Educational Opportunities Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Re: Civil Rights Complaint against Bonham Independent School District and Bonham Municipal Court

Dear Educational Opportunities Section:

Bonham Independent School District ("BISD" or "District") has intentionally discriminated and continues to intentionally discriminate against Black students and students with disabilities by perpetuating a racially hostile environment and a hostile educational environment on the basis of disability, in violation of the U.S. Constitution, and federal and state civil rights laws. B.E., a Black student, has been and continues to be subjected to blatant racial harassment and racial slurs like the n-word, "cotton picker," and "black monkey" from his White classmates, often in the presence or earshot of school staff and administrators without any repercussions. BISD did not provide C.J., a Black student with disabilities, access to necessary accommodations and modifications. Instead, BISD referred C.J. to truancy court for absences related to his disabilities; the municipal court judge ordered C.J. to a General Equivalency Diploma ("GED") program, despite knowing that another court had ordered C.J. to get his high school diploma. In complying with the municipal court's GED order—the result of a truancy case that should not have been brought by the District or should have been dismissed by the municipal court—C.J. ended up in jail for violating the other court's order.

This complaint concerns the District's intentional discrimination based on students' race and disability status. The District thus violates rights guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Title IV of the Civil Rights Act of 1964, and Title II of the Americans with Disabilities Act.

For students with disabilities, the District's hostile environment is compounded by the actions of the Bonham Municipal Court that has the authority to push students out of school into GED programs. The District funnels students into municipal court through truancy referrals, and the Bonham Municipal Court imposes GED orders on students without ensuring that their constitutional rights, including rights to counsel and due process of law, are protected. Bonham Municipal Court thus violates rights guaranteed by

the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Texas Appleseed, Disability Rights Texas, Texas Civil Rights Project, and the National Center for Youth Law bring this complaint on behalf of students B.E. and C.J. and all similarly situated students. B.E. and C.J. represent the students who find themselves caught in the hostile education environment perpetuated by the District and C.J. represents the students whose rights are violated by Bonham Municipal Court.

I. INTRODUCTION

As described further below, BISD has perpetuated an educational environment hostile to Black students and students with disabilities. While the District nominally has policies designed to prevent such illegal discrimination, those policies are enforced in a discriminatory manner, if enforced at all. As of the 2021-2022 school year, only 5.6% of BISD students identify as Black.[1] In a majority-white district, the need to ensure Black students have a supportive, non-racist learning environment is paramount. However, BISD has done the opposite—it has weaponized disciplinary measures and campus law enforcement against Black students, particularly those with disabilities, to funnel them out of the classroom and into various disciplinary settings.

District policy has done little to curb the intentional discrimination of BISD administrators and police officers. In terms of racial discrimination, district policy prohibits discrimination on the basis of race and requires district employees to "immediately notify the appropriate District official," in this case the Superintendent.[2] As further demonstrated below, BISD employees have failed this responsibility, and the Superintendent, when informed, has failed to take effective corrective action.

Similarly, District policies vest substantial discretion in teachers, administrators, and police officers without adequate training, thereby perpetuating discrimination against Black students and students with disabilities. By design, BISD's "Disciplinary Alternative Education Program" ("DAEP") is a separate campus where students are segregated from the rest of the student body. For students like the Complainants here, the DAEP is an incredibly difficult educational environment as the student is relegated to virtual instruction, removed from friends and extracurricular activities, and receives substantially less support from teachers. BISD's Student Code of Conduct permits sending a student to the DAEP for any "General Conduct Violations," which include simply not following instructions, use of profanity, and other minor rules violations.[3]

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[1] TEA, *2022 Snapshot Bonham ISD (074903) -Fannin County*, https://rptsvr1.tea.texas.gov/cgi/sas/broker?_service=marykay&_program=perfrept.perfmast.sas&_debug=0&ccyy=2022&lev=D&id=074903&prgopt=reports%2Fsnapshot%2Fsnapshot.sas (last visited Jan. 9, 2024).

[2] BISD Board Policy Manual, FFH (Local), https://pol.tasb.org/PolicyOnline/PolicyDetails?key=458&code=FFH#localTabContent.

[3] *BISD Student Code of Conduct 2023-2024* 17, https://www.bonhamisd.org/152048_2.

As a practical matter, once a student is transferred to the DAEP, the District significantly increases its use of police officers to criminalize students for school behavior. BISD employs two district police officers, both of whom are white, who have frequently handcuffed students in the DAEP and removed them from class. Despite heavily relying on police officers, the District has failed to train the officers, teachers, or administrators involved on the appropriate circumstances and manner in which to rely on law enforcement for managing student behavior.

