

February 9, 2023

Via Facsimile

Honorable Mike Morath
Commissioner
Texas Education Agency
1701 N. Congress Avenue
Austin, Texas 78701
Fax (512) 463-9008

Re: Request for Commissioner Action and Special Investigation of Austin ISD

Dear Commissioner Morath:

For years, Austin ISD has knowingly neglected its obligations under the Individuals with Disabilities Education Act (IDEA) and implementing state law and harmed thousands of students with disabilities by failing to conduct timely evaluations. Pursuant to the IDEA and state law, school districts must timely evaluate students who are suspected of having a disability. Evaluations are the foundation of providing students with disabilities the free appropriate public education (FAPE) to which they are entitled; evaluations are used to identify children with disabilities, determine their eligibility for special education, and provide key information to the team that develops the individualized educational plan. As a result of Austin ISD's ongoing failures, some students are not receiving any educational services, others are not receiving any special education services, and others are receiving services that are based on significantly out-of-date evaluations. None of these students are receiving the legally required FAPE.

The Texas Education Agency (TEA) has known since at least December 2020 that Austin ISD is not complying with its evaluation obligations under the IDEA. At that time, Austin ISD acknowledged to the agency that it had 647 delayed initial full individual evaluations. Over the course of the next many months, Austin ISD repeatedly failed to meet its own target dates for the completion of evaluations established in its corrective action plan despite repeated assurances that the district was addressing the systemic failures.

In March 2021, Disability Rights Texas (DRTx) filed suit against Austin ISD in the Western District of Texas, Civil Action No.: 1:21-cv-279, *J.R., a minor, by his parents and next friends Analisa and Joe R. v. Austin Independent School District*. At that time, it was reported that an estimated 800 students were waiting for delayed initial evaluations, and another 1,600 were waiting on delayed three-year evaluations.

In July 2021, DRTx formally requested that TEA conduct a special investigation of special education services in Austin ISD (attached). At that time, we provided the sworn declarations of two former Austin ISD school psychologists and a diagnostician who had previously contracted with Austin ISD. They described the systemic failures of the special education department which led to hundreds of delayed evaluations. The diagnostician described how she resigned from Austin ISD in March 2021 because she “could no longer tolerate the unethical and abusive practices in the Austin ISD special education department, which were unlike anything [she] had witnessed in [her] career of work in special education.”

Now, more than two years after informing TEA of its failure to timely evaluate hundreds of children, Austin ISD has reported that as of Dec. 12, 2022, there were 875 delayed initial evaluations, and as of Nov. 17, 2022, there were 956 delayed three-year evaluations. (Interrogatory responses, attached). **In other words, the situation is getting worse, not better, for students waiting for initial evaluations, and the district continues to ignore its statutory deadlines for hundreds of students waiting for three-year evaluations.**

Austin ISD’s evaluation system is broken, and the district has failed to eliminate delays, much less make improvements. We continue to receive complaint after complaint from parents of students who are not being evaluated in the required time frame. Additionally, there are numerous complaints of evaluations that are missing required components, are completed without needed classroom observation, and/or do not evaluate in all areas of suspected need.

Recently, Representative Gina Hinojosa publicly shared her story of the delay she encountered in Austin ISD when her son needed to be evaluated.¹ Despite her advocacy and that of his teacher, they had to wait a year, pre-COVID. Her son’s

¹ https://tlchouse.granicus.com/MediaPlayer.php?view_id=6&clip_id=23762. Representative Hinojosa’s comments relating to the delayed evaluation begin at the 7:00 minute.

Hon. Mike Morath

February 9, 2023

Page 3 of 3

story is the story of thousands of students with disabilities who have been denied the education to which they are entitled. We ask that you accept this correspondence as a written request to conduct a special investigation of Austin ISD, and take concrete action, including the appointment of a conservator or management team over the special education department to remedy this systemic failure to comply with state requirements for students suspected of a disability and in need of special education services. Austin ISD has had years to fix this problem, and TEA's intervention, as the state educational agency responsible for enforcement of the IDEA, is clearly required so that students with disabilities receive FAPE.

