

## TASB Legal Services: Snapshot Truancy Guide for the 2015-16 School Year

House Bill 2398, passed this 84th legislative session, made numerous sweeping changes to the landscape of truancy laws in the state of Texas. This piece of legislation, effective September 1, 2015, addresses a school district’s responsibility to address student truant conduct, including additional requirements for implementation of truancy prevention measures, and referral of a student to truancy court. Heading into the 2015-16 school year, school attendance officers, principals, school resource officers, assistant principals, and other pertinent school officials will need to understand the landscape as it now exists in light of House Bill 2398. This overview will highlight the differences in the relevant truancy provisions found in the Texas Education Code.

Before House Bill 2398	Going into 2015-16 school year
<p><b>Compulsory attendance:</b> children ages 6-17 are required to attend school. Excludes students who are 18 years of age.</p> <p>Education Code § 25.085</p>	<p><b>Compulsory attendance:</b> children ages 6-18 are required to attend school. This bill adds 18 year olds to compulsory attendance requirements.</p> <p>Education Code § 25.085</p>
<p><b>Older students:</b> a referral to truancy court is prohibited for students attending school after their 18th birthday.</p> <p>Education Code § 25.094</p>	<p><b>Older students:</b> a referral to truancy court is prohibited for students attending school after their 19th birthday.</p> <p>School districts may issue a warning letter to a student attending school after age 19 and may revoke enrollment for the student if the person has more than 5 unexcused absences in one semester; or as an alternative, impose a behavior improvement plan on the student (see below). A school district cannot revoke the enrollment of an older student on a day on which the student is physically present at school.</p> <p>Education Code § 25.085; Family Code § 65.002</p>
<p><b>Truant conduct defined:</b> if a student is absent from school on 10 or more days or parts of days within a six-month period in the same school year, or on three or more days or parts of days within a four-week period.</p>	<p><b>Truant conduct defined:</b> if a student is absent from school on 10 or more days or parts of days within a six-month period in the same school year.</p>

<p>Education Code § 25.094</p>	<p><i>Note: truant conduct eligible for referral to truant court does not include a student's failure to attend school on three or more days or parts of days within a four-week period.</i></p> <p>Family Code § 65.003</p>
<p><b>Warning notice:</b> at the beginning of the school year notice must be sent to students' parents that if the student is absent on 10 or more days or parts of days within a six month period, or on three or more days or parts of days within a four-week period, the student's parent is subject to prosecution and the student is subject to referral to court for criminal prosecution of truancy conduct.</p> <p>Education Code § 25.095</p>	<p><b>Warning notice:</b> at the beginning of the school year, a district must send notice to students' parents that if the student is absent on 10 or more days or parts of days within a six month period, the student's parent is subject to prosecution and the student is subject to referral to a truancy court.</p> <p>If a student has been absent without excuse on three days or parts of days within a four-week period, the school district shall issue a warning notice to inform the parent that the student is subject to truancy prevention measures in addition to other statutory requirements in existence.</p> <p>Education Code § 25.095</p>
<p><b>Attendance officer duties:</b> a licensed peace officer serving as an attendance officer may take necessary measures to enforce compulsory attendance requirements, including, but not limited to taking a student into custody with the permission of the student's parent or in obedience to a court-ordered legal process</p> <p>Education Code § 25.091</p>	<p><b>Attendance officer duties:</b> a licensed officer serving as an attendance officer may no longer take a student into custody even if the parent provides permission or pursuant to a court-ordered legal process</p> <p><i>Note: all other duties and powers related to an attendance officer are left intact, including, escorting a student, at the request of a parent, to a school campus to ensure attendance</i></p> <p>Education Code § 25.091</p>
<p><b>Truancy prevention measures:</b> a school district is required to adopt truancy prevention measures (TPMs) to address conduct related to truancy.</p> <p>Education Code § 25.0915</p>	<p><b>Truancy prevention measures:</b> a school district is required to adopt <u>at a minimum</u> the following TPMs:</p> <ul style="list-style-type: none"> <li>• Impose a behavior improvement plan including the specific behavior required or prohibited of the student and the period of time the plan will be in place;</li> </ul>

