SCHOOL LAW:
RESPONSIBILITIES OF SCHOOLS, COUNTIES, AND MUNICIPALITIES UNDER THE TEXAS CIVIL TRUANCY SYSTEM

DAVID P. BACKUS
Underwood Law Firm
1111 West Loop 289
Lubbock, Texas 79416
Ph: 806.793.1711 Fax: 806.793.1723
david.backus@uwlaw.com

State Bar of Texas
28TH ANNUAL
ADVANCED GOVERNMENT LAW COURSE
July 28 – 29, 2016
Austin

CHAPTER 8

UNDERWOOD
ATTORNEYS AT LAW
1111 West Loop 289 | Lubbock, Texas 79416 | 806.793.1711



DAVID P. BACKUS

• • •

Phone: 806.793.1711
Fax: 806.793.1723
david.backus@uwlaw.com

Bar/Court Admissions

State Bar of Texas, 1988

U.S. District Court, Northern District of Texas

U.S. Court of Appeals, Fifth Circuit

Education

Texas Tech University School of Law
J.D., 1988

Southwestern University,
B.A, 1985

Military Service

United States Marine Corps
1985-1994

David Backus' practice is comprised chiefly of public school and regional education service center education law. Prior to assuming his duties with the Underwood Law Firm, David served as general counsel for the Region 17 Education Service Center in Lubbock, senior attorney for the Texas Association of School Boards' Legal Services Division in Austin, and staff counsel and lobbyist for the Texas Association of School Administrators in Austin. He is vice-chair of the Board of Directors of the Texas Council of School Attorneys and a past editorial board member of the Texas School Administrators Legal Digest. David also serves as a one of the seven board members of the Texas Association of School Boards' Legal Assistance Fund, which provides support to school districts that are defending legal challenges with the potential to affect public schools statewide. When he is not advising or defending school districts and education service centers, David is assisting families to finalize the legal portion of their adoption process. An adoptive father of four, he considers this a special part of his practice.

Areas of Practice

- Public Education Law
- Construction Law
- Employment Law

Activities and Affiliations

- Texas Association of School Boards, Council of School Attorneys, Vice Chair
- Texas Association of School Boards, Legal Assistance Fund, Board Member
- State Bar of Texas, School Law Section
- Texas Bar Association, Fellow
- TEA Certified Provider of Continuing Education for School Boards
- TEA Certified Provider of Continuing Profession Education for Educators

TABLE OF CONTENTS

I. BACKGROUND 1

II. RESPONSIBILITIES UNDER THE "NEW" CIVIL TRUANCY SYSTEM 1
- A. Pretrial Procedure 1
- B. Truancy Trial Procedure 4
- C. Appellate Procedure 8
- D. Enforcement of Truancy Court Orders against Students 8
- E. Enforcement of Truancy Court Orders against Non-Students 9
- F. Criminal Offense of Contributing to Truancy against Parent/Guardian 10

III. RECORDS OF TRUANCY PROCEEDINGS—PAST AND PRESENT 11
- A. Records of Truancy Proceedings from September 1, 2015 Forward 11
- B. Records of Truancy Proceedings before September 1, 2015 12

IV. CONCLUSION 13

APPENDIX A: Jefferson County Uniform Truancy Policy Documentation 15

SCHOOL LAW: RESPONSIBILITIES OF SCHOOLS, COUNTIES, AND MUNICIPALITIES UNDER THE TEXAS CIVIL TRUANCY SYSTEM

I. BACKGROUND

During the 84th Legislative Session, the Texas Legislature passed, and the governor signed, House Bill 2398, which radically changed how the state handles the truancy of its public school students. Effective September 1, 2015, HB 2398 not only repealed the Education Code criminal offense of "Failure to Attend School" and its corresponding Family Code "Conduct in Need of Supervision" (CINS) offense found in Section 51.03(b)(2), but it also created a new Chapter 65 in the Family Code, which implemented a new civil system of "truancy courts" designed to:

> "encourage school attendance by creating simple civil judicial procedures through which children are held accountable for excessive school absences."[1]

House Bill 2398 also entitled any person who had previously been convicted of the offense of truancy under the repealed Education Code provision to have the:

> "conviction or complaint and records relating to the conviction or complaint expunged."[2]

With the 2015-2016 school year recently completed, it is a good time to examine the implementation of the new truancy system more deeply.

II. RESPONSIBILITIES UNDER THE "NEW" CIVIL TRUANCY SYSTEM

A. Pretrial Procedure

A child, generally between the ages of 12 and 19, becomes truant from school[3] if the child is required to attend school and fails to do so on 10 or more days or parts of days within a six-month period in the same school year.[4] When the student fails to attend school, without excuse,[5] on three or more days or parts of days within a four-week period, a school district is required to initiate "truancy prevention measures" with the student.[6] The truancy prevention measures must be designed to address the student's conduct related to truancy in the school setting before the student reaches the Family Code 10 day/six-month civil action threshold and to minimize the need for referrals to truancy court.[7] The school district designing truancy prevention measures for a student must take one or more of the following actions:

A) It must impose:

1) A behavior improvement plan on the student signed by an employee of the school and that the school district has made a good faith effort to have signed by the student and the student's parent or guardian, and that includes:

a) A specific description of the behavior that is required or prohibited for the student;
b) The period for which the plan will be effective, not to exceed 45 school days after the date the contract becomes effective; or
c) The penalties for additional absences, including additional disciplinary action or the referral of the student to a truancy court; or:

2) School-based community service; or:

B) It must refer the student to counseling, mediation, mentoring, a teen court program, community-based services, or other in-school or out-of-school services aimed at addressing the student's truancy.

If the school district in designing the truancy prevention measures determines that a student's truant behavior is the result of any of the following, it must offer the student additional counseling services, and it may NOT refer the student to truancy court:

---

[1] TEX. FAM. CODE § 65.001(b).

[2] TEX. CODE CRIM. PRO. § 45.0541(b).

[3] Tex. Educ. Code § 25.085 is the source of the state's compulsory attendance law as well as to what aged students it is applicable, which generally is six years old through 19 years old; however, TEX. FAM. CODE § 65.002(1) defines a "child" for purposes of the civil truancy court enforcement mechanisms as "a person who is 12 years of age or older and younger than 19 years of age." For a list of circumstances under which a student is altogether exempted from application of compulsory school attendance, see Tex. Educ. Code § 25.086.

[4] TEX. FAM. CODE § 65.003(a).

[5] For list of legal excuses from attending school, *see* Tex. Educ. Code § 25.087.

[6] Tex. Educ. Code § 25.0915(a-4).

[7] Tex. Educ. Code § 25.0915(a).

a) Pregnancy;
b) Being in the state foster program;
c) Homelessness; or
d) Being the principal income earner for the student's family.[8]

A school district is also required either to employ a "truancy prevention facilitator" or "juvenile case manager" or to designate an existing district employee or juvenile case manager to serve in such a role. The duties of that school employee include implementing the truancy prevention measures required by law and any additional one(s) implemented by the school district or any individual campus of the district.[9] At least annually, the truancy prevention facilitator is required by statute to meet with a case manager or other individual designated by a truancy court to discuss effective truancy prevention measures.[10]

As part of HB 2398, the legislature gave to the Texas Education Agency (TEA) rulemaking authority to create minimum standards for truancy prevention measures to be adopted by school districts and to establish a set of best practices for truancy prevention measures.[11] Those TEA rules must provide for sanctions for a school district found not to be in compliance with implementing and applying truancy prevention measures in accordance with the procedures described in this article.[12] To date (06/13/2016), the Commissioner of Education has not begun the Administrative Procedures Act rulemaking process for proposed rule publication, comment, and adoption in any of these three areas. The most recent communication from the Commissioner on this subject came on August 25, 2015, in the form of a "To the Administrator Addressed" letter, which stated the following:

> "TEA will be adopting rules to create minimum standards for truancy prevention measures, establishing a set of best practices for truancy prevention measures, and providing for sanctions for districts that are not in compliance with TEC Section 25.0915. However, no additional minimum standards for truancy prevention measures beyond those imposed by the legislation will be adopted for the 2015-2016 school year. During the 2015-2016 school year, TEA will use a complaint-based model for issues of non-compliance under Section 25.0915 of the Texas Education Code."[13]

Consequently, Texas school districts addressed their responsibilities under the new truancy system in cooperation with the relevant local juvenile authorities identified in Family Code Chapter 65. For many Texas counties that cooperation is mandated by law. Specifically, in any county containing at least two school districts and with two or more courts hearing truancy cases, the Education Code requires that a committee be established to recommend a uniform truancy policy for each school district in the county.[14] The County Judge (or designee) and the mayor (or designee) of the municipality with the greatest population are tasked to appoint by January 1, 2016, one member to serve on the uniform truancy policy committee as a representative of each of the following stakeholder areas:

1) a juvenile court;
2) a municipal Court;
3) the office of the justice of the peace;
4) the superintendent of an independent school district;
5) an open-enrollment charter school (if one operates in the county);
6) the office of prosecutor with original truancy jurisdiction in the county; and
7) the general public.

