



National Center for Youth Law

VIA ELECTRONIC MAIL (rules@tea.texas.gov)

Comments on Proposed New 19 TAC Chapter 129
October 17, 2016

Texas Appleseed (Appleseed), Disability Rights Texas (DRTx), and the National Center for Youth Law (NCYL) appreciate the opportunity to provide feedback on TEA's proposed rules concerning truancy prevention measures and sanctions, promulgated to comply with HB 2398 (84th Reg. Sess.).

HB 2398 was passed so that children no longer suffer criminal prosecution, conviction, high fines, and jail time in connection with truancy, a status offense. Its authors and supporters also clearly expressed their intent for schools to be the first and primary point of intervention for children experiencing barriers to attendance. This is meant to reverse the trend of increased reliance on the court system, which research has shown to be less effective than intervention at the school or district level.

For that reason, these rules are critically important. During the time that Appleseed, DRTx, and NCYL spent watching truancy proceedings in courts, meeting with families, and researching the impact of the reliance on criminal courts to address truancy, we met many families who had received little more "intervention" than an automated call or text when their child missed school or class. Often the referral to court was the result of attendance keeping errors that would have been more easily addressed by the school rather than with a court visit.

More often, the underlying absences were the result of failure to appropriately identify and address special education needs, or to implement an appropriate 504 plan. We met homeless students who were not offered transportation, as required by McKinney-Vento, and students who had been bullied relentlessly, alienating them from school, with little intervention to address the bullying. We met students who were chronically ill – who had missed school for doctor's appointments or hospitalizations, and students who were caring for chronically-ill loved ones.

We rarely met students whose truancy was the result of a failure to value school or education – but even for those students, reconnecting them with school is far more successfully done by the schools rather than by a court system. Research suggests that court referrals often drive students deeper into truancy rather than the opposite. Court should therefore be a measure of last resort, when all else has failed.

Schools need robust guidance from TEA, as well as technical assistance to ensure that they make the shift envisioned by HB 2398 successfully. They also need to be reassured that they already have many of the tools they need to develop robust prevention and intervention programs. Truancy is not the result of a specific set of issues or problems addressed by a “one size fits all” program – rather, barriers to attendance result from a myriad of problems, many of which school districts already address through existing programs and services. The critical key is determining the cause of a student’s attendance problems, and targeting services and programs to address that student’s needs.

Since the bill was passed, some districts’ initial efforts to provide prevention and intervention programs have failed to look individually at root causes of a student’s attendance problems. For example, we have seen several districts implement large “truancy prevention” events that do not allow for any interaction with individual students or their families, in no way allow for identification of an individual student’s needs, and therefore do not provide individually tailored interventions to address students’ needs. We have seen other districts simply continuing to implement the same failed methods they used prior to the changes in law, relying principally on the court system as the primary intervention. Schools and districts need strong guidance and technical assistance from TEA to help them make the intended shift.

§129.1043 Minimum Standards

This section requires school districts to identify and address a student’s barriers to attendance, but does not require districts to implement programs consistent with TEA’s own best practices. In addition, this section should include clear guidance regarding school districts’ obligation to comply with federal and state law obligations to students with disabilities. Appleseed, DRTx, and NCYL recommend including the following in this section of the proposed rules (additions bolded):

The minimum standards for the truancy prevention measure(s) implemented by a school district under Texas Education Code, §25.0915, include:

(1) identifying the root cause of the student's unexcused absences and actions to address each cause;

(2) implementing programs and practices consistent with those described in §129.1045;

(3) maintaining ongoing communication with students and parents on the actions to be taken to improve attendance;

(4) establishing reasonable timelines for completion of the truancy prevention measure;

(5) requiring, prior to referral to truancy court, the convening of an admission, review, and dismissal committee or 504 committee to initiate a new assessment to determine causes of nonattendance and/or alter program to address nonattendance for any student with a disability already served in special education or under Section 504 of the Rehabilitation Act; and

(6) requiring, prior to referral to truancy court, the referral of any student suspected of a disability for initial evaluation for services under either special education or Section 504 of the Rehabilitation Act.