The above policy decisions by the District have created an environment in which students like the Complainants are forced out of the classroom and into disciplinary settings. As a result, these Black students and students with disabilities suffer due to illegal discrimination on the basis of race and disability.

The District's discrimination is compounded by its referral of students to the Bonham Municipal Court for truancy charges. The Bonham Municipal Court has authority under Texas law to order students to obtain their GED,[4] and does so through what appears to be a standard form for ordering students to GED programs, with blanks for defendant name and hearing date. In over a decade of observing truancy proceedings throughout the state, the organizations filing this complaint had never previously witnessed a standard municipal court form to order students to drop out of school. Moreover, the Bonham Municipal Court refuses to appoint counsel to students even when the Court itself recognizes that counsel is necessary to protect a student's rights.

II. COMPLAINANTS

The following students have been or are currently attending schools in Bonham Independent School District. They request that the U.S. Department of Justice investigate the unlawful practices, processes, and hostile environment to which they and other students have been subjected and ensure that these violations cease.

B.E.

B.E. is a 14-year-old biracial student at LH Rather Jr. High School in the District who identifies as Black. He has been placed in the DAEP for over a year. B.E. and his family moved to Bonham in 2022.

B.E. experiences his classmates' harassment and use of racial slurs in school hallways, classrooms, and other common spaces almost daily. White students have called B.E. the n-word and told him to go back to picking cotton. School staff are aware of these incidents but have done nothing. On one occasion in November 2022, B.E.'s girlfriend's brother, who is a White student, repeatedly called B.E. the n-word. B.E. was then accused of holding the White student against the lockers. B.E. told the assistant principal at the time, Ms. Poormahandi, that the White student had called him the n-word, but instead of punishing the White student, the assistant principal defended this White student's action through reasoning that the White brother was only trying to protect his sister.

[4] TEX. FAM. CODE § 65.103(a)(3).

B.E. has also witnessed racial slurs being used against other Black students at school. B.E. reports that White students frequently call Black students the n-word, "cotton picker," and "black monkey." Although students regularly utter these slurs within earshot of teachers and the principal, school staff do not stop the students. On one occasion in September 2022, B.E. saw a group of White male students corner a Black female student, poke her with sticks, and call her "monkey." One of these male students is a BISD teacher's son and the teacher defended her son's action by saying that "it was a joke" and that "people are so sensitive." These students were supposed to be sent to the DAEP for these actions, but their parents, including the parent who is a BISD teacher, complained about this punishment. The students were ultimately not sent to the DAEP but instead received in-school suspension (ISS). On another occasion, a White student called B.E.'s Black friend "monkey" in class. Not only did a BISD teacher witness this, but B.E.'s friend also reported it to the classroom teacher. The teacher told B.E.'s friend there was nothing she could do and to sit back down.

In addition to the actions of other students, B.E. has been targeted by the school resource officer (SRO), Officer Abbott. A few months after B.E. and his family first moved to Bonham, in April 2022, he was at a park next to the school that doubles as a school playground and a public park with some friends. Some White high school students started fighting, and one of them told his friend to "go get my G**D*** gun." Understanding this as a gun threat, B.E. and his friends ran behind the school building to hide and called the police. When the SRO and other officers arrived, they simply waved at the White boys who were fighting, and instead approached B.E., who was still on the phone with dispatch. They immediately searched B.E. instead. B.E.'s mom attempted to file a complaint, but was not provided a process to do so.

On another occasion, in April or May 2022, B.E.'s friend's father, who is White, reported to the school that B.E. had sent his daughter a TikTok video. When school staff questioned B.E. about this, he explained that the friend's father had recently called B.E. on the phone, called him the n-word, and yelled at him for hanging out with his daughter because he is Black. While explaining this, B.E. became upset and agitated. When the school staff and SRO met with B.E.'s parents about this incident, they seemed more concerned that B.E. was repeating the other student's father's language than that the father had used this language in talking to B.E. The SRO commented that B.E. was lucky he was at school, because he "doesn't have room to act agitated and excited" out in the community. B.E.'s parents understood this to imply that B.E. was at risk of being shot by the police if he became upset and excited as a Black boy.[5]

When B.E. attended a school football game in October 2022, the SRO followed him and other kids of color around and would not allow them to leave the bleachers. The SRO even pulled another kid of color out of the bathroom while he was using it. When

[5] Bohra, Neelam, *Former Texas Police Officer acquitted in 2020 Shooting Death of Black Man*, N.Y TIMES (Sept. 25, 2022), https://www nytimes.com/2022/09/25/us/jonathan-price-murder-officer-acquitted-texas html (reporting the acquittal of a police officer for shooting a Black man in a community near Bonham).