Best regards,

A handwritten signature in black ink, appearing to read "L. Kym Davis Rogers". The signature is fluid and cursive, with the first name "L." and last name "Rogers" being the most prominent parts.

L. Kym Davis Rogers

Senior Litigation Attorney

Direct: (214) 845.4045

krogers@drtx.org

Attachments

cc: Steve Lecholop (steve.lecholop@tea.texas.gov), Jennifer Alexander (jennifer.alexander@tea.texas.gov)

Attachment 1

July 16, 2021

Via Email Jennifer.Alexander@tea.texas.gov

Jennifer Alexander, Ed.D.
Associate Commissioner, Special Populations
Texas Education Agency
1701 N. Congress Avenue
Austin, Texas 78701

Re: Request for Special Investigation of Austin ISD

Dear Dr. Alexander:

Thank you for meeting with Disability Rights Texas (DRTx) on July 14, 2021 to discuss our concerns about widespread special education failures in Austin ISD (AISD). We wanted to provide information we discussed in the call, thank TEA for taking additional action in requesting supplemental information from AISD, and formally request that TEA conduct a special investigation of special education services in AISD.

As we discussed, in the course of developing our lawsuit, countless AISD educators have spoken out about AISD's pre-pandemic patterns of failing to timely evaluate students with disabilities, failing to retain adequate special education evaluation staff, and making unethical demands of existing evaluation staff. As a result, we have filed suit against AISD in the Western District of Texas, which can be found as Civil Action No.: 1:21-cv-279, styled *J.R., a minor, by his parents and next friends Analisa and Joe R. v. Austin Independent School District*. All of the briefing in that case is publicly available should TEA wish to review more.

With this letter, we have attached the sworn declarations of Amy Shatila, Jessica O'Bleness, and Catherine Huntley. We believe that the information in these declarations combined with TEA's existing awareness of widespread evaluation backlogs forms sufficient basis for a special investigation. These declarations, which describe concerns spanning the 2018-2019 school year to the 2020-2021 school year, illuminate some of the long-standing legal and ethical concerns regarding special education in AISD that directly caused the exodus of AISD's evaluation staff. For example, Ms. Shatila worked as an AISD licensed specialist in school psychology (LSSP) prior to her resignation in December 2019. Ms. Shatila describes shockingly large assignments long before the pandemic, including her own assignment of over 1,500 students, compared to national best practices of employing one LSSP per 500-700 students. Special education staff, including Ms. Shatila, told AISD of their concerns that insufficient evaluation staffing was causing numerous delayed evaluations on many campuses, depriving students of months of needed services without any apparent plan to solve the evaluation crisis or provide compensatory education. Ms. Shatila, among many others, ultimately felt forced to resign due

July 16, 2021

Page 2 of 3

to the many ethical concerns related to special education policies and practices at AISD, including being asked to falsify dates on overdue evaluations. Ms. O’Bleness, the Director of Clinical Training at the University of Texas and a former AISD LSSP, observed the mass resignations of AISD LSSPs and ultimately decided to stop placing her practicum and intern school psychology students with AISD due to marked concerns regarding the treatment of her students and their AISD supervisors. Ms. O’Bleness points out that despite facing difficulties a pandemic, other districts were able to maintain appropriate workload and supervision while completing evaluations in a timely manner.

Ms. Huntley, an educational diagnostician formerly completing contract work for AISD, resigned in March 2021 because she “could no longer tolerate the unethical and abusive practices in the Austin ISD special education department, which were unlike anything [she] had witnessed in [her] career of work in special education.” Ms. Huntley describes many instances of AISD cutting ethical corners in response to its severe understaffing problem, including expectations from AISD that her “reevaluation team” would forego any reevaluation of students in favor of conducting a sham Review of Existing Evaluation Data (REED) with the predetermined conclusion that no reevaluation would be necessary. Additionally, she describes repeated occurrences of AISD pressuring her to interpret and make eligibility determinations regarding assessments of autism and emotional disturbance, despite her objection that those practices exceeded the scope of her license. AISD also tasked Ms. Huntley with evaluations and ARD meetings for Spanish speakers, despite her inability to speak Spanish. Furthermore, at ARD meetings, Ms. Huntley could not recall a single instance of AISD raising compensatory education for students impacted by evaluation delays. To this day, AISD has not shared plans to provide compensatory education services with the impacted families, the greater Austin community, or the court. Moreover, in AISD’s only sworn declaration in our lawsuit describing their effort to remedy problems, it again fails to commit to providing compensatory education services.

