

November 14, 2023

Via Email:

SpecialEducation@tea.texas.gov

Texas Education Agency
1701 N. Congress Ave.
Austin, Texas 78701-1494

Re: Complaint against Ector County ISD

To whom it may concern:

Disability Rights Texas (“DRTx”) is the federally designated Protection and Advocacy System for the state of Texas. We write to file a systemic special education complaint on behalf of [REDACTED] and [REDACTED] against Ector County Independent School District (“ECISD”). We represent [REDACTED] and his parent, Ms. [REDACTED] and [REDACTED] and his parent, Mrs. [REDACTED] in this matter. All allegations made in this complaint are based on either district-provided records and/or parent-provided records and reports.

With this letter, we include confirmation that this complaint was emailed to Dr. Scott Muri, Superintendent for ECISD. Records will be provided to the assigned investigator.

These complaints address a systemic problem: ECISD has failed to meet federally mandated timelines for the evaluation of students with disabilities, resulting in a denial of a free and appropriate public education (“FAPE”) for approximately 900 to 1000 of the district’s students, including [REDACTED] and [REDACTED]. We propose several remedies that ECISD should implement immediately.


I. SUMMARY

[REDACTED] is an eleven-year-old student in Ector County ISD who has been diagnosed with ADHD but is not receiving special education services. [REDACTED] mother has repeatedly requested that ECISD evaluate [REDACTED] for special education evaluation since she enrolled him at the district in 2021. Because ECISD has yet to perform a Full and Individual Initial Evaluation (“FIIE”), it has failed to meet its legal obligation to timely evaluate [REDACTED] for special education.

[REDACTED] is an eleven-year-old student in Ector County ISD who has been diagnosed with autism and ADHD. [REDACTED] receives special education services and has an individualized education program (“IEP”), but he has continued to struggle with behavioral issues in school. Despite the ARD committee’s decision in January 2023 to conduct a formal FBA, ECISD failed to receive parental consent for the evaluation until May of 2023 and has yet to perform its legal obligation of timely reevaluating [REDACTED].

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As a result, [REDACTED] and [REDACTED] have been deprived of the FAPE to which they are entitled under Texas and federal law.

II. FACTS

A. ECISD Has Failed to Evaluate [REDACTED]

DRTx requested [REDACTED] records from ECISD on October 18, 2023. As of the time of this filing, no records have been received from the district, and all allegations as to [REDACTED] are made based off of the statements of Ms. [REDACTED] and the records that she has provided.

[REDACTED] lives with his mother, Ms. [REDACTED] at [REDACTED]. He is currently a fourth grader at [REDACTED] in ECISD and has been diagnosed with ADHD.

For background purposes only, in 2021, Ms. [REDACTED] enrolled her son [REDACTED] at [REDACTED] in ECISD for first grade. Before enrolling [REDACTED] in ECISD, Ms. [REDACTED] met with the school principal at [REDACTED] and informed her that [REDACTED] has been diagnosed with ADHD and was receiving special education services while enrolled in the district he attended prior to ECISD. Ms. [REDACTED] also expressed her concerns that [REDACTED] may have autism and would like to have him evaluated for that eligibility. During this first meeting, Ms. [REDACTED] requested that her son [REDACTED] receive special education services and that the district conduct a FIIE.

Throughout [REDACTED] second and third grade years, Ms. [REDACTED] continued to request a FIIE for [REDACTED]. These requests were made in person or over the phone. She was told that she would have to retrieve [REDACTED] records from the district that he attended previously, that [REDACTED] was on a waiting list to be evaluated, and that receiving a diagnosis of autism from an outside professional would speed up the process. In the meantime, [REDACTED] struggled with behavioral problems in the classroom. At the beginning of [REDACTED] third grade year, in the fall of 2022, Ms. [REDACTED] filled out an application that she was told would begin the process of evaluating [REDACTED]. However, when Ms. [REDACTED] contacting ECISD's special education department, she was told that they had not received any such paperwork for [REDACTED].

A few weeks into the current academic school year, while taking a test, [REDACTED] became frustrated and began to tear small pieces of paper off of his testing materials. When he was reprimanded by his teacher for this behavior, [REDACTED] became overwhelmed, broke his pencils, and knocked over his desk. [REDACTED] received detention for this incident. Then, on October 3, [REDACTED] again became overwhelmed in class, and he exited the building to calm down on the playground. The teacher called the ECISD Police Department, who came and escorted [REDACTED] back to class. Ms. [REDACTED] attempted to meet with the principal to discuss the incident, but her phone calls were not returned.

It was not until this same week that the principal submitted the application that Ms. [REDACTED] filled out last academic year to the special education department.