B.E.'s mom confronted the SRO for targeting kids of color while White kids were also leaving the bleachers but were not being surveilled, the SRO told B.E.'s mom that if she didn't like it, she could leave Bonham.

On December 5, 2022, the SRO handcuffed and arrested B.E. at school in front of other students and charged him with felony indecency. These charges were soon dropped as the allegations were determined to be untrue.

On December 15, 2022, the SRO again handcuffed and arrested B.E. at school in front of other students after he was allegedly horseplaying on the bus and charged him with felony injury to a minor. He was detained for four weeks and given a psychological evaluation because he was alleged to have "anger issues" because of the incident where he was accused of holding his girlfriend's brother against the lockers after the brother called him the n-word.

B.E. was removed to the DAEP and has been there ever since, where he sits in front of a laptop all day and receives little direct instruction from the teacher. B.E. has witnessed one of the DAEP teachers routinely announcing which students have disabilities, requiring those students to sit closer to him, and making comments such as "are y'all stupid." The SRO regularly enters the DAEP, announces that he has a warrant for a student's arrest, handcuffs them, and marches them out, making a big scene to scare the students, and now B.E. is afraid whenever the SRO approaches the DAEP. B.E. is struggling mentally at the DAEP, but the District will not allow him to return to school unless he pleads guilty, and he cannot change schools because attending the DAEP is a condition of his release. The White friend he was allegedly horseplaying with returned to school after only four weeks. A Fannin County probation officer and Fannin County Judge Butler have suggested to the family that they move so that B.E. can attend a different school district. These charges are pending trial, which has been postponed to August 2024, consigning B.E. to the DAEP at least until then. B.E. and his mother believe these arrests were retaliation for speaking up about racial targeting and harassment.

C.J.

C.J. is an 18-year-old Black student with disabilities who was enrolled at Bonham High School (BHS) in the District since the 2021-2022 school year. C.J. has diagnoses of schizophrenia, bipolar disorder, depression, and dyslexia. Because of his disabilities, he also has trouble sleeping. He qualified for special education services as a student with emotional disturbance. When C.J. enrolled at BHS in 2021, BHS followed his inadequate evaluation from his previous school and completed no further evaluations for C.J. until his attorney's request in May of 2023. BHS never completed a functional behavior assessment to determine the cause of his sleeping in class, lack of focus, emotional outbursts, and absences.

Since enrolling at BHS, BISD mostly offered C.J. placement in the Bonham DAEP. The DAEP offered a one-size-fits-all computer-based credit recovery program

and little teacher support. There are only two teachers for all the students in grades 6-12 in the program. C.J. did not receive assistance from either of the teachers, one of whom was too busy with other students to help him. The other teacher was routinely aggressive towards students, yelling and cursing at them, so he was not effective in providing assistance. C.J. struggled to focus and stay awake in this environment, yet there were no accommodations provided to him to help with these problems. The only accommodations BISD offered C.J. in the DAEP were reducing the number of questions on quizzes—C.J. only had to answer seven questions instead of ten—and reducing the number of choices offered on quizzes—C.J. only had two answer choices instead of four.

The DAEP was not structured to provide C.J. with accommodations and modifications that he needed to access his education. For example, DAEP students do not have access to educational instruction in any format other than the computer-based credit recovery program. DAEP students do not have access to any specialists or related services that might be necessary for them to access their education, such as counseling or social work services. Though C.J. asked three or four times to meet with a counselor, he was not provided access to a counselor until May 2023, after he was represented by a Disability Rights Texas attorney and had returned to the BHS campus. At that time, he received one meeting with a counselor where he shared with the counselor that he was having significant mental health struggles, and the counselor advised that he should put a rubber band around his arm and flick it to distract himself from his thoughts.

This lack of accommodations, services, and supports caused C.J. to avoid the DAEP, leading to many absences. Due to his disabilities, he struggled to engage in the DAEP's environment and was not able to learn. C.J. had no opportunity to return to BHS; BISD set his projected exit date from the DAEP as "graduation."

On September 29, 2022, C.J. was having trouble staying awake at the DAEP. Rather than inquire about why C.J. was falling asleep, the teachers asked him to stand up at his desk and said C.J. was making excuses for falling asleep. C.J. became frustrated and the school claimed he walked out of the DAEP without permission. He called his grandmother to help calm him down, and they went to speak with the DAEP teachers. C.J. was still agitated. The teacher said he was originally only going to get suspended for one day, but claimed that C.J. said that he was "going to snap," so he would be suspended for three days. Rather than provide C.J. with an adequate behavior intervention plan ("BIP") to support his de-escalation, the DAEP just suspended C.J. The teacher's decision to suspend C.J. resulted in a bond violation for which C.J. was incarcerated for 18 days from October 4, 2022, until October 21, 2022.