In addition to the representative members of the committee appointed by the two county and city officials, they can also serve as members of the committee themselves (or they may appoint a designee) and they may appoint any other person to the committee as they deem necessary. Additionally, the chief juvenile probation officer (or designee) is a statutory member of the committee.[15] By not later than May 1, 2016, the committee must recommend the following:

a) A uniform process for filing truancy cases with truancy courts;
b) Uniform administrative procedures;
c) Uniform deadlines for processing truancy cases;
d) A local plan with strategies to address truancy, including effective prevention, intervention,

[8] Tex. Educ. Code § 25.0915(a-3).

[9] Tex. Educ. Code § 25.0915(d).

[10] *Id*.

[11] Tex. Educ. Code § 25.0915(f).

[12] Tex. Educ. Code § 25.0915(g).

[13] *See* Texas Education Agency Website: http://tea.texas.gov/taa_letters.aspx

[14] Tex. Educ. Code § 25.0916(a)-(b).

[15] Tex. Educ. Code § 25.0916(c), (c-1), (e).

and diversion methods to reduce truancy and referrals to a truancy court;

e) A system for tracking truancy information and sharing truancy information among school districts, open-enrollment charter schools, truancy courts, juvenile courts, and juvenile probation departments in the county; and

f) Any changes to statutes or state agency rules the committee determines are necessary to address truancy.[16]

Although compliance with any recommendation of the committee is voluntary, the committee's presiding officer is required to issue a report by not later than December 1, 2017, to the county judge and mayor of the municipality with the greatest population in the county on the implementation of the recommendations and compliance with the state truancy laws by a school district located in the county.[17] One such uniform truancy policy is attached to this article as Appendix A.

The Education Code allows the governing bodies of school districts and charter schools to appoint, individually or jointly, an "attendance officer" to assist them in addressing student truancy.[18] The attendance officer selected by schools may be an employee of the school or it may be the probation officer or other officer of the juvenile court of the county. The person(s) selected by a school to be an attendance officer is permitted to receive additional compensation for those duties.[19] If a school district does not select a particular person to be the school's attendance offer, the superintendent of the school is the attendance officer by operation of law.[20] In cases where an open-enrollment charter school does not select an attendance officer, the duties of attendance officer, by operation of law, are to be performed by the peace officers of the county in which the charter school is located.[21] When the duties of attendance officer fall on the superintendent of the schools or the county peace officers by operation of law, no additional compensation may be paid to them for those duties.[22]

The powers and duties of an attendance officer vary slightly depending upon whether the person serving as the attendance officer is also a "peace officer" as that term is understood in Article 2.12 of the Code of Criminal Procedure.[23] The powers and duties that a peace officer and a non-peace officer serving as a school's attendance officer share include the following:

(A) Investigating each case of a violation of compulsory school attendance referred to officer;

(B) Enforcing compulsory school attendance requirements by:

(1) Applying to the student the truancy prevention measures adopted by the school; and

(2) If the truancy prevention measures fail to meaningfully address the student's conduct:

(a) referring the student to a truancy court if the student has unexcused absences for 10 or more days or parts of days within a six-month period in the same school year; or

(b) filing a complaint in a county, justice, or municipal court against a parent/guardian for "Parent Contributing to Nonattendance" under Education Code Section 25.093;

(C) Monitoring school attendance compliance by each student investigated by the officer (in the case of a non-peace officer/attendance officer) or to review school attendance records for compliance by each student investigated by the officer (in case of peace officer/attendance officer);

(D) Maintaining an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record; and

(E) Making a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that a peace officer may not enter a residence without the permission of the parent/guardian or of the tenant or owner of the residence except to lawfully serve court-ordered legal process on the parent/guardian (in the case of a non-peace officer/attendance officer, he or she may not enter a residence

[16] Tex. Educ. Code § 25.0916(f).

[17] Tex. Educ. Code § 25.0916(g)-(h).

[18] Tex. Educ. Code § 25.088.

[19] Tex. Educ. Code § 25.089.

[20] Tex. Educ. Code § 25.090(a).

[21] Tex. Educ. Code § 25.090(b).

[22] Tex. Educ. Code § 25.090(c).

[23] *See* Tex. Educ. Code § 25.091(c)(2).

without permission of the parent/guardian or the owner or tenant of the residence).[24]

An attendance officer who is also a peace officer has the additional power to serve a person with court-ordered legal process and, upon probable cause to believe that a student is in violation of the compulsory school attendance law, to take the student into custody for the purpose of returning the student to his or her school campus to ensure the student's compliance with compulsory school attendance requirements.[25] An attendance officer employed by a school who is not a peace officer may only, at the request of a parent/guardian:

> "escort a student from any location to a school to ensure the student's compliance with compulsory school attendance requirements."[26]

Should a student continue to have unexcused absences from school despite the school district's implementation of truancy prevention measures and should the student be absent without excuse for 10 days or parts of days within a six month period in the same school year, the school district has 10 days from the date of the student's 10th absence to refer the student to a truancy court for the truant conduct.[27] A school district has the discretion to delay a student's referral if the district is applying truancy prevention measures, the measures are succeeding, and it is in the best interests of the student that the referral not be made at that time.[28] Should the school not exercise its discretion to delay the truancy referral, the referral to the truancy court must:

a) Be accompanied by a statement from the student's school certifying that:

    1) The school applied the statutorily required truancy prevention measures to the student; and
    2) The truancy prevention measures failed to meaningfully address the student's school attendance; and

b) Specify whether the student is eligible for or receives special education services under state/federal law.[29]

The truancy court is required to dismiss a referral filed by a school district not only if it fails to contain the certifications and specifications set forth above, but also if it is otherwise substantively defective including, but not limited to, the school district's failure to satisfy all of the elements required for the truancy offense and failure to file the petition within the 10-day timeframe in statute (although the petition cannot be dismissed if the district was exercising its discretion to delay filing due to success of the prevention measures).[30] If the truancy court does not dismiss the referral, it must forward it to the criminal prosecutor who serves the justice, municipal, or constitutional county court designated as the truancy court.[31] The prosecutor for the court designated as the truancy court reviews the school district's referral a second time to ensure that the school complied with the requirements in the Education Code for implementation of truancy prevention measures and that the facts stated in the referral constitute a truancy offense. If the truancy prosecutor decides not to file a petition, he or she must inform the truancy court and the school district of that decision.[32] The statutes do not elaborate on the specificity of the information conveyed to the court or to the school when the prosecutor determines that a petition will not be filed on any particular referral.

B. Truancy Trial Procedure

When the truancy prosecutor determines that the facts and the procedures of the referral are sufficient to merit enforcement, the prosecutor initiates the enforcement action by filing a civil petition for an adjudication of the state against the student.[33] There is specific statutory language regarding the style of the petition as well as its content.[34] The content of the petition must state:

a) With reasonable particularity the time, place, and manner of the acts alleged to constitute truant conduct;
b) The name, age, and residence address, if known, of the student who is the subject of the petition;

---

[24] *See* Tex. Educ. Code § 25.091(a), (b)

[25] Tex. Educ. Code § 25.091(a)(3), (b-1).

[26] Tex. Educ. Code § 25.091(b)(6).

[27] Tex. Educ. Code § 25.0951(a).

[28] Tex. Educ. Code § 25.0951(d).

[29] Tex. Educ. Code § 25.0915(b).

[30] Tex. Educ. Code § 25.0915(c).

[31] Tex. Fam. Code §§ 65.051, .052.

[32] Tex. Fam. Code § 65.053(b)-(c).

[33] Tex. Fam. Code § 65.054(a).

