F.R. §§ 300.304-311.

¹³³ See attachment 5, Fort Bend RTI training, "Making RTI Work For You—how to have more time and make more money and help more students!" (November 8, 2013).

multiple grades and receiving repeated assignments to disciplinary alternative placements, Y.C.'s doctors recommended and notified Fort Bend ISD of the need for special education services. Despite this ongoing, demonstrable need for evaluation for special education services, Fort Bend ISD continues to fail to evaluate Y.C. for special education services.

- Complainant C.D. is a student in Pasadena ISD who has never been evaluated for special education services. C.D. is diagnosed with ADHD and depression, and has failed multiple classes over the last two years. C.D. has never been evaluated for special education and has received three FTAS charges. Rather than identifying C.D. as a student with a disability and referring him for a special education evaluation, school staff assigned to the truancy court have threatened C.D. that they would obtain a court order to force him to drop out and pursue a GED once he turns sixteen.
- A seventeen-year-old student in Houston ISD received special education services in middle school for her bipolar disorder. When she moved to high school, she was told that special education was not offered in high school and she stopped receiving services. Subsequently, she was administratively un-enrolled after missing school to take care of her daughter during an extended illness. Although she wants to return to school to earn her diploma, she has not been able to do so because of a lack of childcare for her daughter and her difficulty in making progress in school without the support of special education. The court ordered her either to re-enroll in public school in two weeks, without the school providing any services to help overcome the barriers that had prevented her from re-enrolling previously, or else to permanently drop out and pursue a GED.
- A student in Houston ISD who had not been evaluated for special education was hospitalized for her depression. After informing the campus of her depression, subsequent hospitalization and failing grades, the campus recommended she locate a private therapist and made no efforts to refer her to special education for evaluation. After receiving FTAS charges for the time she was in the hospital, she received a 90-day deferred disposition order along with a requirement to attend tutoring sessions, but the school still did not refer her to special education evaluations.

B. The Districts fail to provide appropriate and effective evaluations that could determine the root causes of truancy for students with disabilities and ensure their appropriate educational placement.

The Districts are required to ensure that every child receiving special education and related services is appropriately reevaluated should the student's educational or related service needs, including improved academic achievement and

functional performance, warrant a reevaluation.¹³⁴ The evaluation must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student to determine whether the student's Individualized Education Program ("IEP") sufficiently supports the student in making educational progress.¹³⁵

When a student with a disability misses sufficient school days to be charged with FTAS, the student's academic achievement, functional performance, and ability to access the general education curriculum have likely been harmed. Consequently, before filing an FTAS complaint, the school district should first determine the reasons behind the student's absences and their impact on the student's ability to make progress on his or her IEP goals and receive a free, appropriate public education. If the reasons behind the student's absences are not readily apparent, the school should conduct a reevaluation to specifically understand the student's attendance issues. Such a reevaluation could include a functional behavioral assessment to evaluate behavioral difficulties that impact a student's ability to remain in a classroom; a psychosocial evaluation to assess psychological or other factors that may prevent a student from attending school regularly; or academic and intellectual functioning evaluations to assess whether the student's attendance is impacted by the student's frustration with limited academic understanding. After conducting court observations throughout the state, our Organizations have not encountered any students who have received this individualized assessment to determine the root causes of their nonattendance and provide recommendations for addressing the issue.

Additionally, a change in placement should generally trigger a reevaluation, particularly when the placement change is to a more restrictive setting.¹³⁶ A student who is court-ordered to pursue a GED, be homeschooled, or attend an alternative program experiences a change in placement that will impact the student's ability to access the general education curriculum.¹³⁷ However, upon information and belief, the Districts have no practice or procedure for reevaluating students with disabilities at any time related to their FTAS charges. Nor do the Districts require reevaluations prior to school district staff recommending that the truancy court order the student out of school and into a GED program, homeschooling, or an alternative program. Consequently, we spoke to no families statewide who reported that their student with a disability received a special education reevaluation before school staff recommended a change in placement through an FTAS proceeding. For example:

¹³⁴ 34 C.F.R. § 300.303(a).

¹³⁵ 34 C.F.R. § 300.304(b)(1).

¹³⁶ See, e.g., *Board of Educ. of City of White Plains*, 20 IDELR 1475 (SEA NY 1994); *Brimmer v. Traverse City Area Pub. Sch.*, 22 IDELR 5 (W.D. Mich. 1994).