From October 24, 2022, until April 5, 2023, C.J. had twenty-six absences, only four of which BISD excused. C.J. missed some school to attend court-ordered appointments that were located hours away from his school, but BISD's attendance policy only allows excused absences for court appearances, not court-ordered appointments. From February 28, 2023, until March 3, 2023, C.J. missed school because of a mental health crisis. The school's attendance log showed that C.J.'s grandmother called on February 28 and asked the teacher to "unlock tests," so he could work on

assignments at home. The March 2 attendance log shows his grandmother called again to let the school know that C.J. was "struggling mentally." These absences were not excused despite the District's knowledge that C.J.'s disabilities caused these absences. BISD did not conduct any additional evaluations of C.J. to determine what accommodations and modifications were necessary so that he could access education. From March 22, 2023, to March 28, 2023, C.J. was absent due to illness, and he brought a note from the doctor as required by the District's attendance policy. Upon his return to school on March 29, 2023, the SRO stopped by the DAEP and took C.J. into his office. The SRO told C.J. that the note from the doctor only had one date on it, not the whole week, and that his absences would therefore not be excused. C.J. asked if there was any way he could ask his doctor to fix the note, and the SRO said no, it was too late. However, the District's attendance policy states that "a note provided by a parent or guardian, within 5 days of the first day returned to school from illness" would excuse these absences.[6] The SRO gave C.J. the truancy ticket which sent C.J. to Bonham Municipal Court.

On April 5, 2023, C.J. attended his truancy court hearing in front of Judge John Skotnik at the City of Bonham Municipal Court. Mr. James Branam, the principal of BHS told Judge Skotnik that C.J. had hundreds of absences, was not making progress in any of his classes, and would probably not graduate. C.J. stated that the principal did not have his updated grades and progress indicators from his classes. Neither the principal nor Judge Skotnik asked to see C.J.'s updated grades. Moreover, the truancy court record contains no record of C.J.'s attendance or any truancy prevention measures by the District as required by state law. Judge Skotnik ordered C.J. to drop out of BISD and enroll in a GED program. The court order appears to be a standard form for ordering students to GED programs, with blanks for defendant name and hearing date. In over a decade of observing truancy courts throughout the state, the organizations filing this complaint had never previously witnessed a school district or county that relied so heavily on orders to remove children from school to necessitate a standard form to accomplish that goal. Judge Skotnik also required C.J. to sign a no-trespass agreement and said he could not return to BHS for the rest of his life.

Due to a criminal charge unrelated to school, C.J. already had received probation conditions that required him to "obtain his high school diploma, and abide by all rules and guidelines of the Bonham Independent School District." C.J. and his grandmother told Judge Skotnik that he had a conflicting court order to graduate and get his diploma. Judge Skotnik replied that he did not care, told C.J. to get a lawyer, and said that he wanted them out of his courtroom.

Faced with dueling court orders, C.J. followed Judge Skotnik's order to drop out of BISD because it was the most recent in time, and because C.J. had signed a no-trespass agreement. He enrolled in a GED program on April 10, 2023.

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[6] BISD, *Excused & Unexcused Absence Policies*, https://www.bonhamisd.org/248393_2.

On April 12, 2023, C.J. was arrested and put in jail for violating his probation. The only ground for the probation revocation was C.J. following Judge Skotnik's order by dropping out of school and not obtaining his diploma. While incarcerated, C.J. was not given his medication for the first few days, and following his incarceration, it took a few days for the jail to return his medication.

On April 27, 2023, Chief Dean of the BISD Police, Corey Baker, Director of the Fannin County Community Supervision and Corrections Department, and Kelly Trompler, the Superintendent of BISD came to see C.J. in jail. The Superintendent said, "Since there are dueling court orders, it is my decision on whether I let you back into school or not," and made C.J. beg to return to school. Instead of providing accommodations to C.J., they asked C.J. to talk to his doctors about changing his medication. C.J. signed a new probation agreement that stated he would attend school at BISD as directed and get his diploma, abide by all rules and guidelines of the DAEP, remain always engaged with his studies and with staff, always show respect to BISD staff, make appropriate progress in each class, and receive a positive report from the DAEP each Friday or spend the weekend in the Fannin County Jail. The agreement concluded with the statement: "any violation of the rules and guidelines of the DAEP or removal from the program will result in an immediate Motion to Revoke being filed and a warrant issued for" C.J.'s arrest.

