

WEBB COUNTY SCHOOL UNIFORM TRUANCY POLICY

School Districts: United ISD, Laredo ISD, Webb CISD

INTRODUCTION

The following Uniform Truancy Policy "(UTP)" is written to conform to Chapter 25 of the Texas Education Code "(TEC)" and Chapter 65 of the Texas Family Code "(TFC)." The TEC requires Webb County to develop a uniform truancy policy. This policy acknowledges the premise that each school district retains autonomy regarding its respective personnel, students, and regulations while implementing the mandates of the TEC and TFC. This policy also acknowledges judicial discretion and prosecutorial discretion in implementation of the mandates of TEC and TFC. Those persons who review this policy must also read and review TEC Chapter 25 and TFC Chapter 65 in their entireties as they are incorporated into this Uniform Truancy Policy as if copied verbatim.

The UTP acknowledges that truancy is no longer a criminal offense in Texas and that proper jurisdiction of all truancy cases filed in Webb County is the truancy court established by the Webb County Justices of the Peace. A student may not receive a consequence of criminal conviction, monetary fine, or placement in the JJAEP due to a finding of truancy by the truancy court. A peace officer serving as an attendance officer cannot take students into custody even if the parent's permission has been obtained.

The following UTP acknowledges that the school districts in Webb County have adopted truancy prevention measures which will be provided to a student before a referral is made to truancy court.

All school districts in Webb County will follow the statutory mandates imposed by Chapter 25 of the TEC regarding notification to parents regarding unexcused absences, imposition of truancy prevention measures, and filing of truancy referrals.

All school districts in Webb County acknowledge that school districts are prohibited from referring to truancy court a student who is pregnant, in foster care, homeless, or a student who is the principal income earner for his/her family. A student shall be deemed homeless in accordance with the McKinney-Vento Homeless Education Act. (See Exhibit A attached to this policy) These students shall be provided counseling by the school district in an effort to prevent excessive absences and assist these students in meeting credit requirements for graduation.

Webb County school districts have collaborated to draft forms and notices required by Chapter 25 of the TEC. Each school district will administer their forms in compliance with Chapter 25 of the TEC. All such forms and notices are attached to this policy. (See Exhibit B attached to this policy)

TRUANT CONDUCT DEFINED

A student may be found to be truant when the student has been absent on 10 or more days or parts of days within a six month period in the same school year without excuse.

COMPULSORY ATTENDANCE

A child who is six years of age to 18 years of age are subject to the compulsory attendance laws. A child who is required to attend school shall attend school **each** school day for the **entire** period the program of instruction is provided. In addition, "tardies" generally are not considered absences for purposes of compulsory attendance enforcement.

NOTIFICATION

If a student is absent without excuse on 3 days or parts of the days within a four week period, the school district shall issue a parental notification to advise the parent that the student is subject to **truancy prevention measures**. The parental notification shall include the following:

1. Informing the parent of the duty to monitor attendance and require the student to attend school, 2. That the student is subject to truancy prevention measures, and 3. That the campus is requesting a parent meeting to discuss absences.

TRUANCY PREVENTION MEASURES: BEHAVIOR IMPROVEMENT PLAN

The purpose of the behavior improvement plan is intervene before a student engages in conduct that may constitute truant conduct. Therefore, if a student is absent without excuse on 3 days or parts of the days within a four week period, the school district shall issue a behavior improvement plan to the student as a truancy prevention measure. The plan shall include:

1. A specific description of behavior that is required or prohibited for the student, 2. The period for which the plan will be effective , not to exceed 45 school days after the date the contract becomes effective and 3. the penalty for additional absences, such as school district disciplinary action or referral to truancy court

The behavior improvement plan will be signed by a school district employee and will state that the school district made a good faith effort to have the plan signed by the student and the student's parent/guardian. The behavior improvement plan will document the efforts made to have the plan signed by the parent.

REFERRAL TO TRUANCY COURT

If a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a school district shall *within 10 school days of the student's 10th absence* refer the student to a truancy court for truant conduct under Section 65.003(a) of the Texas Family Code.