Since the incident involving the district police, [REDACTED] has not returned to school, despite Ms. [REDACTED] efforts to make [REDACTED] attend. [REDACTED] has experienced extreme anxiety regarding school, resulting in destructive meltdowns at home, and fears that he will be arrested upon his

return to class. DRTx attorney Tabitha Dwyer contacted ECISD's legal counsel on October 18, 2023 via email, and explained that the student was not attending classes. Ms. Dwyer requested that a meeting with school staff be scheduled so that Ms. [REDACTED] and [REDACTED] concerns could be addressed and [REDACTED] would feel safe returning to school, but counsel has not responded. Ms. [REDACTED] also made several attempts to schedule a meeting with the school principal beginning on October 3, but the principal failed to respond until October 30th, and a meeting has yet to be scheduled. Because of this lack of communication, [REDACTED] continues to be absent.

Finally, Ms. [REDACTED] received the consent forms for an FIIE on October 25, 2023, a few days after DRTx contacted the district's counsel and requested a meeting for Ms. [REDACTED] to sign such forms.

B. ECISD Has Failed to Reevaluate [REDACTED]

DRTx requested [REDACTED] records from ECISD on November 6, 2023. As of the time of this filing, no records have been received from the district, and all allegations as to [REDACTED] are made based off of the statements of Mrs. [REDACTED] and the records that she has provided.

Currently, [REDACTED] is a sixth grader at [REDACTED] in ECISD, and he lives with his mother, Mrs. [REDACTED] at [REDACTED]. He receives special education services and is in a life skills class, which is coded as a self-contained placement in his IEP. He has been diagnosed with ADHD, autism, and is nonverbal.

[REDACTED] has exhibited behavioral issues in school, such as hitting, pulling hair, and biting. In January of 2023, the ARD committee decided that a FBA needed to be performed. However, Mrs. [REDACTED] has not been presented with any consent forms, and she has continuously been told at ARD meetings that the school is still waiting on the district for the evaluation to be done. The ARD committee has continued to modify [REDACTED] behavioral intervention plan, as recently as August 4, 2023, without any of the requested supporting data and without success.

At the beginning of the 2023-2024 school year, [REDACTED] behaviors in class became more intense. [REDACTED] mother began to receive calls from the school nearly every day from the assistant principal regarding [REDACTED] behavior, and Ms. [REDACTED] often had to pick her son up from school early. Now, [REDACTED] is picked up from school every day at 2:30 PM, which is an hour and a half before the end of the school day. This modification to [REDACTED] school day was implemented prior to any discussion of the change by the ARD committee and does not appear in his IEP.

On September 28, 2023, [REDACTED] exhibited physically aggressive behaviors towards the adults in his classroom, and he was suspended for two days. On October 5, 2023, [REDACTED] again became aggressive and was suspended for three days. Finally, on October 11, 2023, [REDACTED] was suspended for two more days due to hitting his teacher. After each incident, Ms. [REDACTED] noticed cuts and bruises on [REDACTED] face and neck.

Following these suspensions, Mrs. [REDACTED] emailed the school principal, Ms. [REDACTED] to request that cameras be installed in [REDACTED] classroom. In an email dated October 12, 2023,

Ms. ██████ denied the request and stated that “we will not be installing cameras in the Life Skills room.” A few days later, on October 16, ██████ parents followed this denial with a written letter that was delivered to the principal requesting cameras and citing § 29.022 of the Texas Education Code. On October 18, when Mrs. ██████ asked for clarification as to the reason for the denial, Mrs. ██████ told Mrs. ██████ that cameras would not be installed to “ensure the confidentiality of ██████ along with the other students.” Ultimately, Mrs. ██████ request for the installation of recording equipment was formally approved on November 10th, but only after DRTx attorney Tabitha Dwyer filed a grievance on November 9th with the principal regarding the denial.

Because of ECISD’s failure to reevaluate ██████ along with the school’s failure to fulfill its legal obligation to install cameras in a self-contained classroom, ██████ continues to struggle with aggressive behaviors in school, be disciplined in ways that lead to physical injury, and miss out on classroom instruction due to suspensions, all without any additional data to support an effective BIP and no added protections of having cameras in the classroom.

III. VIOLATIONS

A. ECISD Systemically Delays Initial Evaluations and Reevaluations.

DRTx filed a Public Information Act Request with ECISD on September 18, 2023 via fax. A confirmation sheet indicated that the district received all pages of the request. However, on September 28, 2023, when DRTx called to follow up on the status of the initial request, the district denied that they received all pages of the fax, so the request was resubmitted the same day. On October 17th, the district responded in part to DRTx’s requests and sought clarification of search terms to complete the electronic search portion of the request. That clarification was provided by email on October 30, 2023, along with a request for an estimated timeline of when a response could be expected. At the time of filing, ECISD has not provided a timeline for a full response.