During his incarceration, Disability Rights Texas began representing C.J. and requested an IEP meeting to obtain proper evaluations, supports, services, and accommodations including transition supports and services and accommodations for his lack of focus and attendance. However, no additional accommodations or transition services were provided. Rather, the District quickly graduated C.J. on May 26, 2023. Although C.J. graduated, his academic achievement testing showed that he performed significantly below average in calculations, sentence composition, and essay composition. Since graduation, C.J. has shown interest in returning to BHS to receive transition services and attend electives to help with his transition from secondary education, as the District did not offer him any transition services while at the DAEP. The District, however, has not agreed to this.

III. THE DISTRICT HAS VIOLATED, AND CONTINUES TO VIOLATE, B.E.'S RIGHTS, AND THOSE OF SIMILARLY SITUATED STUDENTS, UNDER THE FOURTEENTH AMENDMENT AND TITLE IV.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which is actionable under 42 U.S.C. section 1983, prohibits state actors from depriving individuals of their constitutional rights, privileges, and immunities based on race or national origin. Further, Title IV of the Civil Rights Act of 1964, 42 U.S.C. section 2000c *et seq.*, prohibits discrimination against students in public schools based on race, color, or national origin.

The District has violated, and continues to violate, B.E.'s rights and the rights of other Black students under the Equal Protection Clause and Title IV by intentionally discriminating against Black students through the creation of a racially hostile educational environment, including by subjecting Black students to objectively offensive racial harassment and responding with deliberate indifference, through ineffective and inadequate efforts, to stop known acts of severe, pervasive, and objectively offensive racial harassment against Black students by students and District employees on school grounds.[7]

a. The District has knowledge of peer-on-peer racial slurs.

B.E. experiences and witnesses his classmates' harassment and use of racial slurs. White students have called B.E. the n-word and told him to go back to picking cotton. The District has been aware of these incidents because teachers have been within earshot and could hear the students. B.E.'s girlfriend's brother repeatedly called him the n-word. The District was aware that B.E.'s girlfriend's brother called him the n-word because B.E. told the assistant principal. Instead of the assistant principal disciplining the White student, she justified that student's behavior.

B.E. has also witnessed racial slurs like the n-word, "cotton picker," and "black monkey" directed toward other Black students.[8] Although White students regularly utter these slurs within earshot or in the presence of teachers and the principal, school staff simply ignore them. When the group of White male students cornered the Black female student, poked her with sticks, and called her "monkey," the District was aware because school staff caught them in the act. In addition, B.E. and other Black students have reported the use of racial slurs to school staff. And when a White student called B.E.'s Black friend "monkey" in class, not only did the teacher witness it, but B.E.'s friend also reported it to the teacher.[9]

b. The District has failed to effectively address peer-on-peer racial slurs.

The District has not taken any steps to address the blatant peer-on-peer racial slurs and harassment. Not only do school staff and administration allow students to use racial slurs in their presence, but they often make excuses for the students' words and actions. Most racial slurs and racial harassment occur without any interventions from school staff.

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[7] *See Notice of Findings of Race Discrimination in the Davis School District*, 3-4; *see also DOJ Case No. DJ 169-44-9, OCR Case No. 10126001,* 4 (explaining that an educational institution violates Title IV if peer-on-peer and staff-on-student harassment on the basis of a protected category creates a hostile environment, the school knew or should have known about the harassment, and the school fails to act).

[8] *See Notice of Findings of Race Discrimination in the Davis School* District, 2, 5-6 (finding that a school district acted with deliberate indifference to racial harassment including the use of racial epithets such as the n-word, monkey noises, "'go pick cotton' and 'you are my slave'"); *see also Notice of Findings of Race Discrimination in the Davis School District*, the *Settlement Agreement Between the Northeastern Local School District and the U.S. Department of Justice, Civil Rights Division, DJ # 169-58-52*, 1 (explaining that harassment includes racial epithets and derogatory language).

[9] *See* DOJ *Case No. DJ 169-44-9, OCR Case No. 10126001,* 4-5 (once an educational institution has actual or constructive notice of possible harassment it must investigate and respond).

Further, White students are rarely punished for racial harassment of Black students. If they are punished, White students generally receive less severe forms of punishment such as ISS instead of placement in the DAEP. For example, on December 15, 2022, B.E. and one of his White friends were allegedly horseplaying on the bus. As a result, the District handcuffed and arrested B.E. in front of other students, charged B.E. with felony injury to a minor, detained B.E. for four weeks, subjected him a psychological evaluation, and placed B.E. in the DAEP where he has been ever since. The District treated B.E.'s White friend differently because they placed him in the DAEP for only four weeks. After four weeks in the DAEP the District allowed B.E.'s White friend to return to his home school.

c. The District reinforces the hostile environment through the actions of its employees.

