



National Center for Youth Law

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**Complaint against El Paso ISD for Failure to Provide Truancy Prevention and Intervention Measures Prior to Filing Court Referral**

In 2015, the Texas legislature passed HB 2398, a reform bill aimed at decriminalizing truancy and prioritizing school-based prevention and intervention for students who were chronically absent rather than relying on court interventions.<sup>1</sup> The bill's authors and sponsors clearly indicated their desire to see prevention and intervention start early at the child's school.<sup>2</sup> HB 2398 specifically included language requiring schools to provide prevention and intervention well before a child's absences would trigger a court referral.<sup>3</sup>

HB 2398 also required the Texas Education Agency (TEA) to draft minimum standards for prevention measures and establish a set of best practices.<sup>4</sup> It directed

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<sup>1</sup> H.B. No. 2398, Enrolled Version, <http://www.legis.state.tx.us/tlodocs/84R/billtext/html/HB02398F.HTM> (2015).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

TEA to adopt rules providing for sanctions for any district found not to be in compliance with the minimum standards the agency establishes. Because TEA had not yet developed either the minimum standards or the sanction process, the agency created an informal complaint process for raising concerns related to a district's failure to comply with the prevention and intervention measures outlined in the bill. This complaint is filed against El Paso ISD for their failure to provide prevention and intervention measures prior to filing truancy court referrals against M.C. and his mother.

### **FACTS**

M.C. is a student with significant health issues at Austin High School in El Paso ISD. He qualifies as a student with disabilities for accommodations under Section 504 of the Rehabilitation Act of 1973 ("504"). M.C.'s 504 plan includes accommodations to "allow student to use the restroom when needed" and "allow student to visit the nurse when needed" due to IBS, Colitis, and Fecal Impaction symptoms.<sup>5</sup> M.C.'s GI doctor and allergy doctor provided medical documentation to the school that lists the thirteen different medications currently prescribed to M.C.<sup>6</sup> His GI doctor reported that these conditions cause M.C. to be "chronically ill" with "frequent abdominal pain" and "potential GI accidents" that may force M.C. to be

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<sup>5</sup> Exhibit A, 504 Accommodations Meeting (February 15, 2016).

<sup>6</sup> *Id.* ("Dr. Gilberto Gomez diagnosed the student with fecal incontinence/constipation. Dr. Gutierrez diagnosed the student on 4/27/15 (see archives) with Colitis/Fecal Impaction. Physician stated that the student might have GI accidents. Student might also have frequent abdominal pain. Student is currently taking: Dulcolax - 5mg, Flonase - 50mcg, Singulair - 10 mg, Gabapentin - 100 mg, Bentyl - 20 mg, Nexium - 40 mg, Flovent- 110mcg, Polyethylene glycol - 3350 powder, Proair - 200 puffs, Symbcort - 2 puffs PRN, Hydroxyzine - 25mg, E-Pen, Dicyclomine - 25mg."); *See also*, Exhibit B, School Health Records.

frequently absent from class.<sup>7</sup> M.C.'s allergy doctor reported that M.C. is also diagnosed with Allergic Rhinitis, Food Allergies, and Asthma.<sup>8</sup>

El Paso ISD failed to develop and implement a plan to ensure that absences related to M.C.'s health conditions were accurately recorded or implement appropriate accommodations to their attendance policy that would address the underlying causes of M.C.'s absences.

Instead of providing reasonable accommodations to the attendance policy and ensuring staff collaboration that would allow M.C. to make up work when he had to be absent due to his disability, El Paso ISD sent "Loss of Credit Warning Letters" to M.C.'s mother on October 16, 2015, January 7, 2016, and February 25, 2016.<sup>9</sup>

On February 8, 2016, At Risk Counselor Martha Valles and Social Worker Linda Salas documented that M.C.'s absences were related to "medical reasons," and discussed "possible homebound [services] due to shoulder surgery." Yet they still proceeded to implement an "Anti-Truancy Contract" that failed to address the underlying causes of M.C.'s absences.<sup>10</sup> This Anti-Truancy Contract places sole responsibility on M.C., a student with significant health issues, by simply stating that M.C. will come to school. Furthermore, this Anti-Truancy Contract fails to mention the underlying causes for his absences or provide any accommodations or school-related services that address his health needs.<sup>11</sup>

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<sup>7</sup> Exhibit C, Homebound Needs Statement, Dr. Carlos Gutierrez (April 27, 2015); Exhibit B, School Health Records.

<sup>8</sup> Exhibit B, School Health Records.

<sup>9</sup> Exhibit D, Letter[s] Regarding Possible Loss of Credit/Final Grade.

<sup>10</sup> Exhibit E, Require Anti-Truancy Attendance Improvement Plan (February 8, 2016).