Pursuant to the Texas Education Code Section 25.0915, each referral to the truancy court for truant conduct must contain the following certification from the school district: 1. the school applied the truancy prevention measures to the student, and 2. the truancy prevention measures failed to meaningfully address the student's school attendance.

The school district must also specify whether the student is eligible for or receives special education services under Subchapter A, Chapter 29 of the TEC.

DETERMINATION OF SUCCESSFUL TRUANCY PREVENTION MEASURES

The school district *may* delay a referral to truancy court or may choose not to refer a student to truancy court if the school district determines that the applied truancy prevention measures are succeeding and it is in the best interest of the student that the referral be delayed or not made.

FORTY FIVE DAY LIMITATIONS PERIOD

Section 65.055 of the Texas Family Code states that a petition alleging truant conduct must be filed by the truant conduct prosecutor from the Webb County Attorney's office within 45 days after the tenth absence, **NOT** 45 days from the date a school district refers a child to a truancy court.

TRUANCY PREVENTION FACILITATORS

The facilitators for each school district shall be appointed by each individual school district in accordance with their personnel resources and guidelines. The facilitators shall implement the truancy prevention measures and meet annually with a Justice of the Peace court case manager to discuss the effectiveness of the school district's truancy prevention measures.

PARENT CONTRIBUTING TO NONATTENDANCE

If a student fails to attend school *without excuse* and such absences meet the definition of truant conduct, a school district may file a complaint against the student's parent in a county, justice, or municipal court for an offense under TEC 25.093 (Parent Contributing to Nonattendance) if the school district provides evidence of the parent's criminal negligence.

COURT FORWARDS REFERRAL TO TRUANT CONDUCT PROSECUTOR

The Webb County Attorney shall serve as the truant conduct prosecutor. When the truancy court receives a school district's referral, the truancy court *must* forward the referral to the Webb County Attorney's office. The Webb County Attorney's office shall review the referral for compliance with the Texas Education Code. The decision to file the petition is solely at the discretion of the prosecutor. A referral complies if the referral:

1. is not for a student whose truancy is determined by the school to be the result of : a. pregnancy, b. being in the state foster program, c. homelessness, d. being the principle income earner for the student's family;
2. specifies whether the student is eligible for (or receives) special education services under Subchapter A of Section 29 of the Texas Education Code;
3. is accompanied by a statement from the student's school certifying that the school applied the truancy prevention measures mandated by the Texas Education Code; and

4. is accompanied by a statement from the student's school certifying that the truancy prevention measures failed to meaningfully address the student's school attendance.

SUMMONS

The truancy summons directs the issuance of a summons to 1. the child, 2. the child's parent, guardian, or custodian, 3. the child's guardian ad litem, if any, and 4. any other proper or necessary party. Each summons issued by the truancy court is to be served personally or be registered or certified mail at least five days before the date of the adjudication hearing.

CHILD'S ANSWER

After the petition is filed, the child may answer orally or in writing before the commencement of the hearing. The proceeding is not criminal; therefore, the child may answer "true" or "not true"/ "admit" or "deny."

ADJUDICATION HEARING

After the prosecutor files the petition with the truancy court, the truancy court will set the date and time of the adjudication hearing. The hearing date must not be on or before the 10th day after the date the petition is filed. Adjudication hearings generally must be open to the public. However, a court has the discretion to determine that the public should be excluded from the truancy court for any particular hearing.

The proceedings in a truancy court that is not a court of record may not be recorded. The court must explain six things at the outset of the hearing: 1. the allegations made against the child, 2. the nature and possible consequences of the proceedings, 3. the child's privilege against self-incrimination, 4. the child's right to trial and confrontation of witnesses, 5. the child's right to representation by an attorney if the child is not represented, and 6. the child's right to a jury trial.

Attorney for the Child. The truancy court may proceed with the hearing in the absence of any person other than the child. The child is required to attend the hearing. A child may be represented by an attorney at the hearing, but it is not required. There is not a requirement that the court appoint an attorney to represent the child. However, the court may appoint an attorney to represent the child if the court determines it is in the best interest of the child. The court may order a child's parent or other responsible person to pay for the cost of a court appointed attorney if the court determines that the person has sufficient financial resources.