There are additional related issues beyond the scope of our lawsuit or the current TEA corrective action that we believe a special investigation should address. Because of understaffing and the need to expedite evaluation, we have heard evaluations are missing required components, do not consistently evaluate in all areas of suspected need, and are not consistently conducted in a child’s native language. We would ask that a special investigation look into those issues as well as other issues TEA may identify.

Numerous educators and community members have also notified DRTx about inequitable special education resources in AISD schools that disproportionately serve low income and minority students. Additionally, in DRTx’s report [*Harmful Restraint of Students with Disabilities in Texas Schools*](#), DRTx identified that Austin ISD is one of the ten districts with the worst disproportionate use of restraint against Black students in the entire state. In AISD, 32% of restraints were used against Black students, even though only 7% of students are Black. Based on that finding, we also encourage TEA to investigate the provision of preventative special education services to Black students in the district, including Functional Behavioral Assessments, counseling services, crisis intervention training and behavior intervention services.

July 16, 2021

Page 3 of 3

We believe that TEA will benefit from hearing parent and educator perspectives on special education in Austin ISD. One way to do this would be to have a listening session and invite the [Coalition for Special Education Equity in AISD \(cseeaisd.org\)](http://cseeaisd.org). Thank you for your time and attention to this matter.

Best regards,

A handwritten signature in black ink that reads "Dustin Rynders". The signature is written in a cursive, flowing style.

Dustin Rynders
Supervising Attorney
Direct: (832) 681-8205
drynders@disabilityrightstx.org

CC: Dr. Edward O'Neil, Director, Complaints, Dispute Resolution, and Intensive Monitoring
Office of Special Populations and Monitoring, edward.oneil@tea.texas.gov

Attachments

Attachment 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**J.R., a minor, by his parents and next
friends ANALISA and JOE R.;**

§
§
§

**D.J., a minor, by his parents and next
friends LAURIE and DAMON J.;**

§
§
§

**A.T., a minor, by her parents and next
friends ANDREA and CLIENT T.;**

§
§
§

**G.S., a minor, by her parents and next
friends JARIN and SEAN S.;**

§
§
§

**A.S., a minor, by his parent and next
friend MARIA N.; and**

§
§
§

Disability Rights Texas,

§
§
§

Plaintiffs,

§
§
§

vs.

C.A. NO. 1:21-CV-00279-LY

§
§
§

**AUSTIN INDEPENDENT SCHOOL
DISTRICT,**

§
§
§

Defendant.

**AUSTIN INDEPENDENT SCHOOL DISTRICT'S
OBJECTIONS AND ANSWERS TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES**

TO: Plaintiffs, by and through their counsel of record, Shiloh Carter, L. Kym Davis
Rogers, and David M. Peterson

Pursuant to the Federal Rules of Civil Procedure, Austin Independent School
District (AISD or the District) objects to and answers Plaintiffs' First Set of Interrogatories
as follows:

OBJECTIONS AND ANSWERS

INTERROGATORY NO. 1:

For the period of March 29, 2021, to the present, identify the initial Full Individual Evaluations (“FIEs”) performed by You. Identification of the FIEs includes the following information for each FIE:

- a. Name of student for whom FIE was done;
- b. Whether the FIE was initiated by parent request or school referral;
- c. The date on which parent request or school referral was received;
- d. The date on which You provided consent or Prior Written Notice to the parents or guardians;
- e. The date on which you received signed consent;
- f. The date on which the FIE was completed;
- g. Whether the FIE was completed within the applicable statutory timeline requirements;
- h. The date on which the applicable admission, review, and dismissal (“ARD”) meeting was held; and
- i. Whether the ARD meeting was completed within the applicable statutory timeline requirements.