¹³⁷ 34 C.F.R. § 300.303(a)(2). While students with disabilities must be reevaluated every three years, the student's parent or teacher can request a reevaluation sooner. School districts need not wait until a parent requests a reevaluation but can proactively request the parent's consent to reevaluate the student well before the student's absences reach the potential for FTAS charges.

- Complainant J.W. is a student in Houston ISD who qualifies for special education for ADHD. He received an FTAS charge for absences dated October 10, October 15, and October 17, 2014. J.W.'s annual ARD meeting was held on October 17, 2014, on the day of the third absence that triggered the FTAS charge, yet the school requested no new evaluations or assessments to identify the cause of the attendance issues or to help prevent future absences.
- Complainant M.P. is a student in Houston ISD who qualifies for special education for learning disabilities. In 2014-2015 school year, M.P. has received two FTAS complaints. His ARD committee has met twice this school year, in October 2014 and March 2015, but failed to request new evaluations or assessments to identify the cause of the attendance issues. His general education teachers mark him absent when M.P. is actually in school in his resource class. An assessment would have quickly identified the situation and provided recommendations to resolve communication issues to prevent the unnecessary referrals to court and financial burden of fines and court costs placed on M.P. and Mr. Porter.
- Complainant R.S. was a student in Clear Creek ISD who qualifies for special education for ADHD, bipolar disorder, and Asperger's syndrome. He and Ms. Walters received a FTAS and PCNA on October 21, 2014. An ARD was never convened to discuss non-attendance or request any new evaluations or assessments to identify the cause of the attendance issues or to help prevent future absences.
- A student in Fort Bend ISD who is eligible for special education under the category of Emotional Disturbance received an FTAS charge after struggling with her mental health due to bullying. Despite her ARD committee's longstanding knowledge of her attendance struggles, including suicidal attempts and psychiatric hospitalizations, the school never requested a single evaluation to address the student's changing needs and escalating mental health concerns that directly contributed to her attendance.¹³⁸

C. The Districts fail to provide students with disabilities with appropriate special education and related services to address and remedy attendance issues that lead to FTAS charges.

To receive FAPE, students with disabilities are entitled to special education, defined as specially designed instruction, at no cost to the parents, intended to meet the student's unique needs.¹³⁹ School districts must provide specially designed instruction that adapts the content, methodology, or delivery of instruction to address the unique needs resulting from the student's disability. This specially

¹³⁸ DRTx, Texas Appleseed, and NCYL court observations (February to May 2015).

¹³⁹ 34 C.F.R. §300.39.

designed instruction is meant to ensure the student may access the general curriculum, so that the student can meet the educational standards that apply to all students.¹⁴⁰ Schools must also provide related services, such as transportation or developmental, corrective, and other supportive services that are necessary to assist a child with a disability in benefiting from special education.¹⁴¹ In short, school districts must provide personalized instruction with sufficient support services to permit the student with a disability to benefit educationally from the instruction.¹⁴²

Students with disabilities who are referred to court for FTAS miss significant amounts of school and instructional time, making it difficult, if not impossible, for them to benefit from special education services. Upon information and belief, when the Districts refer students to court for FTAS, they fail to address the ongoing needs of students with disabilities by neglecting to adapt as appropriate the content, methodology, or delivery of instruction to meet the individual needs of the student. The Districts further fail to provide appropriate related services to assist students with disabilities in benefiting from special education. For example:

- Complainant X.S. is a sixteen-year-old student in Galena Park ISD who is eligible for special education under the category of Emotional Disturbance for bipolar disorder and ADHD. After a suicide attempt at school and subsequent hospitalization, X.S.'s parent requested additional services from the school to address his emotional struggles at school and lack of progress. X.S.'s requests for positive behavior supports, accommodations to attendance policies, and credit recovery program have all been denied by the school. X.S. continues to struggle academically and emotionally and has incurred additional FTAS charges due to the school's failure to provide him FAPE.
- Complainant R.S. was a student in Clear Creek ISD who is eligible for special education under Emotional Disturbance and Other Health Impairment. As part of a deferred disposition agreement, the court ordered that his mother obtain weekly counseling for him. Clear Creek ISD was only providing R.S. with one 30 minute direct counseling session every nine weeks as a related service. Instead of re-evaluating his related services and increasing his counseling at school, Clear Creek ISD used the truancy process to place the burden on R.S.
- A 17-year-old student in Pasadena ISD who receives special education under the category of Emotional Disturbance reported that the school's failure to provide adequate services for him to make educational progress, despite his requests for help, was the primary reason for his FTAS charges. As a result,

¹⁴⁰ 34 C.F.R. §300.39(b)(3).