[34] Tex. Fam. Code § 65.054(b), (d).

c) The names and residence addresses, if known, of at least one parent, guardian, or custodian of the student and of the student's spouse, if any; and

d) If the student's parent, guardian, or custodian does not reside or cannot be found in the state, or if their places of residence are unknown, the name and residence address of any known adult relative residing in the county or, if there is none, the name and residence address of the known adult relative residing nearest to the location of the court.[35]

The petition must be filed not later than the 45th day after the date of the last absence giving rise to the act of truant conduct, and the truancy court may not schedule the adjudication hearing to be held before the 10th day after the petition is filed.[36] When the date is set by the truancy court, the court must direct the issuance of a summons, with a copy of the petition attached to it, to the student named in the petition; the student's parent, guardian, or custodian; the student's guardian ad-litem, if any; and any other person who appears to the court to be a proper or necessary party to the adjudication.[37] The summons must be served on the individual personally or by registered or certified mail, return receipt requested, at least five days prior to that date of the adjudication hearing.[38] The truancy court may endorse on the summons an order directing the person having the physical custody or control of the student to bring him or her to the hearing. Should the person violate that order on the summons, the truancy court may issue a writ of attachment under Chapter 24, Code of Criminal Procedure.[39]

Although a student is not entitled to the appointment of an attorney at the adjudication hearing, the student may hire one for such purposes at the student's discretion. If the truancy court believes it is in the best interests of the student to have an attorney appointed for him or her, it may do so and either absorb the cost or order the student's parent or other responsible person to pay for the cost of that attorney if it determines they have sufficient means to do so.[40] Once filed, the student may answer the petition either orally or in writing at any time up to the beginning of the adjudication hearing. If there is no answer, the court is required to assume a general denial of the truancy allegations.[41] Should the student appear before the court without a parent or guardian or if those responsible persons are unable or unwilling to make decisions in the best interests of the student, the truancy court may appoint a guardian ad litem to protect the interests of the child. A law enforcement officer, probation officer, or other employee of the truancy court may not be appointed as a guardian ad litem. The attorney for the student, however, may be appointed guardian ad litem. Cost associated with a guardian ad litem may be assessed against a parent or other responsible person only after the court makes a determination that the person has sufficient means to pay those costs either wholly or partly.[42]

The truancy adjudication hearing may not be conducted unless the student is personally in attendance, and the parent/guardian of the student and any court-appointed guardian ad litem are required to attend the hearing, unless certain specific exemptions exist.[43] In order to protect the livelihood of parents required to be at truancy adjudication hearings, the legislature created an exemption to the Texas at-will doctrine making it unlawful for an employer to terminate a "permanent employee" because the employee is required to attend the hearing.[44] Damages for a violation of this new employment cause of action include reinstatement to the person's former position, six times the person's monthly compensation, and reasonable attorney's fees.[45]

The new truancy law recognizes one powerful pretrial motion—one that asks the truancy court to dismiss the petition because the student has a mental illness.[46] A "mental illness" for purposes of this motion means:

> "[A]n illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that:
>
> (1) Substantially impairs a person's thought, perception of reality, emotional process, or judgment; or
> (2) Grossly impairs behavior as demonstrated by recent disturbed behavior."[47]

---

[35] Tex. Fam. Code § 65.054(d).

[36] Tex. Fam. Code §§ 65.055, .056.

[37] Tex. Fam. Code § 65.057.

[38] Tex. Fam. Code § 65.058.

[39] Tex. Fam. Code § 65.254.

[40] Tex. Fam. Code § 65.059.

[41] Tex. Fam. Code § 65.060.

[42] Tex. Fam. Code § 65.061.

[43] Tex. Fam. Code § 65.062.

[44] Tex. Fam. Code § 65.063(a).

[45] Tex. Fam. Code § 65.063(c).

[46] Tex. Fam. Code § 65.065.

[47] Tex. Health and Safety Code § 571.003(14).

In response to the motion, the truancy court is required to stay the proceedings to determine whether probable cause exists to believe the student has a mental illness. If the court determines that the student has a mental illness, it must dismiss the petition. Alternatively, if the court determines that the student does not have a mental illness, it must dissolve the stay and proceed with the adjudication hearing.[48]

At the adjudication hearing, the court must explain to the student, the student's parent/guardian, or guardian ad litem the following:

1) The allegations made against the student;
2) The nature and possible consequences of the proceedings;
3) The student's privilege against self-incrimination;
4) The student's right to trial and to confrontation of witnesses;
5) The student's right to representation by an attorney if the student is not already represented; and
6) The student's right to a jury trial.[49]

The student may only waive his or her right to a jury trial if all of the following occur:

a) The student and the student's parent or guardian are informed of the right, understand the right, understand the possible consequences of waiving the right, and understand that waiver of the right is not required;
b) The student signs the waiver;
c) The student's parent or guardian signs the waiver; and
d) The student's attorney signs the waiver, if the student is represented by counsel.[50]

If the student's adjudication occurs before a jury, the jury's verdict must be unanimous, and the Texas Rules of Evidence do not generally apply (although the trial judge may apply particular one(s) applicable to criminal cases in the interests of justice). The following apply to any truancy hearing:

i) The student is entitled to the presumption of innocence;
ii) The student may not be compelled to testify against himself;
iii) Any out of court statement made by the student must be corroborated by other competent evidence;
iv) The state has the burden of proving the truant conduct; and
v) The state must prove the student engaged in the truant conduct "beyond a reasonable doubt".

Following the presentation of the evidence, if the court or jury finds that the student did not engage in truant conduct, the court must dismiss the case with prejudice. Alternatively, if the court or jury finds that the student did engage in the truant conduct, the court shall enter a finding consistent with the adjudication, and the court (not the jury) shall proceed to order that the student submit to appropriate remedial actions permitted in Family Code Chapter 65.[51] The remedial actions that the court determines are appropriate must first be read orally in the student's presence, then entered into a written order. After the court has pronounced its remedial actions, the court must advise the student and the student's parent/guardian or guardian ad litem that the child has a right to appeal the decision of the court, and describe for the student the procedures for sealing the student's records under the law.[52]

The remedial actions that he court may order following its own or the jury's finding that a student engaged in truant conduct are both broad and varied. And, whatever remedial actions are ordered by the court must be accomplished by the later of 180 days or the last day of school of the school year in which the order was entered.[53] Remedial actions that a truancy court may order an adjudicated student to accomplish are specifically set forth in statute as follows:

(1) Attend school without unexcused absences;
(2) Attend a preparatory class for the high school equivalency examination if the court determines that the individual is unlikely to do well in a formal classroom environment due to the student's age;
(3) If the student is at least 16 years of age, take the high school equivalency examination if that is in the best interest of the child;
(4) Attend a nonprofit, community-based special program that the court determines to be in the best interest of the child, including:

[48] Tex. Fam. Code § 65.065(b).

[49] Tex. Fam. Code § 65.101(b).

[50] Tex. Fam. Code § 65.008.

[51] Tex. Fam. Code § 65.101(c).

[52] Tex. Fam. Code § 65.102.

[53] Tex. Fam. Code § 65.104.

(A) An alcohol and drug abuse program;
(B) A rehabilitation program;
(C) A counseling program, including a self-improvement program;
(D) A program that provides training in self-esteem and leadership;
(E) A work and job skills training program;
(F) A program that provides training in parenting, including parental responsibility;
(G) A program that provides training in manners;
(H) A program that provides training in violence avoidance;
(I) A program that provides sensitivity training; and
(J) A program that provides training in advocacy and mentoring;

(5) Complete not more than 50 hours of community service on a project acceptable to the court (but not more than 16 hours in any given week, and the legislature has provided municipalities and counties offering community service opportunities with limitations on exposure to liability to the extent they have purchased insurance to cover such risks as well as maximum dollar amounts of liability exposure[54]); or
(6) Participate for a specified number of hours in a tutorial program covering the academic subjects in which the child is enrolled that are provided by the school the child attends.[55]

In keeping with the legislature's philosophical shift away from the criminalization of truant behavior, the new truancy process prohibits a truancy court from assigning a truant student to a punitive setting, such as a juvenile justice education program, a boot camp, or a for-profit truancy class.[56] Although the statutory truancy remediation actions available to the court generally tilt toward positive interventions and away from punitive ones, the truancy court does possess the powerful additional measure of ordering the Texas Department of Public Safety to suspend the driver's license or permit (or deny the issuance of one) to an adjudicated student for a period not to exceed the end of the school year or 180 days, whichever is later.[57]