The racially hostile education environment is further perpetuated by the actions of District employees. When B.E. was called the n-word , his assistant principal defended the racial harassment by the White student. When a group of White boys harassed a Black girl and called her "monkey," a teacher, who was the mother of one of the White boys, excused the harassment as a "joke" and blamed others for being so "sensitive."

Moreover, the actions and statements of the District's SRO dramatically compound the racially hostile environment. During the incident at the park, the SRO searched B.E., who was hiding and still on the phone with dispatch, instead of the White boys, who were fighting and had made a gun threat. After the incident where a White parent of B.E.'s friend called B.E. the n-word and yelled at him, the SRO commented that B.E. "doesn't have room to act agitated and excited" out in the community, implying that he is at risk of being shot by the police because of his race. The SRO also followed students of color around during a school football game and required them to remain on the bleachers while White students were not policed in the same manner.

These actions or lack thereof by the District and District employees indicate deliberate indifference to the racially hostile educational environment and a pervasive practice of discrimination against B.E. and other Black students.

IV. THE DISTRICT HAS VIOLATED C.J.'S RIGHTS, AND THOSE OF SIMILARLY SITUATED STUDENTS, UNDER TITLE II OF THE AMERICANS WITH DISABILITIES ACT.

The District perpetuates a hostile educational environment for students with disabilities by refusing to provide accommodations and modifications necessary for those students to access education. Despite C.J.'s IEP, the identification of his needs, and requests for services and accommodations, the District failed to make even minimal accommodations for his disability-related needs. Instead, the District placed C.J. into the DAEP which was not designed to provide adequate accommodations and modifications to students with disabilities. Rather than provide those necessary accommodations and modifications, the District pushes out students with disabilities through the truancy process in municipal courts. The District's methods of administering truancy processes,

including its refusal to modify its attendance policy, resulted in the District referring C.J. to municipal court for truancy for his disability-related absences where he was ordered to withdraw and obtain his GED. Even after learning that the GED order violated C.J.'s probation order which placed him in jail, the District was reluctant to let C.J. return to school, instead pressuring him regarding prescribed medication.

a. The District violated Title II of the Americans with Disabilities Act.

Under Title II of the Americans with Disabilities Act ("ADA"), a public entity is prohibited from excluding a "qualified individual with a disability" from "participation in or . . . the benefits of the services, programs, or activities of a public entity," or subjecting a qualified individual "to discrimination by any such entity."[10] Public education institutions and police departments are considered public entities under the ADA; thus, the District and its police department are public entities that the ADA prohibits from discriminating against individuals with disabilities.[11]

i. C.J. is a qualified individual with a disability under the ADA.

The ADA defines disability as "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment."[12] C.J. has a "mental impairment that substantially limits one or more major life activities" because he has been diagnosed with bipolar disorder and schizophrenia. These medical conditions limit C.J.'s major life activities, including learning, concentrating, thinking, and communicating.[13] Moreover, C.J. has a record of disability because he received special education services from the District with the eligibility of emotional disturbance. He also had an Individualized Education Program ("IEP") that documents accommodations and modifications based on his disabilities.

ii. **The District excluded C.J. from participation in or the benefits of its services, programs, or activities.**

Despite C.J.'s protections under the ADA, the District failed to make reasonable modifications and accommodations to the DAEP and to its attendance policies, practices, or procedures. Rather, the District uses methods of administration that fail to comply with the ADA and discriminate against students with disabilities. The District referred C.J. to municipal court for truancy for absences related to his disabilities where C.J. was ordered to drop out and obtain a GED.[14] The District's failure to make reasonable modifications and its discriminatory methods of administration resulted in C.J. losing the benefits of a public education to which he was entitled.

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[10] 42 U.S.C. § 12132
[11] *Id.* § 12131(1)(B).
[12] *Id.* § 12102(1).
[13] *Id.* § 12102(2)(A).
[14] Consistent with the ADA's statutory text, its regulation provides that a public entity may not discriminate in the provision of its services, programs, and activities, whether "directly or through contractual, licensing, or other arrangements." 28 C.F.R. § 35.130(b)(1).

1. The District failed to provide appropriate services, accommodations, and modifications at the DAEP to C.J.

Under the ADA, the District is required to "make reasonable modifications in policies, practices, or procedures when such modifications are necessary" unless such modifications would "fundamentally alter" the nature of its goods, services, facilities, privileges, advantages, or accommodations.[15] The reasonable modification obligation also applies when a public entity knows or reasonably should know that the person has a disability and needs a modification, even where the individual has not requested a modification.[16]

The District failed to offer C.J. reasonable modifications while requiring C.J. to attend the DAEP. The District required C.J. to attend the DAEP throughout his enrollment at BHS and extended his enrollment through the end of the 2022-2023 school year. Though Texas state law requires the District to consider a student's disability in determining DAEP placement, there is no evidence that the District considered C.J.'s disability nor the DAEP's inability to meet his disability-related needs.[17]