¹⁴¹ 34 C.F.R. §300.34(a).

¹⁴² *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester County, et al. v. Rowley*, 458 U.S. 176, 177 (1982).

he has dropped out and is currently attending an alternative program, Summit.

D. The Districts fail to ensure all decisions regarding placement changes for students with disabilities are made by a properly constituted ARD committee, regardless of referral to court for FTAS.

For a student with a disability to receive FAPE, a school district must ensure that the student's educational placement is determined by a team that includes the student's parents and other persons who are knowledgeable about the student, the meaning of the student's evaluation data, and the available placement options.¹⁴³ The student's placement must be determined at least annually, based on the student's IEP, as close as possible to the student's home, and the student's least restrictive environment.¹⁴⁴

For students referred to court for FTAS, school officials from the Districts recommend that the court require placement changes. These include orders that the student drop out of school to pursue a GED, that the parent homeschool the student, or that the student attend an alternate school campus or program that may not provide appropriate supports and services as required in the student's IEP. Upon information and belief, these recommended placement changes are not made by an ARD committee of individuals who are knowledgeable about the child, the meaning of the evaluation data or the placement options. Rather, from what we have witnessed and heard from complainants and others, the Districts' staff assigned to these court proceedings make recommendations to the court to unilaterally change students' placements without regard to students' right to be educated in the least restrictive environment, any evaluation data, or the likelihood of the student's success in the proposed placement. To our knowledge, virtually no consideration is given to the parents' or students' wishes when the Districts' staff recommend placement changes to the court. Indeed, we have observed the Districts' staff recommend that students be ordered to drop out and forgo their right to FAPE despite the students and parents' protestations. For example:

- R.W. was a student in Houston ISD and was eligible for special education services. After being administratively withdrawn from school and threatened with trespass charges if she returned to campus, R.W. was forced to sign up for a homeschool program as condition of a deferred adjudication, at the insistence of the truancy officer after referral to court for FTAS. Her ARD committee never discussed whether her needs could be met through

¹⁴³ 34 C.F.R. §300.116(a)(1)-(2).

¹⁴⁴ 34 C.F.R. §300.116(b). Additionally, students with disabilities must not be placed in special classes, separate schooling, or otherwise removed from the regular educational environment unless they cannot make educational progress in the regular environment with appropriate aids and supports. 34 C.F.R. §300(a)(2)(ii).

homeschooling or whether a placement change to exit the public school system was appropriate.

- Complainant R.S. is a student in Clear Creek ISD, who is eligible for special education for ADHD, bipolar disorder, and Asperger's syndrome. R.S. was moved from a self-contained therapeutic behavior support classroom at Clear Creek High School to general education at Clear Lake High School without Clear Creek ISD ever convening an ARD meeting to discuss where his needs could be met in general education at Clear Lake High School. At court, Clear Lake High School's truancy officer threatened to have R.S. ordered to withdraw from Clear Lake High School and enroll in a GED program. An ARD committee never discussed whether his needs could be met through a GED program or whether a placement change to exit the public school system was appropriate.

E. The Districts fail to ensure all students with disabilities are able to continue attending public school and receiving FAPE until the age of 21.

IDEA requires school districts to provide FAPE to all students with disabilities between the ages of three and 21.¹⁴⁵ Special education eligibility terminates once the student graduates with a regular high school diploma after meeting the state or district's required standards or the student's IEP goals.¹⁴⁶ While students with disabilities are eligible to graduate with a diploma at any time once graduation standards are met, and thus terminate their eligibility earlier, all students receiving special education may continue to attend public high school and receive FAPE until the school year in which they turn 22.¹⁴⁷

Our court watching, review of data, and conversations with complainants indicate students with disabilities facing FTAS charges in the Districts are being forced out before their eligibility for special education expires. Upon information and belief, the Districts do not counsel these students on their right to remain in school until the end of their eligibility or their ability to receive FAPE despite the court order or agreement requiring them to exit the public school system. Instead, our observations, the complainants experiences, and our review of the data indicate the Districts use the truancy court system to force out otherwise qualified students with disabilities and prevent them from accessing FAPE until the end of their eligibility. For example:

¹⁴⁵ 34 C.F.R. §300.101(a).