Guardian Ad Litem. Additionally, the court may appoint a guardian ad litem for the child if the child appears without a parent or guardian, or it appears to the court that the child's parent or guardian is incapable or unwilling to make decisions in the best interest of the child with respect to the truancy court proceedings. The guardian ad litem is appointed to protect the interests of the child in the proceedings.

The attorney for the child may also be appointed by the court to be the child's guardian ad litem. A law enforcement officer, probation officer, or other employee of the truancy court may not be appointed as a guardian ad litem.

The court may order the parent or other person responsible to support the child to reimburse the county for the cost of the guardian ad litem if the court determines that the parent or other responsible person has sufficient financial resources to offset the cost of the child's guardian ad litem wholly or partly.

Mandatory Hearing. Texas Family Code Section 65.101 mandates that a child may be found to have engaged in truant conduct *only after an adjudication hearing* conducted in accordance with the provisions of Chapter 65 of the Family Code. A child may not simply plead "true" to the truancy allegations and avoid coming to truancy court.

Right to Jury Trial. The child has a right to a jury trial but may waive this right. The jury consists of six jurors. Jury verdicts must be unanimous.

Adversarial Hearing. The adjudication hearing consists of the State and the child presenting evidence. Both sides present closing arguments to the factfinder (judge or jury.) The Texas Rules of Evidence generally do not apply. However, the judge may determine that a particular rule of evidence applicable to criminal cases must be followed to ensure that the proceedings are fair to all parties. The child need not be a witness nor otherwise incriminate himself/herself.

Finding of Truant Conduct. The State has the burden of proof and must prove beyond a reasonable doubt that the child engaged in truant conduct. If the child is found to have engaged in truant conduct, the court shall order the remedies the court finds appropriate under Section 65.103 of the Texas Family Code. The court is required to orally pronounce the court's remedial actions. The remedial actions are also to be entered in a written order. The jury is not involved in ordering remedies for a child.

REMEDIAL ORDER

Texas Family Code Sections 65.103 and 65.105 list the remedial actions a court may order. These sections shall be referred to for a complete list. Some of the allowed actions are listed below:

- Attend school without unexcused absences;
- Attend a prep class for high school equivalency exam if child unlikely to do well in a classroom environment due to age;
- If at least 16, take the high school equivalency exam if in child's best interest
- Order parents and others to take certain actions [Fam. Code 65.105(a)]
- Order child or other person to pay \$50 court cost if party can afford

- Attend a nonprofit, community based special program that the court determines is in child’s best interest, including:
- Alcohol and drug abuse program;
- Rehabilitation program;
- Counseling program, including a self-improvement program;
- Program that provides training in self-esteem & leadership;
- A work and job skills program;
- Program that provides training in parenting, manners, violence avoidance, or sensitivity training.

Prohibitions. A truancy court may not order a child who has been found to have engaged in truant conduct to: 1. attend a JJAEP, a boot camp, or a for-profit truancy class, or 2. perform more than 16 hours of community service per week.

Special Education Students. The Justices of the Peace shall maintain their judicial discretion and the County Attorney prosecutors shall maintain their prosecutorial discretion. However, they recognize that a special education student's education plan is to be determined by the student's ARD committee in accordance with the federal law of the Individuals with Disabilities Education Act (IDEA). Therefore, the following remedial measures shall not be recommended for students who receive special education and are found to have engaged in truant conduct:

- a. Attend preparatory classes for high school equivalency exam
- b. Withdraw from school and take the high school equivalency exam
- c. Homeschooling instruction or Homebound instruction of the student
- d. Attend another campus or alternative school
- e. Participate in tutorial programs for academic subjects other than those provided to all students by the student's school district
- f. Work and job skills program

ORDER OF DESTRUCTION OF RECORDS

A truancy court shall order the destruction of records relating to allegations of truant conduct that are held by the court or by the prosecutor if a prosecutor decides not to file a petition for and adjudication of truant conduct after a review of the referral made by the school district.