Moreover, understanding that other persons may have a contributing influence over the truant behavior of a student, the truancy court has been given significant authority to order those people, subject to a hearing on the matter, either to participate in some of the remedial activities ordered for the student or to enjoin those people from interacting with the student. Specifically, the truancy court has the ability to do any one or more of the following:

1) Order the student and the student's parent to attend a class for students at risk of dropping out of school that is designed for both the student and the student's parent;
2) Order any person found by the court to have, by a willful act or omission, contributed to, caused, or encouraged the student's truant conduct to do any act that the court determines to be reasonable and necessary for the welfare of the student or to refrain from doing any act that the court determines to be injurious to the student's welfare;
3) Enjoin all contact between the student and a person who is found to be a contributing cause of the student's truant conduct, unless that person is related to the student within the third degree by consanguinity or affinity, in which case the court may contact the Department of Family and Protective Services, if necessary;
4) After notice to, and a hearing with, all persons affected, order any person living in the same household with the child to participate in social or psychological counseling to assist in the child's rehabilitation;
5) Order the child's parent or other person responsible for the student's support to pay all or part of the reasonable costs of treatment programs in which the student is ordered to participate if the court finds the student's parent or person responsible for the student's support is able to pay the costs;
6) Order the student's parent to attend a program for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the student's unexcused absences and in developing strategies for resolving those problems; and
7) Order the student's parent to perform not more than 50 hours of community service with the student.[58]

[54] Tex. Fam. Code § 65.106.

[55] Tex. Fam. Code § 65.103(a).

[56] Tex. Fam. Code § 65.103(b).

[57] Tex. Fam. Code § 65.103(c).

[58] Tex. Fam. Code § 65.105.

The truancy court may also order the parent, student, or other person responsible for the student's support to pay $50.00 in court costs if, after an opportunity to be heard on the matter, the court determines they are financially able to so do so.[59] Those court costs are statutorily required to be deposited into a special account for use only for offsetting the cost of operations of the truancy court.[60]

At any point during the life of the court ordered remedial measures, i.e., the later of 180 days or the last day of school of the school year in which the order was entered, the truancy court may hold a hearing to modify those measures if petitioned by a party.[61] There is no right to a jury at a modification hearing, and the court must pronounce in court, in the presence of the student, the changes to the remedial measures. In the court's written order, the court must also state its reasons for modifying those measures.[62]

An order of the truancy court may be challenged by filing a motion for a new trial. The motion for a new trial must be filed not later than 14 days after the order is signed by the court, and the party filing the motion must serve all other parties with a copy of the motion not later than the next business day using a method approved under Rule 501.4 of the Texas Rules of Civil Procedure. The truancy court judge may grant a new trial upon a showing that justice was not done in the original trial of the case. Of course, only one new trial may be granted to a party. If the truancy court judge has not ruled on the motion for new trial, the motion is automatically denied at 5:00 p.m. on the 21st day after the day the court's order was signed.[63]

C. Appellate Procedure

The student, the student's parent or guardian, the state, or a person who is otherwise subject to a truancy court's order may appeal any order of the court. The appeal from a truancy court is to the juvenile court. The juvenile court case is tried *de novo*, and, on appeal, the order of the truancy court is vacated.[64] The procedures set forth for appeals in Rule 506 of the Texas Rules of Civil Procedure apply to an appeal from the truancy court to the juvenile court, except that an appeal bond is not required.[65] Interestingly, there is a specific statutory obligation on an attorney who represented a student during a truancy court proceeding to file a notice with the court that will hear the appeal informing the court whether that attorney will handle the appeal.[66]

Following the trial and issuance of a judgment in the juvenile court, a party may appeal that court's judgment to the Texas courts of appeal and the Texas Supreme Court in the same manner as set forth in Texas Family Code Chapter 56.[67]

D. Enforcement of Truancy Court Orders against Students

If a student fails to obey an order issued by a truancy court or the student is in direct contempt of court, the truancy court, after providing notice and an opportunity for a hearing, may hold the student in contempt of court and order that:

1) The student pay a fine not to exceed $100;
2) The Department of Public Safety suspend the student's driver's license or permit (if the student does not have a license or permit, order that the Department of Public Safety deny the issuance of a license or permit to the child) until the student fully complies with the court's orders; or
3) The student both pay the fine and suffer the withdrawal of driving privileges.[68]

Under no circumstances, however, may the truancy court order the confinement of a student for his or her failure to obey an order of the court.[69] Should a truancy court find that a student has failed to obey an order issued by a truancy court or has been in direct contempt of court on two or more previous occasions while the student is 16 years of age or younger, the truancy court, after providing notice and an opportunity for a hearing, may refer the student to the juvenile probation department requesting truancy intervention.[70] When the truancy court makes such a referral, the court must provide the juvenile probation department with the following:

a) Documentation of all truancy prevention measures taken by the originating school district;

---

[59] Tex. Fam. Code § 65.107(a).

[60] Tex. Fam. Code § 65.107(d).

[61] Tex. Fam. Code § 65.108(a),(c).

[62] Tex. Fam. Code § 65.108(b),(e).

[63] Tex. Fam. Code § 65.109 and Tex. R Civ. P. 505.3(c), (e).

[64] Tex. Fam. Code § 65.151(a), (b); Tex. Fam. Code § 65.153(c).

[65] Tex. Fam. Code § 65.152.

[66] Tex. Fam. Code § 65.153(b).

[67] Tex. Fam. Code § 65.151(c).

[68] Tex. Fam. Code § 65.251(a).

[69] Tex. Fam. Code § 65.251(e).

[70] Tex. Fam. Code § 65.251(b).

b) Documentation of all truancy orders for each of the student's previous truancy referrals, including:

   1) Court remedies and documentation of the student's failure to comply with the truancy court's orders, if applicable, demonstrating all interventions that were exhausted by the truancy court; and
   2) Documentation describing the student's direct contempt of court, if applicable;

c) The name, birth date, and last known address of the student and the school in which the student is enrolled; and
d) The name and last known address of the student's parent or guardian.[71]

Upon receipt of the documentation and information from the truancy court, the juvenile probation department is tasked with reviewing the material and making a determination whether to offer the student additional remedies related to the student's school's uniform truancy policies or to refer the student to a juvenile court for a contempt of court hearing.[72] The juvenile probation department may also determine that extenuating circumstances caused the truancy referral.[73]

In circumstances where the juvenile probation department refers the student to the juvenile court, the juvenile court prosecutor must exercise his or her prosecutorial discretion to determine if probable cause exists to believe that the child engaged in direct contempt of court or failed to obey an order of the truancy court under circumstances that would constitute contempt of court. If the prosecutor finds that probable cause does not exist (or if the juvenile probation department finds that extenuating circumstances caused the original truancy referral), the juvenile court must enter an order requiring the student's continued compliance with the truancy court's order and notify the truancy court not later than the fifth day after the date the order is entered. Conversely, if the juvenile court prosecutor determines that probable cause does exist, the prosecutor should request an adjudication of the matter, and, not later than the 20th day after the date the juvenile court receives the prosecutor's request for adjudication, the juvenile court must conduct a hearing to determine if the child engaged in conduct that constitutes contempt of the order issued by the truancy court or engaged in direct contempt of court.[74] Should the juvenile court find that the student engaged in such conduct, the juvenile court is limited to:

1) Entering an order requiring the child to comply with the truancy court's order;
2) Forwarding a copy of the order to the truancy court within five days; and
3) Admonishing the child, orally and in writing, of the consequences of subsequent referrals to the juvenile court, which include a possible charge of delinquent conduct for contempt of the truancy court's order or direct contempt of court and/or a possible detention hearing.

E. Enforcement of Truancy Court Orders against Non-Students

Although a truancy court is limited in its contempt of court enforcement actions against a student, the same limitations do not apply in enforcement actions against a parent or other persons. The Family Code allows, after giving notice and an opportunity for a hearing,[75] a truancy court to find such persons in direct contempt[76] or may enforce the following specific orders by contempt:

(1) An order that a parent of a student, guardian of a student, or any court-appointed guardian ad litem of a student attend a Section 65.062 adjudication hearing;
(2) An order requiring a person (other than a student) to take a particular action;
(3) An order that a student's parent, or other person responsible to support the student, reimburse the municipality or county for the cost of the guardian ad litem appointed for the student; or
(4) An order that a parent, or person other than the child, pay the $50.00 court cost.