¹⁴⁶ 19 TEX. ADMIN. CODE §89.1070; 34 C.F.R. §300.102(a)(3)(i).

¹⁴⁷ 19 TEX. ADMIN. CODE § 89.1035 [In Texas, an eligible student receiving special education services who is 21 years old on September 1 of the school year may continue to attend school until the end of the school year, or the student's graduation].

- Abilene, Austin, Clear Creek, Conroe, Ector County, Fort Worth, Galveston, Houston, Pasadena, San Antonio, and Victoria ISD all have significant numbers of students with disabilities who are court-ordered to enter GED programs and then do not earn their GED.
- Complainant R.W. was a student in Houston ISD who was eligible for special education services. The week after receiving FTAS charges, R.W. was notified by letter that she had been administratively withdrawn from public high school and could face trespass charges if she were to return. At no time was she counseled on her ability to remain in school until the age of 22 or to return despite being un-enrolled.
- Complainant J.W. is a student in Houston ISD who is eligible for special education under the category Other Health Impairment for ADHD. Despite only being seventeen, J.W. was notified by letter that he had been administratively withdrawn from school. He had missed just three full school days that school year. Although J.W. demonstrated a desire to continue attending school, he was forced out by the school district and not informed of his ongoing right to attend until the age of 22.
- Complainant M.P. is a student in Houston ISD who receives special education services for learning disabilities. At court, M.P. was threatened with being ordered to enroll in a GED program if he continued to incur unexcused absences.
- Complainant X.S. is a student in Galena Park ISD who receives special education services under the category of Emotional Disturbance. After struggling with his mental health, including extended hospital stays following a suicide attempt at school, X.S. was notified by letter in January 2015 that he had been administratively withdrawn from school and would only be allowed to re-enroll after X.S. and his guardian met with the Principal. Following that meeting, X.S. re-enrolled and continued to attend. However, in March of 2015, X.S. was again administratively un-enrolled. X.S.'s parent went to the school to attempt to re-enroll him, only to be denied re-enrollment due to X.S.'s absences. Although X.S. was eventually allowed to re-enroll, at no time during this process did school district staff counsel X.S. or his parent about his right to receive FAPE until age 22.
- Complainant R.S. was a student in Clear Creek ISD who receives special education services for ADHD, bipolar disorder, and Asperger's syndrome. Despite his right to receive services and continue his education until the age of 22, upon the recommendation of the Clear Creek ISD truancy officer, the court threatened to order R.S. to enroll in a GED program at the next hearing.

F. TEA has failed to ensure that all students with disabilities in the state of Texas receive FAPE, regardless of referral to court for FTAS.

Under federal law, TEA bears ultimate responsibility for ensuring that all students with disabilities in Texas receive FAPE.¹⁴⁸ Among other provisions, federal law requires TEA to have policies and procedures that ensure that all students with disabilities in Texas:

- are identified and evaluated;¹⁴⁹
- receive an IEP based on the student’s need and developed according to federal law;¹⁵⁰
- receive an educational placement based on the student’s IEP and determined by “a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;”¹⁵¹
- remain in their regular education environment unless they cannot make satisfactory progress with appropriate supplementary aids and services;¹⁵² and
- are not removed from their regular classroom because of needed modifications in the general education curriculum.¹⁵³

Similarly, Texas state law requires TEA to ensure that each Texas student with a disability:

- has a properly developed and implemented IEP;¹⁵⁴
- is educated in the least restrictive environment that is appropriate to the student’s educational needs;¹⁵⁵ and
- receives necessary related services.¹⁵⁶

To achieve these goals, Texas state law mandates TEA’s creation and implementation of a comprehensive system to monitor school district compliance with state and federal special education law.¹⁵⁷ As part of this system, TEA must engage in ongoing analysis of school district special education data and inspections of school district facilities.¹⁵⁸

¹⁴⁸ 20 U.S.C. § 1412 (a)(1)(A); 34 C.F.R. § 300.101.

¹⁴⁹ 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(1)(i).

¹⁵⁰ 20 U.S.C. § 1412(a)(4); 34 C.F.R. § 300.112.

¹⁵¹ 34 C.F.R. 300.116(a)(1); (b)(2).

¹⁵² 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2).

¹⁵³ 34 C.F.R. § 300.116.

¹⁵⁴ TEX. EDUC. CODE § 29.001(7).

