



**Comments of Dustin Rynders to Senate Committee on Criminal Justice and
Senate Committee on Education on
Interim Charge 7**

October 30, 2012

The Problem

Students with disabilities frequently receive Class C school citations for minor school misbehavior, including disability-related conduct. Data is not kept to give an accurate portrayal of the percentage of youth receiving Class C citations who have disabilities, but everyone understands that special education students are disproportionately impacted. Thanks to TEA data and Texas Appleseed reports, we know that students with disabilities are removed to alternative education placement at double the rate of their general education peers. Frequently, citations are given for the same offenses as disciplinary removal, so we would expect to see a similar overrepresentation in Class C referrals. Each year, our agency receives hundreds of requests for representation in Class C cases all over the state. Many cases are for egregious abuses of the criminal justice system where youth with serious disabilities are being referred to law enforcement while districts fail to conduct appropriate basic behavior assessment or attempt to any meaningful positive behavior interventions. In many cases, the youth is not even connected with the area's mental health authority. School citations require the youth to miss school and fail to hold the school accountable for providing better services. Many times youth forget about the incident before the court hearing. The system of fines is not closely related to what the child values and is a poor substitute for assessment-driven, research-based behavior interventions. Parents and students attend hearings without benefit of counsel and are typically expected to pay court costs. In most counties, the court has no resources to provide and standard plea agreements are given that don't easily take into account unique circumstances like disability. The real penalty comes years later when the record of the citation becomes a barrier to housing, employment, professional licensure, or military service.

Illustrative Examples of Real DRTx School Citation Cases:

- Middle school student with autism was given citation for "disruption of class" for repetitive, non-threatening and uncontrollable stemming movements and noises that caused substitute teacher alarm.
- Young man with Asperser's Syndrome who has no disciplinary history receives assault citation when attacked by bully. Client hit youth back once before being injured so badly by bully that he was taken to emergency room. School and police officer failed to differentiate between victim and assailant, stating that policy does not allow self defense

so both would receive citation.

- High school youth who receives special education because of serious mental illness obtains charge for “failure to attend school” after psychiatric hospitalization to adjust medication. When he goes to court with doctors note, school informs judge that he is “disruptive” and judge orders him to get G.E.D., ignoring fact that youth has no ability to pass G.E.D. exam and that the federal Individuals with Disabilities Education Act (IDEA) provides youth right to attend school and receive specialized instruction to meet needs, including behavioral health needs, until he reaches age 22.
- Numerous youth with intellectual disabilities who live at State Supported Living Center are referred to Justice of the Peace Court, despite previous findings of incapacity.

Recommendations:

1) Data Collection

School districts should be required to track all referrals to law enforcement and include special education status, 504 status, age, offense, and race.

2) Texas Judicial Council Proposals

DRTx attorney Dustin Rynders was pleased to serve on advisory council of the Texas Judicial Council’s Juvenile Justice Committee and DRTx believes the recommendations, collectively, represent a moderate but positive step in the right direction to encourage more problems to be handled at school and to decrease overall referral of students to justice and municipal courts for minor behavior that should be handled in school and at home.

Recommendations regarding youth with limited capacity are of particular concern to DRTx. Under the current system, many such youth accept plea bargains even though they do not have capacity to understand charges. This is largely because there is no system to evaluate them. Still, juvenile court referrals have to be made carefully because evaluation procedures in juvenile court are costly and could lead to unintended consequence of civil commitment, which would be very inappropriate for such minor offenses. The Texas Juvenile Council’s recommendation that such cases be dismissed the first time, and referred to Juvenile Courts in subsequent cases appears to recognize that justice and municipal courts are not equipped to address issues of capacity. Still, the mandated referral to juvenile court could increase burden on those courts for cases that should likely also be dismissed. The underlying behaviors of kids with disabilities that lead to Class C citations need addressed with referral to MHMRA for mental health services and school districts for special education services, including behavior supports. The legislature should consider improving on the TJC’s recommendations by diverting subsequent citations to the appropriate service agencies.

3) Training for All School District Officers

Police in schools need additional training to deescalate crises, especially involving youth with mental illnesses. The current 16 hour of training is insufficient, and should be raised to 40 hours, as Bexar County has done voluntarily.

Right to Council

Currently indigent defendants are not provided appointed attorneys in Class C misdemeanors. While this is apparently do to fact that “fine only” offenses do not lead to incarceration, unresolved citations are often turned into warrants at age 17. Additionally, conviction of even Class C misdemeanors can impact future school applications, professional licensing, employment applications, and housing. Indigent children, especially those with disabilities, should be entitled to representation in all Class C school citation cases. The experience of DRTx is that an attorney can often raise viable defenses and obtain positive outcomes for clients. Unfortunately, no nonprofit organization can meet the enormous need for representation.

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