The penalty that a truancy court may impose for contempt of the specific orders set forth above is $100.00. If a parent or other person (not the student) is in direct contempt, the truancy court may also impose the following penalties in addition to the $100.00 fine:

1) confinement in jail for a maximum of three days;
2) a maximum of 40 hours of community service; or

[71] Tex. Fam. Code § 65.251(c).

[72] Tex. Fam. Code § 65.251(d).

[73] Tex. Fam. Code § 65.252(c).

[74] Tex. Fam. Code § 65.252(a).

[75] Tex. Fam. Code § 65.255(a).

[76] Tex. Fam. Code § 65.253(b).

3) both confinement and community service.[77]

The parent or other eligible person against whom a final truancy court order has been entered may appeal that order as provided by law from judgments entered by a justice court in civil cases.[78] An appeal by a parent or other person DOES NOT abate or otherwise affect the proceedings in truancy court involving the student.[79] The procedures for the appeal are those set forth in Rule 506 of the Texas Rules of Civil Procedure, except that an appeal bond is not required.[80]

The state, or the truancy court on its own motion, may initiate enforcement of a truancy court order against a parent or person other than the student by filing a written motion, in ordinary and concise language, that:

i) Identifies the provision of the order allegedly violated and sought to be enforced;
ii) States specifically and factually the manner of the person's alleged noncompliance;
iii) States the relief requested; and
iv) Contains the signature of the party filing the motion.[81]

Upon receipt of the motion for enforcement, the truancy court must by written notice set the date, time, and place of the hearing and order the person against whom enforcement is sought to appear and respond to the motion. The notice must be given by personal service or by certified mail, return receipt requested, on or before the 10th day before the date of the hearing on the motion. The notice must include a copy of the motion for enforcement. Personal service must comply with the Code of Criminal Procedure.[82] If the person moves to strike or specially excepts to the motion for enforcement, the truancy court must rule on the exception or motion to strike before the court hears evidence on the motion for enforcement. If an exception is sustained, the court shall give the movant an opportunity to re-plead and continue the hearing to a designated date and time without the requirement of additional service.[83] Should a person who has been personally served with notice to appear at the hearing not appear, the truancy court may not hold the person in contempt, but may issue a warrant for the arrest of the person.[84]

At the enforcement hearing, which is conducted without a jury,[85] the state must prove beyond a reasonable doubt that the person against whom enforcement is sought engaged in conduct constituting contempt of a reasonable and lawful court order as alleged in the motion for enforcement.[86] The person against whom enforcement is sought has a privilege not to be called as a witness or otherwise to incriminate himself or herself.[87] If that person was not represented by counsel during any previous court proceeding involving a motion for enforcement, he or she may, through counsel, raise any defense or affirmative defense to the proceeding that could have been asserted in the previous court proceeding that was not asserted because the person was not represented by counsel, including the specific affirmative defense that the court did not provide him or her with due process of law in the proceeding in which the court entered the order.[88]

Should the truancy court reach a judgment in the motion for enforcement, it must include in its judgment findings for each violation alleged in the motion for enforcement and the punishment, if any, to be imposed as a consequence of those findings.

F. Criminal Offense of Contributing to Truancy against Parent/Guardian

Although HB 2398 decriminalized the prior truancy offense against a student in the Education Code, the new legislation did not repeal the Education Code's offense against a parent/guardian for "Contributing to Nonattendance".[89] Instead, the bill made some modifications to that existing offense. The offense now allows a school district that has warned the parent/guardian at the beginning of the school year of the existence of this offense[90] to file a complaint against that parent/guardian if the parent/guardian with criminal negligence fails to require the child to attend school as required by law, and the child has absences for 10 or more days or parts of days within a six-month period in the same school year. That complaint may be filed against the parent/guardian by the school's attendance

[77] Tex. Fam. Code § 65.253(c), (d).

[78] Tex. Fam. Code § 65.256(a).

[79] Tex. Fam. Code § 65.256(c).

[80] Tex. Fam. Code § 65.256(b).

[81] Tex. Fam. Code § 65.257(a), (c).

[82] Tex. Fam. Code § 65.258(a)-(b).

[83] Tex. Fam. Code § 65.258(c).

[84] Tex. Fam. Code § 65.258(d).

[85] Tex. Fam. Code § 65.259(c).

[86] Tex. Fam. Code § 65.259(a).

[87] Tex. Fam. Code § 65.259(b).

[88] Tex. Fam. Code § 65.259(e), (f).

[89] Tex. Educ. Code § 25.093.

[90] School districts fulfill this requirement by including the information in their Student Handbooks and requiring parental acknowledgement of receipt of those handbooks.

officer or other appropriate school official[91] in the following courts:

1) The constitutional county court of the county in which the parent resides or in which the school is located, if the county has a population of 1.75 million or more;
2) A justice court of any precinct in the county in which the parent resides or in which the school is located; or
3) A municipal court of the municipality in which the parent resides or in which the school is located.[92]

An offense by a parent/guardian for "Contributing to Non-Attendance" is a misdemeanor that is punishable by fine only. The statutory fine schedule is as follows:

a) Not to exceed $100 for a first offense;
b) Not to exceed $200 for a second offense;
c) Not to exceed $300 for a third offense;
d) Not to exceed $400 for a fourth offense; or
e) Not to exceed $500 for a fifth or subsequent offense.[93]

Each day the parent/guardian's child remains out of school may constitute a separate offense and multiple offenses may be consolidated and prosecuted in a single action.[94] Any fines collected by a court for a conviction under this offense are required to split 50/50 between the educational institution the child attends (i.e., school district, open-enrollment charter school, or juvenile justice alternative education program) and the county or municipality responsible for the court that issued the conviction.[95] As a part of the order of conviction, deferred adjudication, or deferred disposition, the court is permitted to order the parent/guardian to attend a program for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the students' unexcused absences and in developing strategies for resolving those problems if a program is available.[96] If the parent/guardian refuses to obey the court's order, the court may punish the parent/guardian for contempt of court under Section 21.002, Government Code.[97] The punishments for contempt of court under that section are as follows:

(1) For a court other than a justice court or municipal court:

(A) A fine of not more than $500; or
(B) Confinement in the county jail for not more than six months, or
(C) Both such a fine and confinement in jail; and

(2) For a justice court or municipal court:

(A) A fine of not more than $100; or
(B) Confinement in the county or city jail for not more than three days; or
(C) Both such a fine and confinement in jail.

III. RECORDS OF TRUANCY PROCEEDINGS—PAST AND PRESENT

A. Records of Truancy Proceedings from September 1, 2015 Forward

Records and files created in the process of truancy court proceedings are confidential and may only be disclosed to statutorily identified individuals and entities. Those persons and entities include the following:

1) The judge of the truancy court, the truant conduct prosecutor, and the staff of the judge and prosecutor;
2) The student or an attorney for the student;
3) A governmental agency if the disclosure is required or authorized by law;
4) A person or entity to whom the student is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;
5) The Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification;
6) The agency[98]; or
7) With leave of the truancy court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.[99]

---

[91] Tex. Educ. Code § 25.093(b).

[92] *Id.*

[93] Tex. Educ. Code § 25.093(c).

[94] Tex. Educ. Code § 25.093(c-1).

[95] Tex. Educ. Code § 25.093(d).

[96] Tex. Educ. Code § 25.093(f).

[97] Tex. Educ. Code § 25.093(g).

[98] The term "agency" is not defined in Title 3A of the Family Code.

[99] Tex. Fam. Code § 65.202.

