

## Compulsory Attendance & Truancy

In 2015, House Bill 2398 removed the criminal offense of failure to attend school from the Texas Education Code. Districts are now expected to address student truancy by implementing truancy prevention measures, identifying the individual circumstances contributing to a student's unexcused absences, and taking specific action. Although truancy is no longer a criminal offense, districts may still refer a student to truancy court. However, the intent of the law is that court referrals will be used as a last resort.

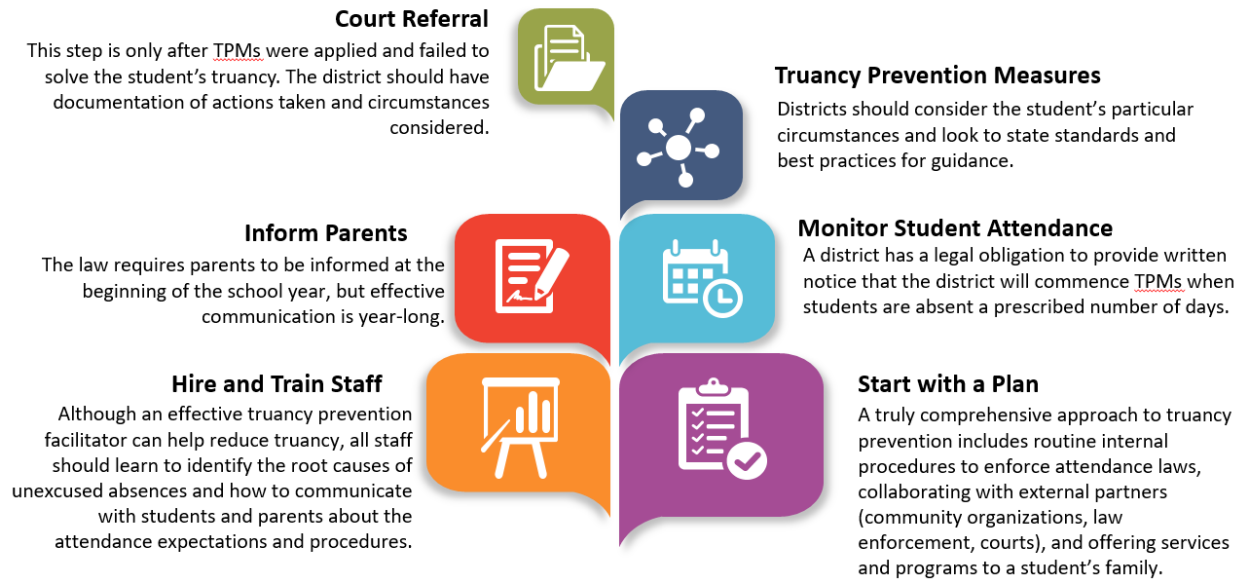
School attendance officers, principals and assistant principals, school resource officers, and other pertinent school officials need to understand how to navigate the specific laws and rules created to address student truancy. This overview will highlight some of the required actions a district must take to enforce compulsory attendance law in Texas.

### Truancy under the Texas Education Code

Absent an exemption such as attendance at a private school or homeschool, Texas law requires students age 6–19 to attend school each day that instruction is provided. Compulsory attendance also applies to students who are younger than six who have previously been enrolled in first grade and to students below the age of six who are voluntarily enrolled in pre-kindergarten or kindergarten. For students over the age of 19, student truancy may result in revocation of enrollment in certain circumstance.<sup>1</sup>

School districts are required to notify parents of attendance requirements at the beginning of the school year. This notice must state that the parent may be subject to prosecution and the student may be referred to truancy court if the student is absent 10 or more days or parts of days within a six month period.<sup>2</sup>

If a student has unexcused absences on three days or parts of days within a four-week period, the district must send a warning notice to inform the parent that the student is subject to truancy prevention measures. Generally, tardies are not considered absences. Unexcused absences do not include absences that are excused by state law and local school district policy.<sup>3</sup> For a list of excused absences, see TASB Policies FEA(LEGAL) and (LOCAL).



## District Action

### Appoint an Attendance Officer

The Texas Education Code allows the school board to appoint school attendance officers. If the school board does not select a school attendance officer, the superintendent and the peace officers in the district will perform the duties of the attendance officer. The Texas Education Code also describes the powers and duties of an attendance officer, including investigations, home visits, court referrals, and taking a child into custody or escorting a child to campus.<sup>4</sup> For more information on the powers and duties of an attendance officer, see TASB policy FED(LEGAL).

### Appoint Facilitators

Districts are required to employ a truancy prevention facilitator or juvenile case manager to implement the district’s truancy prevention measures and meet annually with a court case manager to discuss the measures’ effectiveness. Districts may designate an existing employee, such as an attendance officer, to serve in this role.<sup>5</sup>

### Adopt Truancy Prevention Measures

Generally speaking, truancy prevention measures are programs or services that promote consistent school attendance while addressing the underlying risk factors that may lead to truancy. Since 2011, the Texas Education Code has required districts to adopt TPMs, but details regarding the TPMs were not adopted until 2015.<sup>6</sup>

At a minimum, Texas Education Code section 25.0915 requires a district to take at least one of the following actions as a TPM:

- **Impose a behavior improvement plan.** The district may impose a behavior improvement plan that must be signed by an employee of the school, that the district has made a good faith effort to have signed by the student and the student's parent or guardian, and that includes the elements described in Texas Education Code section 25.0915.
- **Impose school-based community service.** School-based community service is not defined in statute. This term, while not widely known, is not new in state law. In 2013, the 83rd Texas legislature included the term in the requirement for certain school districts to impose graduated sanctions prior to referral of a student to court for a criminal complaint. *See* Tex. Educ. Code § 37.144 (detailing a list of graduated sanctions required, including school-based community service).
- **Refer the student to counseling, mediation, mentoring, teen court, or other in-school or out-of-school service aimed at addressing the truant behavior.** If an issue is identified as preventing a student from attending school, appropriate district employees should determine whether there is any in-school or out-of-school service that can address the issue. For example, the district may offer parenting programs or meetings to ensure parents understand attendance requirements and have a plan to get students to school. The district could refer a student to counseling to deal with drug and alcohol issues or after-school tutoring to increase student engagement.