The DAEP curriculum and program did not meet C.J.'s educational needs, nor is there any evidence that the DAEP is structured to offer basic accommodations and modifications to students with disabilities. The DAEP is a one-size-fits-all computer-based credit recovery program. The students spend the entire day in front of the computer without extracurricular activities, enrichment offerings or electives offered at the traditional school, and many of the students sleep during the day. C.J. describes the DAEP as "jail-like." The students have three minutes to use the bathroom and after three minutes the DAEP teacher knocks on the bathroom door and may crack it open. One of the DAEP coaches yells at the students and uses curse words. As B.E. has witnessed, students with disabilities are singled out and verbally abused by one of the DAEP teachers.

The District knew that C.J. has a disability and needed modifications. C.J. has schizophrenia, bipolar disorder, and dyslexia. The District had determined that he qualified as having an emotional disturbance disability and that his disability affected his "involvement and progress" in language arts, math, social studies, science, fine arts, physical education, and career/technology. While at the DAEP, C.J. consistently fell asleep during the school day and made requests to meet with a counselor three or four times, which put the District on further notice of his disability and need for

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[15] 42 U.S.C. § 12182(b)(2)(A)(ii)*; see also* 28 C.F.R § 35.130(b)(7); *Johnson v. Gambrinus Co./Spoetzl Brewery*, 116 F.3d 1052, 1059 (5th Cir. 1997) (holding that "the defendant must make the requested modification unless the defendant pleads and meets its burden of proving that the requested modification would fundamentally alter the nature of the public accommodation" in a similar Title III context); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 594–95 (1999) (discussing the "fundamental alteration" defense in the Title II context).

[16] *See* the United States' Findings and Conclusions Based on Its Investigation of the Minnesota Department of Corrections under the Americans with Disabilities Act, DJ # 204-39-192.

[17] TEX. EDUC. CODE § 37.001(a)(4).

accommodations. At the DAEP, C.J. struggled to stay awake and focus in the computer-based class environment. C.J.'s IEP required accommodations for classroom instruction, assignments and tests, and behavior management such as feedback provided frequently, breaking down assignments into smaller chunks, oral/signed administration of tests, positive reinforcement, minimizing visual distractions, clearly defined limits, and private discussion about behavior.

The District did not provide those necessary accommodations and instead suggested C.J. request help from the DAEP teachers. The only limited modifications provided at the DAEP were to allow him to complete seven quiz questions instead of ten with two answer choices instead of four. Those limited modifications were not designed to meet C.J.'s individual needs to provide him education access as required by law.

The District failed to provide C.J.'s requested modification to meet with a counselor at the DAEP. While enrolled at the DAEP, C.J. made three or four requests to meet with a counselor to discuss his mental health challenges. The District did not provide any other form of mental health services to C.J. as an accommodation while he was enrolled at the DAEP; indeed, upon information and belief, the District has structured the DAEP program to not include access to these accommodations. C.J. finally met with a counselor upon returning to his home school. The District failed to make reasonable modifications throughout C.J.'s time at the DAEP.

2. The District failed to modify its attendance policies, practices, or procedures to account for C.J.'s disability-related absences.

Similarly, the District failed to make reasonable modifications to its attendance policies. Under Texas law, the District has wide discretion in which absences it excuses.[18] The District's attendance policy requires a doctor's or parent's/guardian's note to excuse absences. If no note is provided, then the absence is considered unexcused.[19] BHS's attendance policy requires that a student absent more than three consecutive days because of a personal illness bring a statement from a doctor or health clinic verifying the illness or condition that caused the absence.[20]

Upon information and belief, BISD has delegated its discretion in excusing student absences to its police department, a department that could report no training regarding accommodations for students with disabilities. In effect, by refusing to excuse student absences, the BISD police department creates the alleged factual predicates for the truancy tickets that it then issues.

From October 24, 2022, until April 5, 2023, C.J. had twenty-six absences, only four of which were excused by the District. From February 28, 2023, to March 3, 2023,

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[18] *Id*. § 25.087(a).
[19] BISD, *Excused & Unexcused Absence Policies* 1, https://www.bonhamisd.org/248393_2..
[20] *Bonham High School Parent/Student Handbook 2023–2024 School Year* 24, https://bhs.bonhamisd.org/164855_2.

C.J. was absent because of a mental health crisis. The school's attendance log showed that C.J.'s grandmother called on February 28 and asked the teacher to "unlock tests" so he could work on assignments at home. The March 2 attendance log shows that his grandmother called again to inform the school that C.J. was "struggling mentally." However, the District did not excuse these absences despite knowing that C.J.'s documented disabilities caused them.