A student who has been found to have engaged in truant conduct may apply, on or after the student's 18th birthday, to the truancy court that made the finding to seal the records relating to the allegation and finding of truant conduct in the possession of (1) the court; (2) the "truant conduct prosecutor"; and (3) the school district. [100] The application must include certain statutorily required information to assist the record holders in identifying the relevant records.[101] After determining that the student complied with the remedies ordered by the court, the truancy court must order that the records be sealed, and, in addition to sealing the student's records, not later than the 30th day after the date of the sealing order, all index references to the records of the truancy court that are ordered sealed must be deleted.[102] If no record exists with respect to a student who has applied for the sealing of his or her records, a truancy court, clerk of the court, truant conduct prosecutor, or school district must affirmatively reply to the sealing request that such is the case.[103] The effect of the sealing of the records allows the person whose records have been sealed to deny the conduct in any proceeding or in any application for employment, information, or licensing to state. Moreover, any statement that the student makes indicating he or she has never been found to have engaged in truant conduct may not be held against the student in any criminal or civil proceeding.[104]

On or after the student's 21st birthday, on the motion of the student or on the truancy court's own motion, the truancy court may order the destruction of the student's records that have been sealed under this section if the student has not been convicted of a felony.[105]

If a truant conduct prosecutor exercised his or her prosecutorial discretion not to file a petition in the truancy court following his or her review of a referral from a school district, a truancy court must order the destruction of records relating to those allegations of truant conduct that are held by the court or by the prosecutor.[106]

B. Records of Truancy Proceedings before September 1, 2015

As part of its decriminalization of truancy proceedings, HB 2398 also amended the Code of Criminal Procedure to permit expunction of any and all records relating to the former Education Code truancy offense of "Failure to Attend School".[107] The amendments to the Code of Criminal Procedure entitle every person who has been convicted of an Education Code truancy offense[108] to have the conviction or complaint and records relating to the conviction or complaint expunged.[109] Interestingly, the new statute states the student's entitlement to have his or her records expunged as follows:

> "***Regardless of whether the individual has filed a petition for expunction***, the court in which the individual was convicted or a complaint for a truancy offense was filed shall order the conviction, complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, to be expunged from the individual's record."[110]

(Emphasis added.)

The qualifier "regardless of whether the individual has filed a petition for expunction" appears to mandate that all courts in which any student was convicted for truancy under the repealed Education Code offense from the inception date of that offense (which precedes 1995 when the Education Code was recodified) until September 1, 2015, on their own motion, begin the expunction process of those records. Thus, arguably, every justice, municipal, and relevant county court that convicted a student of truancy from 1995 until September 1, 2015, must search its records for the past 21 years and identify:

1) the names of those student(s);
2) the dates of the truancy conviction;
3) what school district(s) the student(s) attended; and
4) what law enforcement agencies were involved in the truancy case.

Once that information is gathered, the courts begin the expunction process and notify the affected school districts and law enforcement agencies with specific information about the student's name and years of attendance. With that information, it will be easier (not

---

[100] Tex. Fam. Code § 65.201(a).

[101] Tex. Fam. Code § 65.201(b).

[102] Tex. Fam. Code § 65.201(c), (d).

[103] Tex. Fam. Code § 65.201(e).

[104] Tex. Fam. Code § 65.201(g).

[105] Tex. Fam. Code § 65.201(h).

[106] Tex. Fam. Code § 65.203.

[107] Formerly Tex. Educ. Code § 25.094 (repealed by Acts 2015, 84th Legislature., Ch. 935 (H.B. 2398), § 41, effective September 1, 2015).

[108] *See* Tex. Code Crim. Pro. § 45.0541(a).

[109] Tex. Code Crim. Pro. § 45.0541(b).

[110] Tex. Code Crim. Pro. § 45.0541(c).

"easy" just "easier") for the schools and law enforcement agencies to search their records for relevant information and comply with the court's order to expunge the records. Once the court enters the expunction order, the student is released from all disabilities resulting from the conviction or complaint, and the conviction or complaint may not be shown or made known for any purpose.[111]

IV. CONCLUSION

The breadth of the entitlement granted to students who were previously convicted of "Failure to Attend School" to have their court, law enforcement and school records expunged illustrates the Legislature's strong commitment to decriminalizing truant behavior in schools. The new, purely civil, system to address truant student behavior is clearly designed to encourage attendance at school rather than to punish non-attendance. School personnel, who are tasked with enforcing student attendance, and their counterparts in county and city government have had one school year to operate under the new system, and they are still working out many of the intricate details of it. The players in the system are still working out those details because, as presented in this article, the new system is a complex one. As with most complex systems, it will take a significant amount of time to master it. It is the desire of the author that this article expedite that mastery by those with responsibilities within the system, because, once mastered, the next step must be to determine whether the shift to a purely civil approach to altering truant student behavior was a wise one. The sooner that determination may be made, the better for all the parties in the system, especially the students.

[111] *Id.*

APPENDIX A

Resolution

STATE OF TEXAS	§	COMMISSIONERS' COURT
	§	
COUNTY OF JEFFERSON	§	OF JEFFERSON COUNTY, TEXAS

BE IT REMEMBERED at a meeting of Commissioners' Court of Jefferson County, Texas, held on the _____ day of _____, 2016, on motion made by _____, Commissioner of Precinct No. ____, and seconded by _____, Commissioner of Precinct No. ____, the following Resolution was adopted:

A RESOLUTION APPROVING A UNIFORM TRUANCY POLICY

WHEREAS, 84 H.B. 2398 mandates that each county establish a uniform truancy policy; and,

WHEREAS, the Jefferson County has accordingly appointed the Jefferson County Uniform Truancy Policy Committee composed of various representatives of the Courts, Cities, School Districts, the Jefferson County District Attorney Office and the Juvenile Probation Department to devise a uniform truancy policy to comply with the requirements of 84 H.B.2398; and,

WHEREAS, the Jefferson County Uniform Truancy Policy Committee has worked diligently to prepare the proposed uniform truancy policy; and,

WHEREAS, the Commissioners Court of Jefferson County, Texas, finds it in the best interest of the citizens of Jefferson County, Texas, that the Court adopt the Jefferson County Uniform Truancy Policy which will decriminalize students and aid in preventing truancy; and,

NOW THEREFORE, BE IT RESOLVED that the Commissioners Court of Jefferson County, Texas, does hereby adopt the Jefferson County Uniform Truancy and that it is to be effective May 1, 2016.

SIGNED this _____ day of _____, 2016.

_____
JUDGE JEFF R.BRANICK
County Judge

_____
COMMISSIONER EDDIE ARNOLD
Precinct No. 1

_____
COMMISSIONER MICHAEL S. SINEGAL
Precinct No. 3

_____
COMMISSIONER BRENT A. WEAVER
Precinct No. 2

_____
COMMISSIONER EVERETTE D. ALFRED
Precinct No. 4

UNIFORM TRUANCY PLAN

OF

JEFFERSON COUNTY, TEXAS

Jefferson County, Texas
Attendance Procedures
2015-2016

1. Upon any unexcused absence or an absence not cleared in the attendance office, a phone call will be placed to the parent/guardian.

2. Upon the student's return, he or she will have **three school days to provide a note of excuse for any absence** to the school's attendance clerk. (See handbook for a list of approved absences.)

3. Upon the **third unexcused absence in a four week period or the fifth total unexcused absence**, a **Truancy Warning and Request for Conference Letter** will be mailed to the parent at the home address on record with the school, and Truancy Prevention Measures will be implemented by Campus Administration.

4. Upon the **fifth total unexcused absence, a Second Truancy Warning Letter** will be sent to the parent/guardian. Truancy prevention measures will continue to be implemented.

5. If a student accrues **ten unexcused absences in a six-month period**, a truancy referral will be sent to the appropriate authority, unless the student is eligible for one of the four exceptions under the law.

Jefferson County, Texas
Anti-Truancy Attendance Improvement Plan
(Initiated after 3 unexcused absences in a 4 week period or 5 total unexcused absences)

Student Name	Grade Level/Date of Birth	Student ID Number	Campus
Student's Address		**Parent's Name and Address**	

Start Date: _____ **End Date:** _____

Part 1 – ABSENCE EXCLUSIONS

Check appropriate box, attach documentation, and adjust plan according if absences are a result of:

- ☐ Pregnancy.
- ☐ Foster Care.
- ☐ Homelessness.
- ☐ Student being the Primary Income Earner for Family.

Part 2 – ATTENDANCE/BEHAVIOR PROBLEMS

Check all that apply:

- ☐ Student has frequent absences.
- ☐ Student frequently comes to school late.
- ☐ Student is frequently late getting to class.
- ☐ Student has a history of attendance problems.

Attach a copy of current student attendance record and grades.