Plaintiffs request that the above information be provided in an excel spreadsheet so that the information can be sorted and analyzed effectively and efficiently.

ANSWER: AISD objects to this Interrogatory on the grounds that it is overly broad and not proportional to the needs of the case because it requests educational records of students who are not parties to this litigation. AISD also objects to this Interrogatory because it contains subparts or a compound in violation of the rule. Fed. R. Civ. P. 33(a). AISD further objects to this Interrogatory because it is unduly burdensome, as AISD does not have a mechanism to locate, gather, and segregate the requested information for the over 10,000 AISD special education students and AISD would essentially have to review every student’s file to locate the specific requested information. Subject to these objections, *see* documents previously produced. Fed. R. Civ. P. 33(d).

INTERROGATORY NO. 2:

For the period of March 29, 2021, to the present, identify the special education re-evaluations performed by You. Identification of the re-evaluations includes the following information for each re-evaluation:

- a. Name of student for whom re-evaluation was done;

- b. The date on which the re-evaluation was performed;
- c. Whether the re-evaluation was subject to the statutory three-year requirement or to an alternative agreed date by the ARD committee;
- d. The date on which the re-evaluation was due to be performed (based either on the three-year requirement or by agreement from the ARD committee); and
- e. Whether the re-evaluation was performed by the required date.

Plaintiffs request that the above information be provided in an excel spreadsheet so that the information can be sorted and analyzed effectively and efficiently.

ANSWER: AISD objects to this Interrogatory on the grounds that it is overly broad and not proportional to the needs of the case because it requests educational records of students who are not parties to this litigation. AISD also objects to this Interrogatory because it contains subparts or a compound in violation of the rule. Fed. R. Civ. P. 33(a). AISD further objects to this Interrogatory because it is unduly burdensome, as AISD does not have a mechanism to locate, gather, and segregate the requested information for the over 10,000 AISD special education students and AISD would essentially have to review every student's file to locate the specific requested information. Subject to these objections, *see* documents previously produced. Fed. R. Civ. P. 33(d).

INTERROGATORY NO. 3:

For the period of March 29, 2021 to the present, identify each instance where a student has received compensatory education from You for having a delay in the special education evaluation process, including but not limited to delay in providing consent, delay in evaluation (initial or re-evaluation), or delay in ARD. Identification includes the name of the student who received compensatory education, reason that the compensatory education was provided and the specific compensatory education that was or is being provided by You. For each instance of compensatory education, please identify the entry in your response to Interrogatories No. 1 or No. 2 to which the compensatory education corresponds (*i.e.*, the specific FIE or re-evaluation and corresponding data identified in response to the above interrogatories).

Plaintiffs request that the above information be provided in an excel spreadsheet so that the information can be sorted and analyzed effectively and efficiently.

ANSWER: AISD objects to this Interrogatory on the grounds that it is overly broad and not proportional to the needs of the case because it requests educational records of students who are not parties to this litigation. AISD also objects to this Interrogatory because it contains subparts or a compound in violation of the rule. Fed. R. Civ. P. 33(a). AISD further objects to this Interrogatory because it is unduly burdensome, as AISD does not have a mechanism to locate, gather, and segregate the requested information for the over 10,000 AISD special education students and

AISD would essentially have to review every student's file to locate the specific requested information. Subject to these objections, *see* documents previously produced. Fed. R. Civ. P. 33(d).

INTERROGATORY NO. 4:

Identify, as of the date of your response, each initial evaluation and re-evaluation that is currently overdue based on the required deadlines. Identification of each evaluation and/or re-evaluation includes the following:

- a. Name of student whose evaluation is overdue;
- b. Whether it is an initial evaluation or a re-evaluation;
- c. The date on which the evaluation was due to be performed under the applicable law;
- d. Your reasons, if any, for not performing the evaluation within the required deadlines.