	<ul style="list-style-type: none"> <li>• Impose school-based community service;</li> <li>• Refer the student to counseling, mediation, mentoring, teen-court, or other in-school or out-of-school service aimed at addressing the truant behavior</li> </ul> <p><i>Note: guidance on sample truancy prevention measures is included in Appendix A.</i></p> <p>Education Code § 25.0915</p>
<p><b>Application of TPMs:</b> school district discretion on when to begin applying TPMs to a student who has been absent, but common practice has been to apply TPMs as early as the third absence within a four-week period</p> <p>No Education Code provision</p>	<p><b>Application of TPMs:</b> a school district must begin application of TPMs if a student fails to attend school without excuse on three or more days or parts of days within a four-week period</p> <p><i>Note: a school district may apply TPMs to all age students required to attend school under compulsory attendance requirements</i></p> <p>Education Code § 25.0915 (a-4)</p>

**Failure to Attend School**

HB 2398 has removed Section 25.094 (Failure to Attend School) from the Texas Education Code. This means that a student who is absent from school for 10 or more days or parts of days within a six-month period cannot be referred to court for criminal prosecution of the offense of failure to attend school.

<p><b>Referral to court for Failure to Attend School:</b> if a student fails to attend school without excuse on 10 or more days or parts of day within a six-month period, the school district <i>shall</i> file a complaint against the student or student’s parent or both for failure to attend school. The school district is required to file on the student or parent or both within 10 days of the student’s 10th absence.</p> <p>If the student is absent from school without excuse on three or more days or parts of days within a four-week period, the school district <i>may</i> file a complaint against the</p>	<p><b>Referral to court for truant conduct:</b> if a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period, a school district shall refer a student to truancy court within 10 school days of the student’s 10th absence.</p> <p>A district may delay referral to truancy court if the district is applying TPMs and the TPMs are succeeding, or it is not in the best interest of the student to refer the student to truancy court.</p> <p>A school district may refer a student ages 12-18 to truancy court.</p>
--	---

<p>student, parent, or both for failure to attend school.</p> <p>A school district may refer a student ages 12-17 to a court for failure to attend school.</p> <p>Education Code §§ 25.0951, 25.094, 25.093</p>	<p>A school district is prohibited from referring the following students to truancy court for truant conduct and must provide counseling:</p> <ul style="list-style-type: none"> <li>• Pregnant students;</li> <li>• Students in foster care program;</li> <li>• Homeless students;</li> <li>• Students who are principal income earners for their family</li> </ul> <p><i>Note: The Texas Office of Courts Administration's Truancy Reform Website offers additional resources for school administrators implementing HB 2398, including flowcharts for truancy court procedures and school responsibilities, available at: <a href="http://www.txcourts.gov/publications-training/training-materials/truancy-reform.aspx">www.txcourts.gov/publications-training/training-materials/truancy-reform.aspx</a>.</i></p> <p>Education Code §§ 25.0951, 25.0915. Family Code § 65.002.</p>
<p><b>Court referral documentation:</b> referral to court for failure to attend school must include a statement from the school certifying that: TPMs were applied but failed to address attendance; specify whether the student is eligible for special education services.</p> <p>Education Code § 25.0915, 25.0951</p>	<p><b>Court referral documentation:</b> referral to truancy court must still be accompanied by a statement from the school certifying that TPMs were applied but failed; and specify whether the student is eligible for or receives special education services.</p> <p>Changes to the law have increased the discretion that prosecutors and courts have to dismiss a petition filed by a school district alleging truant conduct for varying reasons, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Does not include information required;</li> <li>• Conduct does not satisfy the elements of truant conduct;</li> <li>• Not timely filed;</li> <li>• Prosecutor's discretion</li> </ul> <p>Education Code §§ 25.0951, 25.0915. Family Code § 65.053</p>