Part 3 – STUDENT ATTENDANCE IMPROVEMENT AGREEMENT

Please read and initial each statement below:

_____ I will arrive daily to school on time.
_____ I will get to all class periods on time.
_____ I will manage my passing time wisely.
_____ I will maintain regular school attendance.
_____ I will reduce the number of unexcused absences.
_____ I will submit all valid excuse notes to the Attendance Clerk at my school.
_____ **I understand that if I have 10 or more whole or part day unexcused absences in a six month period I will be referred to the truancy Court of Jefferson County.**

_____ _____
Student Signature Date

Part 4 – PARENT ATTENDANCE IMPROVEMENT AGREEMENT

- ☐ Parent/Guardian will ensure the student's regular and consistent attendance and punctuality.
- ☐ Parent/Guardian will call the school and send documentation of excused absences.
- ☐ Parent/Guardian will monitor student's academics and attendance with the district's parent access center.
- ☐ Parent/Guardian will make certain that the school has accurate address and telephone contact information and will update school records immediately when there are changes.

_____ _____

Parent Signature Date

Part 5 – SCHOOL BASED TRUANCY PREVENTION MEASURES

- ☐ Phone contact with parent — Date/Initial: _____, _____, _____
- ☐ Warning Letter sent, along with a request for a conference — Date/Initial: _____, _____, _____
- ☐ Student Attendance Contract — Date/Initial: _____, _____, _____
- ☐ Counseling: truancy only — Date/Initial: _____, _____, _____
- ☐ Counseling: if referred for one of four factors Pregnancy, foster care, homeless, or income earner — Date/Initial: _____, _____, _____
- ☐ Administrator conference with student — Date/Initial: _____, _____, _____
- ☐ Administrator conference with parent — Date/Initial: _____, _____, _____
- ☐ Referral to campus support/resources — Date/Initial: _____, _____, _____
- ☐ Evening School/Detention — Date/Initial: _____, _____, _____
- ☐ Unable to contact parent/guardian(s) — Date/Initial: _____, _____, _____
- ☐ Referred to Community Service — Date/Initial: _____, _____, _____
- ☐ Other _____ — Date/Initial: _____, _____, _____

_____ — Date/Initial: _____, _____, _____

_____ — Date/Initial: _____, _____, _____

(Attach a copy of documentation)

Mandatory for cases referred to court (TEC §25.0915)

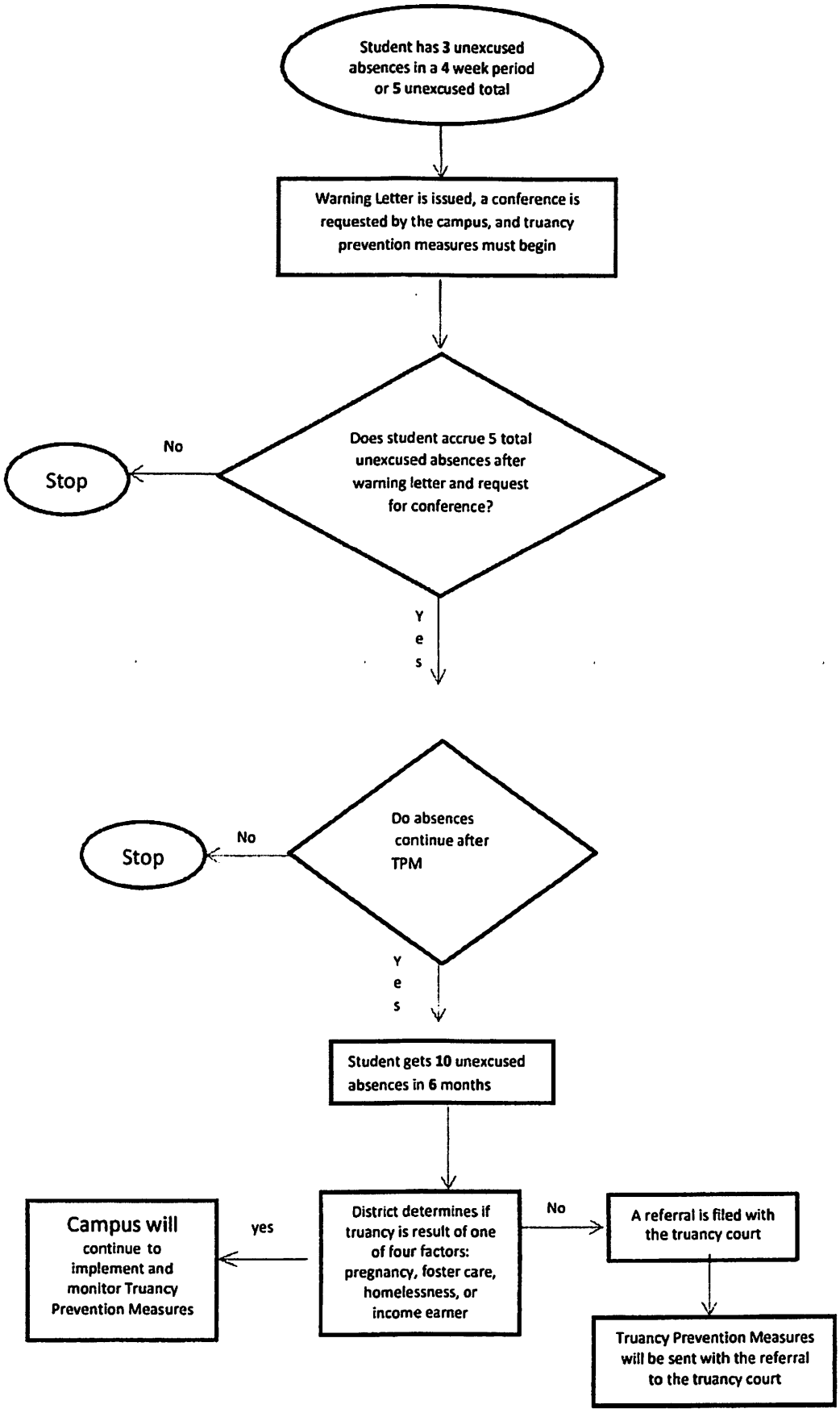
This statement certifies that the school applied the truancy prevention measures listed above to the student, and the truancy prevention measures failed to meaningfully address the student's school attendance.

The student receives Special Education services ☐ Yes ☐ No

_____ _____

Campus Administrator Signature Date

Jefferson County, Texas



SCHOOL REFERRAL FOR TRUANT CONDUCT

School: _____ Contact: _____

Phone: _____

Student's Name:	**Parent/Guardian Name:**
Address:	**Parent/Guardian Address** *(if different)*:
City **State** **Zip**	**City** **State** **Zip**
DOB: **Age:** **Sex:** **Race:**	
Social Security #:	**Phone:** ( )
Student ID #	**Student DL # (if known):**

☐ The student was at least 12 years and less than 19 years of age when all truant conduct occurred.

☐ Student's Parent/Guardian was notified student has been absent from school without excuse on three or more days or parts of days within a four-week period. *(Please attach copy of written notice)*

☐ Student missed 10 or more days or parts of days within a six-month period in the same school year. *(Please attach attendance record)*

☐ The truancy is not related to pregnancy, being in a state foster program, being homeless, or being the principal income earner for student's family.

The school has initiated truancy prevention measures and has taken one or more of the following actions:

☐ Creation of a behavior improvement plan which meets the following requirements:

- The plan is signed by an employee of the school;
- The school has made a good faith effort to have the plan signed by the student and the student's parent/guardian;
- The plan includes a specific description of the behavior that is required or prohibited for the student;
- The plan includes the period for which the plan will be effective, not to exceed 45 school days after the effective date
- The plan states the penalties for additional absences, including disciplinary action or referral to truancy court

(Please attach behavior improvement plan)

☐ School-based community service

☐ Referral of the student to counseling, mediation, mentoring, a teen court program, community- based services, or other in-school or out-of-school services aimed at addressing the truancy.

The student has seen the Juvenile Case Manager assigned to this court. ☐ Yes ☐ No *(check one)*

The student ☐ **is** ☐ **is not** (*check one*) eligible for or receives Special Education Services under *Subchapter A, Chapter 29.*

☐ The Truancy Prevention measures failed to meaningfully address the student's school attendance.

_____ _____

Signature *Date*

Truancy Case Filing Process and Requirements

1. Truancy filing submitted to E-truancy by School District

2. Prosecutor reviews filing for legal sufficiency:
   a. Appropriate Case Initiation Documents:
      i. "Referral " : Minor 18 or younger [25.951 (a)]
      ii. "Complaint" :Parent [25.0951 (b)]

   b. All 10 absences occurred within the same six month period

   c. **Warning Notice** : must be dated and signed by parent and/or adult student (18 YOA) or if mailed a copy of Return Receipt. The notice must;
      Inform the parent that:
      i. It is the parent 's duty to monitor the student's attendance and require the student to attend school.
      ii. The student is subject to truancy prevention measures under 25.0915; and
      iii. Request a conference between school officials and the parent to discuss the absences.