Plaintiffs request that the above information be provided in an excel spreadsheet so that the information can be sorted and analyzed effectively and efficiently.

ANSWER: AISD objects to this Interrogatory on the grounds that it is overly broad and not proportional to the needs of the case because it requests educational records of students who are not parties to this litigation. AISD also objects to this Interrogatory because it contains subparts or a compound in violation of the rule. Fed. R. Civ. P. 33(a). AISD further objects to this Interrogatory because it is unduly burdensome, as AISD does not have a mechanism to locate, gather, and segregate the requested information for the over 10,000 AISD special education students and AISD would essentially have to review every student's file to locate the specific requested information. Subject to these objections, the number of out of timeline initial evaluations as of December 12, 2022 is approximately 875 and the number of out of timeline re-evaluations as of November 17, 2022 is approximately 956. The District is in the process of updating this information. Also, *see* documents previously produced. Fed. R. Civ. P. 33(d).

Respectfully submitted,

ROGERS, MORRIS & GROVER, L.L.P.



AMY C. TUCKER

State Bar No. 24042068

Email: atucker@rmgllp.com

JONATHAN G. BRUSH

State Bar No. 24045576

Email: jbrush@rmgllp.com

ALEXA GOULD

State Bar No. 24109940

Email: agould@rmgllp.com

ROGERS, MORRIS & GROVER, L.L.P.

5718 Westheimer, Suite 1200

Houston, Texas 77057

Telephone: 713/960-6000

Facsimile: 713/960-6025

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2023, a true and correct copy of the foregoing document was served on the following individuals via electronic mail:

David M. Peterson

(Via Email: dpeterson@susmangodfrey.com)

L. Kym Davis Rogers

(Via Email: krogers@drtx.org)

Shiloh Carter - *pro hac vice*

(Via Email: scarter@drtx.org)



Counsel for Austin ISD

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**J.R., a minor, by his parents and next
friends ANALISA and JOE R.;**

§
§
§

**D.J., a minor, by his parents and next
friends LAURIE and DAMON J.;**

§
§
§

**A.T., a minor, by her parents and next
friends ANDREA and CLIENT T.;**

§
§
§

**G.S., a minor, by her parents and next
friends JARIN and SEAN S.;**

§
§
§

**A.S., a minor, by his parent and next
friend MARIA N.; and**

§
§
§

Disability Rights Texas,

§
§
§

Plaintiffs,

§
§
§

vs.

C.A. NO. 1:21-CV-00279-LY

**AUSTIN INDEPENDENT SCHOOL
DISTRICT,**

§
§
§

Defendant.

§

VERIFICATION

STATE OF TEXAS

§

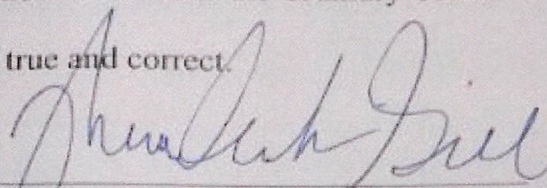
§

COUNTY OF TRAVIS

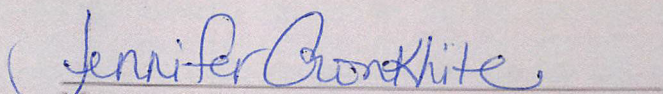
§

Before me, the undersigned notary public, on this day personally appeared **DR. THERESA AROCHA-GILL** who, by me duly sworn on oath deposed and said that she is duly qualified and authorized in all respects to make this affidavit in her official capacity as Director of Special Education for the Austin Independent School District, that she has

read the District's Answer to Plaintiffs' First Set of Interrogatories, and that the answer to interrogatory number 4 is within her personal knowledge, or may be derived from business records made and kept by Austin Independent School District in the ordinary course of business, and that the answer contained therein are true and correct.


DR. THERESA AROCHA-GILL

Subscribed and sworn to before me, the undersigned authority, this 12 day of January, 2023.


Notary Public

My Commission Expires:

6-14-26