COURT COSTS

If a child is found to have engaged in truant conduct, the truancy court, after giving the child, parent, or other person responsible for the child's support a reasonable opportunity to be heard, shall order the child, parent, or other person, if financially able to do so, to pay a court cost of \$50.00 to the clerk of the court.

RIGHT TO APPEAL

After pronouncing the court's remedial actions, the court shall advise the child and the child's parent, guardian, or guardian ad litem of the child's right to appeal as detailed in Sections 65.151-65.153 of the Texas Family Code.

SEALING RECORD

After pronouncing the court's remedial actions, the court shall advise the child and the child's parent, guardian, or guardian ad litem of the procedures for the sealing of the child's records under Section 65.201 of the Texas Family Code.

MOTION FOR NEW TRIAL

Motions for new trial are authorized by Section 65.109 of the Texas Family Code.

HEARING TO MODIFY REMEDIES

Hearings to modify remedies imposed by the court may be held in accordance with Section 65.108 of the Texas Family Code.

SEALED RECORDS

Only children who have been found to have engaged in truant conduct and have complied with court ordered remedies may have their records sealed under Section 65.201 of the Texas Family Code when the child is eighteen years of age.

CONTEMPT OF COURT

If a child fails to obey a remedial order issued by a truancy court or a child is in direct contempt of court, the truancy court, after providing notice and an opportunity for hearing, may hold the child in contempt of court and may order a fine and/or DPS suspension of the child's driver's license or permit under Section 65.251(a), (a)(1), (a)(2) of the Texas Family Code.

Under Section 65.251(b), if a child has been found to be in contempt of court on two or more occasions, the truancy court after providing notice and an opportunity for a hearing, may refer the child to the juvenile probation department unless the child failed to obey the truancy order or was in direct contempt of court while 17 years of age or older.

DESTRUCTION OF RECORDS

On or after the fifth anniversary of a child's 16th birthday, on the motion of the child or on the truancy court's own motion, the truancy court may order the destruction of the child's records that have been sealed under this section if the child has not been convicted of a felony.

EXPUNCTION OF TRUANCY RECORDS

An individual who has been convicted of truancy offense under the former Section 25.094 or has had a complaint for truancy offense dismissed is entitled to have the conviction or complaint and records relating to the conviction or dismissal expunged 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. After entry of the order, the individual 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.

ANNUAL MEETING

Annually, all Webb County school districts shall meet with all the truancy case managers of the Webb County Justice of the Peace courts. School districts will be represented by the employees who are designated as truancy prevention facilitators in accordance with Section 25.0915 (d)(e) of the Texas Education Code. Discussions at the annual meeting will include, but will not be limited to, tracking truancy information, effective truancy prevention measures, number of truancy cases, and method of sharing of truancy information with Webb County juvenile courts and Webb County juvenile probation department. Representatives of the Webb County Juvenile Courts and Webb County Juvenile Probation Department will be invited to the annual meeting.

TRUANCY PREVENTION SERVICES PROVIDED TO STUDENTS IN WEBB COUNTY

Counseling services are available to all public school district students in Webb County through their school districts. However, students with school attendance problems will be worked with in accordance with specific needs as outlined by the student's truancy BIP and campus administration. Additionally, those students whose attendance is being affected by pregnancy, being in a state foster program, homelessness, or being the principal income earner for the student's family will have access to all their school district's programs to assist them in overcoming school attendance barriers. All students will be counseled regarding credit requirements for graduation.

PASSED on this the ____ day of _____, 2015 by the Commissioners Court of Webb County Texas.

Dr. A. Marcus Nelson,
Superintendent, Laredo ISD

Roberto J. Santos
Superintendent, United ISD

Dr. Severita Sanchez
Superintendent , Webb CISD

Judge Cayetano "Tano" Tijerina
Webb County

APPROVED AS TO FORM:

By: Marc Montemayor
Webb County Attorney