ECISD’s partial response, dated October 17th, provided data on untimely initial evaluations.¹ For example, the district provided information on four initial evaluations that were referred in 2021.² The district also provided information on over four hundred past-due initial evaluations.³ Several documents received from ECISD regarding those past-due evaluations show that parental consent was obtained months after the initial request for evaluation in the cases of hundreds of students.⁴

However, DRTx has information from a TEA Special Education Investigative Report that leads the organization to believe that the actual number of past due evaluations is closer to one thousand. Documents received by DRTx on October 28, 2023, also indicate that parental consent was obtained months after the initial request for evaluation in the cases of hundreds of students.⁵ For the few entries that indicated a FIIE had been completed for the corresponding student, the forty-

¹ Exhibits A, B, C.

² Exhibit C.

³ Exhibit A.

⁴ Exhibits A, B.

⁵ Exhibit D.

five school day deadline had been exceeded by months in many instances.⁶ However, most of the nearly one thousand referrals listed in these graphs do not have a consent date and therefore have no FIIE completion date.⁷ Finally, for those students who have been evaluated, several entries indicate that the initial ARD meeting for that student was held past the thirty-day deadline after completion of the FIIE or has not been held at all.⁸

Although the documents provided by TEA and through a PIA Request show clear systemic violations in assessments, the documents communicate a much greater severity of the problem. Due to the large discrepancy in Exhibits A, B and C versus Exhibit D, DRTx is unable to fully assess the total number of students that are actually on the district's "waiting list."

B. ECISD Has Failed to Meet Its Child Find Obligations.

As detailed above, ECISD officials have failed to complete a timely FIIE for [REDACTED]. Timely identification and evaluation of students with disabilities is critical.⁹ Under the IDEA, schools must take affirmative action to identify and evaluate students with disabilities.¹⁰ A school district's Child Find obligation is triggered when the district has reason to suspect that a child has a disability and may need special education services.¹¹ Thus, a violation of Child Find is established when it is shown that "school officials overlooked clear signs of a disability and were negligent in failing to order testing."¹² The Child Find obligation "extends to all children suspected of having a disability, not merely to those students who are ultimately determined to be disabled."¹³

Further, a school district may not use alternate interventions to either delay or deny an evaluation.¹⁴ Additionally, students in special education are to be evaluated when additional disabilities are suspected.

⁶ Exhibit D.

⁷ Exhibit D.

⁸ Exhibit D.

⁹ OSEP Memo 11-07 (Jan. 21, 2011), available at <https://sites.ed.gov/idea/files/osep11-07rtimemo.pdf> (last visited Nov. 1, 2023). OSEP guidance is given deference because the agency has the principal responsibility of administering the IDEA. *See, e.g., Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1134 and n.23 (9th Cir. 2003); *Michael C. ex rel. Stephen C. v. Radnor Twp. Sch. Dist.*, 202 F.3d 642, 649–50 (3d Cir. 2000).

¹⁰ 34 C.F.R. § 300.111, 30.131; 20 U.S.C. § 1401(8), 1412(a)(3) and (10)(A)(ii); *see also Dobbins v. D.C.*, 2016 WL 410995 (D.D.C. Feb. 2, 2016) (A school district violates the IDEA when it fails to ensure that a student "is evaluated for eligibility for special education services on a timely basis.").

¹¹ *El Paso ISD v. Richard R.*, 567 F. Supp. 2d 918, 950 (W.D. Tex. 2008); *see also W.B. v. Matula*, 67 F.3d 484, 501 (3d Cir. 1995) (abrogated on other grounds by *A.W. v. Jersey City Pub. Sch.*, 486 F.3d 791 (3d Cir. 2007)); *Reg'l Sch. Dist. No. 9 Bd. of Educ. v. Mr. & Mrs. M.*, 2009 WL 2514064 (D. Conn. Aug. 7, 2009).

¹² *Bd. of Educ. of Fayette Cnty., Ky. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007); *see also Dep't of Educ., State of Haw. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195–96 (D. Haw. 2001) (finding that the totality of the evidence clearly supported a Child Find violation).

¹³ *N.G. v. D.C.*, 556 F. Supp. 2d 11, 25 (D.D.C. 2008).

¹⁴ OSEP Memo 11-07 (Jan. 21, 2011), available at <https://sites.ed.gov/idea/files/osep11-07rtimemo.pdf> (last visited Nov. 1, 2023).