<p><b>Parent contributing to non-attendance:</b> a school district may file a complaint for criminal prosecution against a parent in court for contributing to the non-attendance of a student.</p> <p>Education Code § 25.093</p>	<p><b>Parent contributing to non-attendance:</b> a school district may still file a complaint for criminal prosecution against a parent. State law has been amended to include that this offense may be punishable by fine only with fines ranging from: \$100 for first offense to \$500 for fifth or subsequent offenses.</p> <p>State law has been amended to require a school district to provide evidence of the parent’s “criminal negligence” in contributing to the non-attendance of the student.</p> <p><i>Note: evidence of “criminal negligence” can include documentation of warning notices, implementation of a behavior improvement contract signed by a parent and student, and any other information contained by the school district demonstrating an attempt to work with the student’s parents.</i></p> <p>Education Code §§ 25.093, 25.0951, 25.0952</p>
<p><b>Truancy prevention facilitator:</b> no requirement to have a truancy prevention facilitator.</p> <p>No Education Code provision</p>	<p><b>Truancy prevention facilitator:</b> a school district shall employ a truancy prevention facilitator to:</p> <ul style="list-style-type: none"> <li>• Implement TPMs;</li> <li>• Meet annually with a court case manager to discuss effectiveness of TPMs</li> </ul> <p>A school district is allowed to appoint an existing district employee to serve as a truancy prevention facilitator.</p> <p><i>Note: School districts have likely required attendance officers to perform this function in the past.</i></p> <p>Education Code §25.0915</p>
<p><b>Truancy court:</b> a student referred to court for failure to attend school may be processed in one of two ways depending on the size of the county the school district is located in and the court the student’s case is filed in:</p>	<p><b>Truancy court:</b> a student between the ages of 12-18 alleged to have missed 10 or more days or parts of days within a six-month period in the same school year shall be referred to truancy court for civil processing only.</p>

<ul style="list-style-type: none"> <li>• Criminal processing: addressed by a justice of the peace court or municipal court with a criminal conviction if found guilty of a class C misdemeanor;</li> <li>• Civil processing: addressed by juvenile courts as civil cases without resulting in a criminal conviction.</li> </ul> <p>Education Code § 25.094. Family Code § 51.03, 51.04</p>	<p>A referral of a student for truant conduct shall be to specific courts designated as truancy courts: 1) constitutional county courts (in counties with a population of 1.75 million or more); all justice courts; and 3) all municipal courts.</p> <p>Family Code §§ 65.003, 65.004</p>
--	--

**Expunction of Failure to Attend Records**

With the removal of the offense of Failure to Attend School (Texas Education Code § 25.094), House Bill 2398 requires expunction of all records and documents relating to a conviction or complaint of the offense, including any in the possession of a school district. A school district is not required to expunge or destroy any records of this nature until an order from a court has been provided to the school district instructing the district on the process for the expunction of the records.

## Appendix A: Truancy Prevention Measures, Guidance, and Examples

Generally speaking, truancy prevention measures (TPMs) are programs or services that promote consistent school attendance while addressing the underlying risk factors that may lead to truancy. Since 2011, the Texas Education Code has required districts to adopt TPMs. Tex. Educ. Code § 25.0915. The 2011 amendments to the Texas Education Code did not describe what TPMs were required, however, so districts were left to figure out the appropriate measures on their own. In 2015, the Texas Legislature enacted HB 2398, adding specific examples of TPMs to the existing law.

State law does not specifically define what TPMs are required. Districts should adopt and implement TPMs in light of the legislative intent to reduce criminal penalties for truancy and to promote alternatives to exclusionary methods of school discipline. At a minimum, Texas Education Code section 25.0915, as amended by HB 2398, requires a district to take at least one of the following actions as a TPM:

- Impose a behavior improvement plan on the student that must be signed by an employee of the school, that the district has made a good faith effort to have signed by the student and the student's parent or guardian, and that includes the elements discussed below;
- Impose school-based community service;
- Refer the student to counseling, mediation, mentoring, teen court, or other in-school or out-of-school service aimed at addressing the truant behavior.

**Behavior improvement plan.** Section 25.0915 requires the behavior improvement plan to include: (1) a specific description of the behavior that is required or prohibited for the student; (2) the period for which the plan is effective, not to exceed 45 school days; or (3) the penalties for additional absences, including disciplinary action or referral to truancy court. Ideally, a behavior improvement plan would include all three elements. In addition, the plan should set out measurable goals to improve attendance. The goals should be appropriately based on the student's age and the factors that are contributing to nonattendance (e.g., using an alarm clock, going to bed earlier, arriving at the bus stop on time). The plan could require the student to check in regularly with an employee mentor at the school. The plan could also restrict certain privileges, such as off-campus lunch, until the student meets specific attendance goals. The plan must be signed by an employee of the school, and the school must make a good faith effort to have the plan signed by the student or the student's parent or guardian.