¹⁵⁵ TEX. EDUC. CODE § 29.001(8).

¹⁵⁶ TEX. EDUC. CODE § 29.001(9).

¹⁵⁷ TEX. EDUC. CODE § 29.010(a).

¹⁵⁸ *Id.*

1. TEA has failed to create adequate data monitoring systems to prevent school districts from forcing students with disabilities out of regular education.

TEA's failure to require school districts to provide accurate data regarding students with disabilities who are referred to court for truancy means that TEA cannot ensure that these students receive FAPE. Even though state law requires school districts to report their truancy data to TEA, many do not do so.¹⁵⁹ Consequently, TEA does not have sufficient data to identify all school districts where students with disabilities are being forced out of regular education through the truancy process.

Although TEA could employ a range of sanctions against school districts that fail to report accurate truancy data, upon information and belief, TEA has not done so. For example, TEA has authority to downgrade the accreditation of Districts that fail to report this data and TEA also has authority to initiate investigations of school districts' special education provision.¹⁶⁰ However, to our knowledge, TEA has yet to downgrade the accreditation of any school district or investigate any school district for its failure to report truancy data to TEA.

Beyond this failure to collect basic data on truancy court referrals, TEA has also failed to create any data system that would allow it to monitor whether students with disabilities are being forced out of regular education through the truancy process. TEA does not routinely collect or review data regarding:

- The types of interventions that school districts implement for students with disabilities before those students are referred to court for FTAS;
- The effect of FTAS court proceedings on the educational placement of students with disabilities; or
- The recommendations that school staff make to court officials during FTAS court proceedings.

2. TEA has failed to use the data that it does collect to identify school districts where students with disabilities have been forced out through the truancy process.

Even where TEA does have data showing that school districts are forcing students with disabilities out of school through the truancy process, TEA has failed to take any remedial action. As described above, over a three-year period, 1,247

¹⁵⁹ See Section II.A.4.i, *supra*. TEA's employment of ESCs to verify school district data does not reduce TEA's obligation under federal law to ensure that every Texas student with a disability receives FAPE.

¹⁶⁰ TEXAS APPLESEED, *supra* note 2 at 11; TEX. EDUC. CODE § 29.010(a).

special education students in Texas did not earn a GED after being court-ordered to withdraw from regular education and prepare for the GED. Given that these students could not earn a GED, they could not have been receiving FAPE in a GED program. However, to our knowledge, TEA has not initiated investigations of the school districts responsible for the education of these students. As described in Section II.A.3.iii., *supra*, TEA's great difficulty in producing a report that identifies which school districts have forced students out in this way shows that TEA is not regularly using this data to investigate school districts.

Furthermore, although the majority of these students are still age-eligible for special education, to our knowledge, TEA has failed to identify these students and ensure that they are re-enrolled in an educational program that provides them FAPE. For these 1,247 students, TEA has completely abdicated its affirmative duty to ensure that students with disabilities receive FAPE.

3. TEA disincentivizes school districts from identifying students with disabilities, thereby increasing the likelihood that these students will be forced out through the truancy process.

Since 2004, TEA has used the Performance-Based Monitoring Analysis System ("PBMAS") to monitor Texas public schools. PBMAS Special Education Indicator No. 16 measures the percent of students enrolled in a district who receive special education services.¹⁶¹ TEA has set the "performance level" for Indicator No. 16 at 8.5 percent, meaning that PBMAS expects school districts to identify no more than 8.5 percent of students as children with disabilities.¹⁶² TEA's annual monitoring reinforces this expectation: TEA awards its best possible score to schools that identify 8.5 percent or fewer of their students as eligible for special education.¹⁶³ When a school district identifies more students as eligible for special education, TEA awards a lower score, meaning that the school district will be subject to additional scrutiny.¹⁶⁴

This clearly articulated goal of identifying fewer than 8.5 percent of Texas students as eligible for special education flies in the face of national data showing that 13 percent of students nationwide have disabilities that entitle them to special education.¹⁶⁵ Texas school districts have responded to TEA's goal remarkably efficiently: approximately 8.5 percent of Texas students were identified as students eligible for special education in 2013-2014.¹⁶⁶

¹⁶¹ TEA, 2014 PERFORMANCE BASED MONITORING ANALYSIS SYSTEM MANUAL 74, *incorporated by reference*, 19 Tex. Admin. Code § 97.1005(b).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ National Center for Education Statistics, *Fast Facts, Students with Disabilities*, available at <https://nces.ed.gov/fastfacts/display.asp?id=64>.