## Best Practices for Truancy Prevention

TEA has created minimum standards for TPMs implemented by a district. TPMs, at a minimum, should identify the root cause of the student's unexcused absences and identify actions to address each cause. The measures should include maintaining ongoing communication with students and parents on the actions to be taken to improve attendance. The district should also establish reasonable timelines for completing the truancy prevention measures. For a student with a disability, the district should establish procedures to notify the admission, review, and dismissal (ARD) committee or the Section 504 committee of attendance issues. The district should also ensure that those committees consider whether the student's attendance issues warrant an evaluation, reevaluation, or modifications to the student's individualized education program or Section 504 plan.

The Texas Administrative Code lists several best practices that schools should consider while implementing TPMs.<sup>7</sup> School districts, by rule, are also required to consider other services offered to students, including an optional flexible school day program and evening and online alternatives; working with businesses that employ students to help students coordinate job and school responsibilities; and offering before school, after school, and/or Saturday prevention or intervention programs or services that implement best and promising practices.<sup>8</sup>

**Relationships with community organizations.** Many districts already have established relationships with external organizations that have programs designed to promote consistent school attendance. Some commonly known organizations that can address truancy through mentoring programs or other types of partnerships include Communities in Schools and Big Brothers Big Sisters of America.

**Consider special circumstances:** If a school district determines that a student's truancy is the result of pregnancy, being in the state foster program, homelessness, or being the principal income earner for the student's family, the district is required to offer additional counseling to a student and may not refer the student to truancy court.

## PARENT LIABILITY

Districts have the option of filing a complaint for criminal prosecution of a parent for contributing to a student's failure to attend school if the parent fails to require the student to attend school on 10 or more parts of days within a six-month period. A complaint against a student's parent can be made in the county, justice, or municipal court if the district provides evidence and meets the statute's other requirements. The offense of contributing to a student's failure to attend school is a misdemeanor, punishable by fine. It is an affirmative defense to prosecution that one or more of the absences was excused by a school official or should be excused by the court.<sup>9</sup>

## STUDENT REFERRAL TO COURT

When TPMs fail to solve the problem, referral to a truancy court that can impose civil (not criminal) consequences is still an option for students between the ages of 12 and 18, unless the failure to attend school is the result of pregnancy, being in the foster care program, homelessness, or being the principal income earner for the student's family. A referral for 10 or more unexcused absences within six months must be made within 10 school days from the date of the student's tenth absence. A district may delay the referral if the truancy prevention measures are succeeding and the delay is in the student's best interest.<sup>10</sup>

When a district refers a student to truancy court, the district must provide a statement documenting that TPMs were applied but failed and specifying whether the student is eligible for or receives special education. The law requires a truancy court to dismiss a referral that fails to comply with the statutory requirements. In addition, it is an affirmative defense to an allegation of truancy that one of more of the absences should have been excused by the school or court or that the absence was involuntary. As such, documentation of the actions taken by the district are more important than ever.<sup>11</sup>

Moreover, by enacting HB 2398 and other legislation in recent years, Texas lawmakers have demonstrated a strong commitment to reforming disciplinary practices that resulted in criminal consequences and could have the effect of further excluding students who were already at risk. Referring a student to court for failure to attend school should always be a district's last resort.

## EXPUNCTION OF FAILURE TO ATTEND RECORDS

In addition to the removal of the offense of failure to attend school, the 2015 legislation also amended the Texas Code of Criminal Procedure article 45.0541 to require expunction of all records and documents relating to a conviction or complaint of the offense of failure to attend school. A school district is not required to expunge or destroy any records of this nature until an order from a court has been provided to the school district instructing the district on the process for the expunction of the records.

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

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

<sup>1</sup> Tex. Educ. Code §§ 25.085-.086.

<sup>2</sup> Tex. Educ. Code § 25.095.

<sup>3</sup> Tex. Educ. Code §§ 25.086-.087, .095; Tex. Educ. Agency, *To the Administrator Addressed Letter Re: Attendance*, [tea.texas.gov/About\\_TEA/News\\_and\\_Multimedia/Correspondence/TAA\\_Letters/Attendance\\_Admission\\_Enrollment\\_Records\\_and\\_Tuition\\_-\\_August\\_2017/](http://tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Attendance_Admission_Enrollment_Records_and_Tuition_-_August_2017/).

<sup>4</sup> Tex. Educ. Code §§ 25.088, .090-.091.

<sup>5</sup> Tex. Educ. Code § 25.0915(d), (e).

<sup>6</sup> Tex. Educ. Code § 25.0915.

<sup>7</sup> 19 Tex. Admin. Code § 129.1045.

<sup>8</sup> 19 Tex. Admin. Code § 129.1045.

<sup>9</sup> Tex. Educ. Code § 25.093.

<sup>10</sup> Tex. Educ. Code §§ 25.0915, .0951.

<sup>11</sup> Tex. Educ. Code § 25.0915; Tex. Fam. Code §§ 65.003.