**School-based community service.** Behavior contracts with students are a familiar administrative tool to address attendance issues. Other forms of truancy prevention may require the district to experiment, such as school-based community service. School-based community service is not defined in statute. This term, while not widely known, is not new in state law. School-based community service was included in the Texas Education Code in the 83rd legislative session with the requirement for certain school districts to impose graduated

sanctions prior to referral of a student to court for a criminal complaint. See Tex. Educ. Code § 37.144 (detailing a list of graduated sanctions required, including school-based community service). For school districts that have not created school-based community service, information about such services should come from discussions with school district administrators and experts in the study of truancy prevention measures.

**Other in-school or out-of-school service aimed at addressing truant behavior.** If an issue is identified as preventing a student from attending school, appropriate district employees should determine whether there is any school-based or community service that can address the issue. For example, the district may offer parenting programs or meetings to ensure parents understand attendance requirements and have a plan to get students to school. The district could refer a student to counseling to deal with drug and alcohol issues or after-school tutoring to increase student engagement. (Note that Section 25.0915 *requires* a district to offer counseling if a student is determined to be truant due to pregnancy, being in the state foster program, homelessness, or being the principal income earner for the student’s family.) Many factors could contribute to truancy, some of which overlap with the district’s legal obligations to serve students with particular needs. Therefore, the truancy prevention facilitator and other employees responsible for implementing TPMs should be familiar with the district’s policies regarding bullying and harassment, students with disabilities, and homeless students, and should be prepared to offer relevant services.

**Relationships with community organizations.** Many districts already have established relationships with external organizations with programs designed to promote consistent school attendance. Some commonly known organizations that can address truancy through mentoring programs or other types of partnerships include Communities in Schools and Big Brothers Big Sisters of America. The truancy prevention facilitator should be aware of local options for mentoring, counseling, and other community-based services or programs. For example, Communities in Schools offers family engagement services, including parenting classes and support groups, as well as mentoring programs, tutoring, and community service opportunities for students. The goal of an integrated approach that draws on community, school, and family resources is to surround students with the support they need to stay focused on school.

## A COMPREHENSIVE APPROACH TO ATTENDANCE

Beyond providing TPM to a student in a specific instance, districts should take a universal approach to promoting a culture of attendance. This includes training staff to talk meaningfully with students and parents about the attendance policy and the root causes of unexcused absences. Teachers and administrators should set out attendance expectations when school begins and address concerns promptly; there is no need to wait for a problem to develop. Districts should develop attendance procedures that encourage campus staff to reach out to families and determine the root causes of failure to attend school. For example, parents should be immediately notified of any unexplained absence, followed by other interventions (e.g., phone calls and/or home visits) to find out what is the issue behind repeated unexcused absences. Once the issue is identified, the district can begin to apply TPMs designed to meet

the student's needs. A truly comprehensive approach includes routine internal procedures to enforce attendance laws, collaborating with external partners (community organizations, law enforcement, courts), and offering services and programs to a student's family as appropriate.

## A LAST RESORT

When TPMs fail to solve the problem, referral to a truancy court that can impose civil (not criminal) consequences is still an option for students between the ages of 12 and 18, unless the failure to attend school is the result of pregnancy, being in the foster care program, homelessness, or being the principal income earner for the student's family. When a district refers a student to truancy court, the district must provide a statement documenting that TPMs were applied but failed and specifying whether the student is eligible for or receives special education. Tex. Educ. Code §§ 25.0915, .0951. This requirement existed before HB 2398, however, the new law provides additional reasons for the court to dismiss the referral. As such, documentation of the actions taken by the district are more important than ever before. Moreover, by enacting HB 2398 and other legislation in recent years, Texas lawmakers have demonstrated a strong commitment to reforming disciplinary practices that resulted in criminal consequences and could have the effect of further excluding students who were already at risk. Referring a student to court for failure to attend school should always be a district's last resort.

For more information on this and other school law topics,  
visit TASB School Law eSource online at [schoolawesource.tasb.org](http://schoolawesource.tasb.org).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.*