¹⁶⁶ TEXAS APPLESEED, *supra* note 2, at 69.

By establishing this low expectation, TEA has created a monitoring scheme that disincentivizes school districts from meeting their obligations under state and federal law to identify students with disabilities. This disincentive makes it less likely that students with disabilities will be identified and receive appropriate services. As described in Section III.A, *supra*, when school districts fail to identify students with disabilities and provide them appropriate services, these students are more likely to be forced out of regular education through court referral for FTAS.

4. TEA has failed to provide school districts sufficient guidance to ensure that FTAS referrals do not impact FAPE for students with disabilities.

Although TEA publishes best practices covering a number of topics relevant to Texas public education, to our knowledge, TEA has failed to include best practices regarding:

- Addressing truancy without referring students to court;
- Ensuring that students with disabilities are not referred to court for absences related to their disabilities;
- Creating behavior intervention plans to address students with disabilities' absences before referral to court;
- Implementing other evidence-based interventions to ensure students with disabilities can access their special education programming; or
- Ensuring FAPE for students with disabilities who have absences.

To our knowledge, TEA has also failed to provide school districts with any guidance on:

- The types of truancy prevention and intervention measures that should be attempted before a court referral is made;
- How to train school staff who attend FTAS court proceedings to ensure that their recommendations are consistent with providing FAPE to students with disabilities; and
- How to create a system that ensures that students with disabilities are not referred to court without a referral to an ARD to discuss evaluation or to review their educational placement.

Although TEA does provide annual guidance to school districts on implementation of attendance laws, that guidance has not addressed how to ensure that students with disabilities still receive FAPE despite referral to court for truancy.¹⁶⁷ In fact, the total lack of guidance to districts from TEA led the Legislative Budget Board to

¹⁶⁷ See, e.g., Letter from David A. Anderson, Gen. Counsel, Tex. Educ. Agency, to Administrators (Aug. 14, 2014), available at <http://www.tea.state.tx.us/index4.aspx?id=2147508100>.

recommend that the agency be statutorily required to create minimum standards and establish best practices for truancy prevention and intervention.¹⁶⁸

IV. REMEDIES SOUGHT

A. Request for Independent Investigation and Resolution

Because the Complainants allege that the Districts and TEA have violated numerous requirements of IDEA, its implementing regulations, and state special education requirements resulting in the denial of FAPE for students with disabilities, the Complainants request the selection of an independent expert who is knowledgeable in educating truant students with disabilities to investigate and resolve this complaint. TEA has authority to retain an outside individual or entity to investigate a complaint against it.¹⁶⁹

B. Statewide Remedies

Based on the ongoing violations of students' rights under IDEA, the Complainants respectfully request that TEA protect students with disabilities across Texas from further violations by establishing clear guidance and monitoring systems that guarantee that:

- A) Districts develop and follow procedures for ensuring students who miss school and may have disabilities are identified, located, evaluated, and offered FAPE;
- B) Districts abandon use of the truancy process to force students with disabilities, identified or unidentified, to withdraw from school to avoid criminal penalty for FTAS; and
- C) TEA undergoes efforts to identify all students with disabilities under the age of 22 who have been forced out of school through the truancy process described in this complaint; and
- D) TEA ensures that all Texas students with disabilities who have been forced out of school through the truancy process are offered appropriate special education services and compensatory education.

The Complainants further request that TEA provide school districts information on best practices for:

¹⁶⁸ LEGISLATIVE BUDGET BOARD, TEXAS STATE GOVERNMENT EFFECTIVENESS AND EFFICIENT REPORT, at 2, 7 (2015).

¹⁶⁹ See, e.g., Comments to 34 C.F.R. § 300.152(a), *Federal Register*, Vol. 71, No. 156, p. 46602 (August 14, 2006). See also, *OSERS Letter to Chief State School Officers*, July 17, 2000, Question No. 15.

- Developing and implementing Child Find policies that ensure students who miss school and are suspected of having disabilities are identified, located and evaluated.
- Ensuring that students with disabilities are not referred to court for absences related to their disabilities;
- Creating behavior intervention plans to address students with disabilities' absences before referral to court;
- Implementing other evidence-based interventions to ensure students with disabilities can access their special education programming;
- Preventing and intervening in truancy before a court referral is made;
- Training school staff who attend FTAS court proceedings to ensure that their recommendations are consistent with providing FAPE to students with disabilities; and
- Creating a system that ensures that students with disabilities are not referred to court without a referral to an ARD to discuss evaluation or to review their placement.