Texas law has established certain deadlines for the evaluation of students suspected of having a disability and who may qualify for special education services. Parental consent to evaluate a student must be sought within fifteen days of the parent's written request for a FIE, and the evaluation must be completed no later than the forty-fifth school day following the day the district received the parent's written consent.¹⁵

ECISD has failed to timely evaluate [REDACTED]. The district had reason to believe that [REDACTED] has a disability and may qualify for special education services from the time he was first enrolled in the district for the 2020-2021 school year. Ms. [REDACTED] informed the school principal that [REDACTED] has been diagnosed with ADHD, had received special education services while enrolled at his previous district, and she suspected that [REDACTED] may also have autism. Additionally, [REDACTED] behavioral issues in class this semester, which have escalated to the point that the school believed police intervention to be necessary, demonstrates his need for additional supports and services above those available in general education.

ECISD has acknowledged the need to evaluate [REDACTED] by providing Ms. [REDACTED] with an application to fill out at the beginning of the 2022-2023 school year. Ms. [REDACTED] has made continuous requests throughout [REDACTED] third and fourth-grade years for [REDACTED] to be evaluated, but ECISD failed to provide her with any consents forms until October 25, 2023. The nature of ECISD's negligence is only exacerbated by statements made to Ms. [REDACTED] that ultimately delayed the evaluation process, such as requiring her to retrieve [REDACTED] records from his previous school district. Because ECISD failed to order testing in light of the above facts, it has violated its Child Find duty under the IDEA as to [REDACTED].

The data that DRTx has received evidences the systemic nature and extent of ECISD's failure to fulfill its Child Find obligations. [REDACTED] is just one of the hundreds of students who are being denied a FAPE by the district.

C. ECISD Has Failed to Meet Its Reevaluation Obligations Under the IDEA.

Federal law requires that school districts reevaluate students with disabilities if it is determined that "the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation."¹⁶ Reevaluations must occur at least once every three years and no more than once a year unless the parent and district agree otherwise.¹⁷

Although there are no deadlines by which a district must complete a reevaluation other than performing at least one every three years, the ARD committee should determine a timeline for reevaluation when it decides that additional data is necessary.

According to Ms. [REDACTED] ECISD has failed to reevaluate [REDACTED] and to set a timeline for the completion of a FBA. [REDACTED] aggressive behaviors have become increasingly more intense, resulting in several suspensions this semester, a shortened school day, and injuries to [REDACTED].

¹⁵ 19 Tex. Admin. Code § 89.1011(b)(1), (c)(1).

¹⁶ 20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1).

¹⁷ 20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b).

The ARD committee determined that a FBA was warranted due to these behaviors in January of 2023. However, Mrs. [REDACTED] was not presented with consents to sign and the evaluation has yet to be performed. Additionally, school officials have continuously told Mrs. [REDACTED] as recently as October 4, 2023, that they are “waiting on the district” for anything to be done about reevaluating [REDACTED] and a timeline for completing the evaluation was not proposed or adopted by the ARD committee until DRTx attorney Tabitha Dwyer accompanied the parents to an ARD meeting on November 9, 2023.

ECISD’s failure to reevaluate [REDACTED] or set a timeline is further evidence of the wait times that students with disabilities are facing in the district due to its extensive evaluation backlog.

IV. PROPOSED REMEDIES

In light of ECISD’s continuing failure to meet its legal obligations to [REDACTED] and [REDACTED] we urge that TEA take the immediate actions:

1. Order ECISD to provide an expedited Full and Individual Initial Evaluation for [REDACTED]
2. Order ECISD to provide an expedited reevaluation for [REDACTED]
3. Order ECISD to review and revise its district policies pertaining to its timelines for the completion of special education evaluations.
4. Order ECISD to review and revise its district policies pertaining to the installation of cameras in self-contained settings upon the request of a parent and to train staff on these policies.
5. Determine whether each impacted student in ECISD is eligible for compensatory education.
6. Appoint a monitor to ECISD to assist the district in establishing and carrying out a corrective action plan and monitoring its compliance with that plan.
7. Order an on-site audit of the educational files of all students receiving special education in the district to determine Child Find violations and training needs.

Please feel free to contact us to discuss this case. Colleen Potts can be reached at (806) 370-1445, Shiloh Carter can be reached at (281) 836-0736, and Tabitha Dwyer can be reached at (806) 599-9728.

Respectfully,



Colleen Potts
Supervision Attorney



Shiloh Carter
Litigation Attorney



Tabitha Dwyer
Legal Fellow

Enc: Email Confirmation; Releases

cc: Dr. Scott Muri, Superintendent, ECISD, via email at superintendent@ectorcountyisd.org
(without enclosures); parents of [REDACTED] and [REDACTED]