**Note: School district's must present evidence of criminal negligence on the part of the parent by showing documented proof that parent was on notice of the attendance issues, and failed to make efforts to address or correct the student's attendance. Education Code 25.0951(b)*

d. Review for compliance with 25.0915 (a-1) (one or more of the following has to have been implemented):
    i. IAP/BIP/Contract (includes)
        1. Period the plan will be in effect, not to exceed 45 days from the effective date of the contract;
        2. Specific description of behavior required or prohibited;
        3. Penalty for additional absences, including additional disciplinary action or the referral of the student to truancy court; or
    ii. School Based Community Service
    iii. Student referred to counseling, mediation, mentoring, a teen court program, community based services, or other in school or out of school services aimed at addressing the student's truancy.

e. Certifying Statement by School Official regarding truancy prevention measures and student's special education status. 25.0951 (b)

f. Case Information Sheet

g. Complete Attendance Record for the current school year

h. Disciplinary Record for the current school year

i. Copy of Attendance Contract (if applicable)

3. If filing is sufficient for filing prosecutor will do one of the following;
    a. accept both parent and student case for a pre-court diversion docket
    b. accept student's case and file a formal petition against the student
    c. accept parent's case and file a formal complaint against the parent

4. The Court will notify school districts of the case settings dates and times by sending them a copy of the court docket.

SCHOOL DISTRICT REFERRAL (SEC. 25.0915, EDUCATION CODE)

Referring School	Parent/ Guardian Name
Student Name	P/G Relationship to student
Student Initials (First, Last)	Parent's Address
Student ID#	City, State, Zip
Student DOB (month, day, year)	P/G Phone #
Student Address	Other Parent or Guardian

TO THE TRUANT CONDUCT PROSECUTOR:

In Care of: □ *City of* _____ *Municipal Court,* _____ County, Texas
□ Justice Court, *Precinct* _____, _____ County, Texas

I, THE UNDERSIGNED, CERTIFY THAT EACH OF THE FOLLOWING IS TRUE AND CORRECT:

1. The above named student is a "child," per Section 65.002 of the Family Code, who is 12 years of age or older and younger than 19 years of age and is required to attend school under Section 25.085 of the Education Code.

2. The school district has adopted truancy prevention measures per Section 25.0915 of the Education Code that are designed to address student conduct related to truancy in the school setting before the student engages in truant conduct and designed to minimize the need for referrals to truancy court for truant conduct. (Sec. 25.091 (a), Education Code)

3. The student failed to attend school without excuse on 3 or more days (or parts of days) within a 4-week period.

4. Thereafter, the school district notified the student's parent or guardian of: (1) the student's absence; (2) the parent's/guardian's duty to monitor the student's school attendance and require the student to attend school; and (3) that the student is subject to truancy prevention measures. The school district requested a conference between school officials and the parent to discuss the absences. (Sec. 25.095 (b), Education Code) (*Attach notice and supporting documentation*)

5. The truancy prevention measures were implemented by a: □ truancy prevention facilitator, □ juvenile case manager □ designated existing employee of the school district. (Sec. 25.0915 (d)-(e), Education Code)

6. The school district took **at least one** of the following truancy prevention measures the district was required to adopt (*check all that apply and attach supporting documentation*):
   □ Imposed a "behavior improvement plan" on the student (Sec. 25.0915 (a-1)(1)(A), Education Code);
   □ Imposed "school-based community service" on the student (Sec. 25.0915 (a-1)(1)(B), Education Code.);
   □ Referred the student to (*circle all that apply*) (a) counseling, (b) mediation, (c) mentoring, (d) a teen court program, (e) community-based services, or (f) other in-school or out-of-school services aimed at preventing student's truancy (specifically: _____) (Sec. 25.0915 (a-1)(2), Education Code)

7. The school district has determined that the student's truancy is **NOT** the result of: (1) pregnancy; (2) being in the state foster program; (3) homelessness; or (4) being the principal income earner for the student's family. (Sec. 25.0915 (a-3), Education Code)

8. The student failed to attend school as required on 10 or more days (or parts of days) within a six-month period in the same school year. (*Attach attendance records*)

9. This filing of this referral □ **was** □ **was not** delayed for reasons authorized by Sec. 25.0951(d), Education Code.

10. A. The school district applied the adopted truancy prevention measures to the student.
    B. The truancy prevention measures failed to meaningfully address the student's school attendance.
    C. The student □ **is** □ **is not** eligible for and, **does**, **does not** receive special education services under Subchapter A, Chapter 29 of the Education Code.

_____ _____ _____
Printed Name Signature Date

DATE RECEIVED BY TRUANCY COURT:	**DATE TRANSMITTED TO PROSECUTOR:**	**DATE REVIEWED BY PROSECUTOR:**

CAUSE NO. _____

IN THE MATTER OF _____,	§	**IN THE TRUANCY COURT**
	§	
A CHILD	§	**PRECINCT NO. ____**
	§	
	§	**JEFFERSON COUNTY, TEXAS**

STATE'S ORIGINAL PETITION FOR ADJUDICATION OF A CHILD FOR TRUANT CONDUCT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the State of Texas ("Petitioner") by and through its attorney Tatiana Zelezniak, and upon information and belief, presents to the Court that, in Jefferson County, Texas, _____ ("Respondent") engaged in truant conduct as specified below.

ALLEGED TRUANT CONDUCT

Petitioner alleges that, in Jefferson County, Texas, Respondent did then and there fail to attend school as required by §25.085 Texas Education Code on ten or more days or parts of days within a six-month period in the same school year, to-wit: **September 17, November 13, and December 18 of 2015; and January 25, and February 3, 8, 9, 10, 11, 12, 17, 18, 19, 23, 24, 25, and 26 of 2016.**

Said absences occurred during the **2015-2016** school year of **Nederland High School** in which Respondent was enrolled at the time of the alleged truant conduct.

PARTIES

Respondent _____ is a child at least 12 years of age or older and younger than 19 years of age at the time of the alleged truant conduct, whose date-of-birth is **01/27/1999.** Respondent's address is _____, **Nederland, Texas 77627.** Respondent's parent, guardian, or custodian is _____, whose address is _____ **Street, Nederland, Texas 77627.** Said information is to the best of the knowledge and belief of Petitioner.

VENUE

☒ Respondent is or was enrolled in **Nederland High School** at the time of the alleged truant conduct which is located in Jefferson County, Texas. As such, venue is proper in said county pursuant to §65.006 Texas Family Code.

☒ Respondent resides in Jefferson County, Texas. As such, venue is proper in said county pursuant to §65.006 Texas Family Code.

CERTIFICATION BY SCHOOL UNDER §25.0915(b)

Prior to the filing of this Petition, the referring school certified that the school applied the truancy prevention measures adopted under §25.0915(a) or (a-4) Texas Education Code to Respondent, that said truancy prevention measures failed to meaningfully address Respondent's school attendance, and that the school specified whether Respondent is eligible for or receives special education services under Subchapter A, Chapter 29 Texas Education Code (see Exhibit "A" attached hereto).

LIMITATIONS PERIOD

Petitioner has filed said petition in the truancy court within forty-five days of the date of the last absence giving rise to the act of truant conduct alleged above.

PRAYER FOR RELIEF

Petitioner prays that an adjudication hearing be set no earlier than the eleventh day from the date this Petition is filed, and that summons issue for the Respondent and the Respondent's parent, guardian, or custodian alleged above. Upon conclusion of the adjudication hearing, Petitioner prays that the Court enter a judgment finding Respondent engaged in truant conduct and order appropriate remedial actions pursuant to §65.103 Texas Family Code.

Respectfully submitted,

Tatiana Zelezniak
Truant Conduct Prosecutor
Jefferson County, Texas
(409) 835-8550
tzelezniak@co.jefferson.tx.us
State Bar No. 024093970

AGENDA ITEM **April 11, 2016**

Consider and possibly approve a Resolution to approve a Uniform Truancy Policy, pursuant to 84 H.B. 2398.