C. Specific Remedies for J.W. in Houston ISD

1. Houston ISD convene an ARD and offer appropriate compensatory education including transition services and one-on-one tutoring with master level teacher in reading, mathematics, and written expression.

D. Specific Remedies for M.P. in Houston ISD

1. Houston ISD convene an ARD to offer an expedited formal full individual evaluation that includes transition assessment, reading evaluation, speech and language diagnostic evaluation, psychological evaluation, dyslexia and related disorders screening.
2. Houston ISD convene an ARD to review evaluation and results and offer evaluation-driven compensatory education services including one-on-one academic tutoring in all areas through an extended school year and transition services.

E. Specific Remedies for Y.C. in Fort Bend ISD

1. Fort Bend ISD initiate an expedited evaluation for special education, including a psychological evaluation, and conduct an ARD to consider eligibly under categories including but not limited to Emotional Disturbance as well as Other Health Impairment for ADHD. The evaluation should also include a Functional Behavioral Assessment and Counseling Assessment.

2. Convene an ARD to review the evaluation and results and offer evaluation-driven compensatory education services including one-on-one academic tutoring in all areas, counseling services, and transition services that may be provided in a manner that accommodate her needs as a parent.

F. Specific Remedies for C.D. in Pasadena ISD

1. Pasadena ISD initiate an expedited evaluation for special education, including a psychological evaluation, and conduct an ARD to consider eligibly under categories including but not limited to Emotional Disturbance as well as Other Health Impairment for ADHD. The evaluation should also include a Functional Behavioral Assessment and Counseling Assessment.
2. Convene an ARD to review the evaluation and offer one year of evaluation-driven compensatory education services including one-on-one academic tutoring in algebra, counseling services, and transition services.

G. Specific Remedies for X.S. in Galena Park ISD

1. Galena Park ISD convene an ARD and offer appropriate compensatory education including transition services, one-on-one academic tutoring in all areas, counseling services, and a credit recovery program.

H. Specific Remedies for R.S. from Clear Creek ISD

1. Contract compensatory counseling and tutoring to be provided in his current school district by Clear Creek ISD.

V. CONCLUSION

This complaint details devastating and unlawful practices by Texas school districts that use the truancy process to force students with disabilities out of school and the Texas Education Agency that ignores these illegal acts. As exemplified by J.W., R. W., M.P., Y.C., C.D., X.S., and R.S., the Abilene, Austin, Clear Creek, Conroe, Ector County, Fort Bend, Fort Worth, Galena Park, Galveston, Houston, Pasadena, San Antonio, and Victoria Independent School Districts engage in policies and practices that deny students with disabilities their right to a free appropriate public education by forcing them into GED programs, homeschooling programs, or other forms of alternative schools where they cannot receive the special education and related services to which they are entitled. Students with disabilities forced out of school through court referral for FTAS are deprived of access to the general education curriculum, related services, and transition services, and are ultimately denied opportunities for any meaningful educational benefit. School districts must

be held accountable for their failure to provide special education and related services to all students with disabilities by forcing students with disabilities out of the public school system in the ways described in this complaint.

In addition, TEA has ignored its responsibilities to ensure students with disabilities receive FAPE by failing to prevent school districts from engaging in repeated and systematic force-out practices. TEA is responsible for providing guidance and direction to school districts on their implementation of special education policies and procedures, and must monitor all districts to ensure they meet the requirements of federal law. However, TEA failed to provide adequate guidance to school districts to prevent school districts from using the court truancy processes to force students with disabilities out of school. TEA also failed to create a sufficient data monitoring system to track and investigate districts that force out students with disabilities through the truancy process. TEA further pressures school districts to under-identify students with disabilities that require special education services, directly contributing to the force out of students with disabilities who have not been identified as requiring special education services. TEA's multiple failures to protect students with disabilities from this force-out harm students with disabilities and deny them their federally protected right to FAPE.

The allegations and evidence set forth in the above complaint merit prompt and extensive investigation by an independent individual or organization who is knowledgeable in educating truant students with disabilities. Disability Rights Texas, the National Center for Youth Law, and Texas Appleseed stand ready to assist in whatever way possible to support the investigation and to provide advice about appropriate resolution of this complaint.

Respectfully submitted,

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