<sup>11</sup> *Id.*

On February 10, 2016, M.C.'s mother provided medical documentation showing that M.C. had been diagnosed with sleep apnea and an anxiety disorder. On February 15, 2016, an annual 504 committee meeting for M.C. convened.<sup>12</sup> The parent provided medical records from Dr. Gilberto Gomez and Dr. Gutierrez listing M.C.'s current medications and documenting how M.C.'s GI issues may impact his attendance.<sup>13</sup> In addition, M.C.'s mother raised concerns regarding M.C. being bullied by other students.<sup>14</sup> The school-based members of the 504 committee failed to address her bullying concerns or provide any reasonable accommodations to attendance policies for absences related to M.C.'s disabilities.<sup>15</sup>

On April 1, 2016, Assistant Principal and 504 Coordinator Ahmad Ismail filed an allegation of Truant Conduct against M.C. and of a Parent Contributing to Non-Attendance ("PCNA") against his mother alleging 11 full day unexcused absences and 1 partial day unexcused absence from December 18, 2015 to March 22, 2016.<sup>16</sup> On December 18, 2015, Mr. Ismail alleges that M.C. only missed 6<sup>th</sup> period.<sup>17</sup> M.C.'s mother provided medical excuses for several of the dates listed in the complaint:

- On January 25, 2016, M.C. had an appointment at Paso del North Pediatrics.<sup>18</sup>
- On February 2, 2016, M.C. had an appointment with Dr. Madhu Narra at Allergy Partners of El Paso.<sup>19</sup>
- On February 3, 2016, M.C. had a therapy appointment at the El Paso Child Guidance Center.<sup>20</sup>

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<sup>12</sup> Exhibit A, 504 Accommodations Meeting (February 15, 2016).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Exhibit H, Court Records

<sup>17</sup> Exhibit F, Attendance Records for August 25, 2015 to February 15, 2016.

<sup>18</sup> Exhibit G, Medical Excuse Notes

<sup>19</sup> *Id.*

- On March 14, 2016, M.C. had an appointment at El Paso Orthopedic Surgery Group Physical Therapy Department.<sup>21</sup>
- On March 21, 2016, M.C. had an appointment at Paso del North Pediatrics.<sup>22</sup>
- On March 22, 2016, M.C. had an appointment with Dr. Carlos Gutierrez at Paso del North Pediatrics.<sup>23</sup>

In addition, Mr. Ismail submitted a “Truancy Prevention Measures Certifying Statement” form.<sup>24</sup> According to this form, Mr. Ismail claims to have sent a warning letter to M.C.’s mother on October 2, 2015.<sup>25</sup> The warning letter alleges 3 absences (September 11, September 25, and October 1, 2015). These dates are not included in the April 1, 2016 complaint.<sup>26</sup> M.C.’s attendance records reveal that on September 11, 2015, M.C. was present for 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> period.<sup>27</sup> He was in the nurse’s office for 5<sup>th</sup> period.<sup>28</sup> The school nurse sent him home and the absence was excused due to illness.<sup>29</sup> On September 25, 2015, M.C.’s attendance records show that he was present in class for 1<sup>st</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> period.<sup>30</sup> M.C.’s attendance records reveal that the October 1, 2015 absence was excused due to illness.<sup>31</sup>

On April 18, 2016, M.C.’s mother pled not guilty and provided documentation to the Truancy Court regarding M.C.’s significant health issues and medical

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Exhibit H, Court Records

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Exhibit F, Attendance Records for August 25, 2015 to February 15, 2016.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

excuses.<sup>32</sup> M.C. pled not true.<sup>33</sup> Assistant Principal and 504 Coordinator Ahmad Ismail made false allegations against M.C. to the Court.<sup>34</sup> Mr. Ismail lied to the Court by stating that M.C. was faking these health issues and that he was on illegal drugs. The Court found that M.C. had “engaged in truant conduct” and ordered M.C. to take a drug test, participate in classes at Inner Resource, and homebound educational services.<sup>35</sup> The Court also found M.C.’s mother guilty and ordered her to take parenting classes, to “put son in homebound,” and pay a \$100 fine plus court costs.<sup>36</sup> Furthermore, on April 19, 2016, drug test results show that M.C. was completely negative for any drugs.<sup>37</sup>

## **CONCLUSION**

El Paso ISD’s prevention and intervention efforts were perfunctory and superficial at best. Despite HB 2398’s requirements, no serious effort was made to determine the underlying reason for M.C.’s absences or find ways to effectively support M.C.’s attendance. Moreover, records show that El Paso ISD was fully aware of the severity of M.C.’s medical conditions and how these may have impacted his attendance. Despite knowing the underlying cause of M.C.’s absences, El Paso ISD refused to provide reasonable accommodations to support M.C. and continue his education. Instead, El Paso ISD discriminated against M.C. and his family because of his disabilities.

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<sup>32</sup> Exhibit H, Court Records

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

Referred to Truancy Court, slandered by his school 504 coordinator/assistant principal, forced to undergo drug testing, and ordered out of school, M.C. was traumatized and humiliated. M.C.'s mother now has a class C misdemeanor conviction on her record, and was ordered to take parenting classes, pay a \$100 fine, and take her son out of school. El Paso ISD's actions against M.C. and his family completely undermine the purpose of HB 2398. School districts need clearly defined rules, oversight, and accountability from TEA in order to prevent schools from continuing to use the truancy court referral system as a way to push students with disabilities out of school.

#### **REMEDIES SOUGHT**

- A. Convene a 504 committee meeting to develop a plan that includes individualized accommodations to the school's attendance policy. Specifically, M.C. should not receive any disciplinary actions, unexcused absences, truancy court referrals, or loss of credit based on attendance requirements for absences related to his medical conditions. In addition, his 504 plan should require staff to communicate and collaborate to ensure that M.C. is not being counted tardy or absent when he is physically present at school but symptoms of his medical conditions cause him to be in the nurse's office or bathroom for prolonged periods of time. His 504 plan should include a collaborative system designed to provide him with extra time to make up work that he missed due to absences related to his medical conditions.

B. El Paso ISD should reimburse M.C.'s mother the amount of all truancy court imposed fines and court costs caused by the school district's unlawful truant conduct referral.

Respectfully submitted,

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