§129.1045 Best Practices

In addition to the best practices listed in Section (a), Section (a) should also include language that encourages school districts to identify existing programs within the district and their communities that may both prevent students' attendance barriers and intervene with students at risk of truancy:

(1) At the beginning of each year, map services and programs available within the district and the community that a school, a student, or their parent or guardian may access to address a student's barriers to attendance, including, but not limited to:

- Services for pregnant and parenting students;
- Services for students experiencing homelessness;
- Title I dropout prevention programs & programs for "at risk" youth;
- Counseling services;
- Tutoring programs and services available at no-or-low cost;
- Mental health services;
- Alcohol and substance abuse treatment programs; and
- Mentoring programs and services.

This section should encourage districts to make these service and program maps easily available to staff, students and families, as well as ensuring that staff, students and families know of their availability. This section should also encourage school districts to use new prevention and intervention programs to target gaps in services, and to coordinate existing programs and services:

(2) After mapping services available in the district and community, districts should target any new resources, programs, or services at gaps in services identified during the mapping process.

(3) School districts should ensure that McKinney-Vento Liaisons, Foster Care Liaisons, and Title IX Coordinators, 504 coordinators and special education staff meet to discuss opportunities to work together to address students' attendance barriers.

Section (b) should include Saturday prevention or intervention programs or services, which have been successfully used in other districts, as an option that districts should consider.

§ 129.1047 Sanctions

This section should include a complaint process that a parent or advocate may initiate if a school or district is not complying with requirements for prevention and intervention services. It should include a timeline within which TEA must respond to such a complaint:

(a) If a school or district fails to comply with the provisions set out in the Texas Education Code or in the Commissioner's rules and regulations related to prevention and intervention programs for truancy, a parent, student, community member or advocate may file a complaint with TEA, indicating:

- If on behalf of a specific student, the student's name, address, phone number and name of the school the child attends;
- A description of the school or district's alleged violation; and
- A proposal for resolution.

(b) A complaint may be filed on behalf of an individual student or a group of students. A complaint need not be filed on behalf of any specific student.

(c) TEA will respond to the complaint within 30 days, outlining the sanction or remedial action required of the school or district if TEA's investigation determines the school or district has failed to comply with the requirements of the Education or Administrative Code. TEA shall require a non-compliant school or district to report TEA's finding to any court that has received a referral for truant conduct due to the school or district's failure to provide prevention and intervention services and programs.

(d) A party to a complaint may submit a request for reconsideration to TEA by mail, hand-delivery or facsimile within 15 calendar days of TEA's response. The party shall identify why reconsideration is requested and include any documentation that supports the request for reconsideration. The party seeking reconsideration shall provide the other party a copy of the reconsideration request at the same time that the request is filed with TEA. The other party may respond to the reconsideration request within 5 calendar days of TEA's receipt of the request. TEA will consider the reconsideration request and provide a written response to the

parties within 30 calendar days of receipt of the request. The filing of a reconsideration request shall not delay a school or district's implementation of any remedial action required by TEA.

Respectfully submitted,

DISABILITY RIGHTS TEXAS

Dustin Rynders
Shiloh Carter
Meredith Parekh
1500 McGowen, Ste 100
Houston, TX 77004
(832) 681-8205
Fax (713) 974-7695
drynders@drtx.org

TEXAS APPLESEED

Deborah Fowler
Morgan Craven
1609 Shoal Creek Blvd, Ste. 201
Austin, TX 78701
(512) 473-2800
dfowler@texasappleseed.net

NATIONAL CENTER FOR YOUTH LAW

Michael Harris
Hannah Benton Eidsath
Alexandra Santa Ana
405 14th Street, 15th Floor
Oakland, CA 94612
(510) 899-6559
hbenton@youthlaw.org