From March 22, 2023, to March 28, 2023, C.J. was absent due to illness, and he brought a note from the doctor as required by BISD and BHS attendance policies. Upon his return to school on March 29, 2023, SRO Abbott of the BISD Police Department[21] told C.J. that the doctor's note only had one date on it, not the whole week. C.J. asked if there was any way he could fix it, and SRO Abbott said no and that it was too late. However, the District's attendance policy allows for a note from a parent or guardian within 5 days of returning to school and BHS's policy allows for a doctor's note within 3 days of returning to school to excuse those absences. Therefore, not only did BISD not accommodate C.J., but it did not even follow its own attendance policy with regard to him. SRO Abbott then issued C.J. a truancy ticket even though a truancy petition must be dismissed upon request where, as here, the student has a mental illness.[22]

The District applied its attendance policies, practices, and procedures without regard to C.J.'s disabilities and necessary modifications. C.J. would not have faced a truancy charge but for the District's failure to modify its attendance policies, practices, and procedures to allow for parent's/guardian's phone call and note to excuse disability-related absences. Indeed, there would have been no factual basis for a truancy charge but for SRO Abbott's refusal to accommodate C.J.'s disability. The District should have also provided reasonable accommodations to C.J. by inquiring about his absences before issuing him a truancy ticket. These accommodations would not have fundamentally altered the nature of the school's program regarding attendance, as the school could have pursued other measures to address C.J.'s absences, including reviewing his learning supports and accommodations to determine how he could be better supported at school and implementing truancy prevention measures as required by state law.[23]

3. The District systemically fails to comply with the ADA through methods of administration that discriminate against students with disabilities.

A public entity, directly or through contractual or other arrangements, is prohibited from utilizing criteria or methods of administration "that [have] the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability" or "that [have] the purpose or effect of defeating or substantially impairing

[21] The BISD SROs are employed directly by the District.
[22] *See* TEX. FAM. CODE § 65.065.
[23] *See* 42 U.S.C. § 12182(b)(2)(A)(ii); *see also* TEX. EDUC. CODE § 25.0915.

accomplishment of the objectives of the public entity's program with respect to individuals with disabilities."[24]

The District has systemically failed to provide accommodations to C.J. and other similarly situated students with disabilities by placing them in the DAEP which is unable to provide necessary accommodations and modifications. Upon information and belief, the District does not consider students' disability-related needs before placing them in the one-size-fits-all DAEP.

The District systemically failed to provide accommodations to C.J. through its use of untrained SROs to enforce its attendance policy. Specifically, the District failed to train the SRO regarding the ADA, failed to inform students of their rights and the procedures for requesting accommodations for attendance, failed to appropriately process accommodation requests and disability-related absences, and failed to track students' disability-related absences. In fact, the undersigned organizations sent a comprehensive public information request to BISD requesting all trainings, presentations, and other documents detailing guidance given to police officers, teachers, and administrators on the appropriate use of law enforcement. The District produced no responsive documents, let alone training materials related to law enforcement's treatment of students with disabilities.

Here, C.J. was issued a truancy ticket upon his return to school on March 29, 2023, even though C.J.'s absences were disability-related and he brought a doctor's note. The SRO refused to excuse C.J.'s absences because the doctor's note only had one date on it instead of the whole week. C.J. made a request to correct this note but the SRO stated that it was too late, counter to BISD's own attendance policy that provides students with 5 days after they return to school and BHS's policy allowing for a doctor's note within 3 days of returning to school for illnesses. The SRO, failing to provide accommodations to C.J. and failing to abide by the District's own attendance policies, issued C.J. a truancy ticket that would send him to the municipal court.

These processes and failures, when analyzed together, lead to a systematic failure to comply with the ADA and discriminate against students with disabilities like C.J.

b. Rather than providing necessary services, accommodations, and modifications, the District denied C.J. the benefits of public education by referring him to truancy court.

Under the ADA, the District is prohibited from denying the benefits of a public education to students with disabilities on the basis of their disability, either through their

[24] 28 C.F.R. § 35.130(b)(3)(i)-(iii)*; see also* Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Governmental Services, 28 C.F.R. § Pt. 35, App. B § 35.130 (stating that Paragraph(b)(3) prohibits "*both* blatantly exclusionary policies or practices *and* nonessential policies and practices that are neutral on their face, but deny individuals with disabilities an effective opportunity to participate.") (emphases added).

actions or through their arrangements with courts.[25] Nonetheless, the District denied C.J. the benefits of a public education by sending him to municipal court on a truancy charge where he could be—and was subsequently—subjected to a GED order.

On March 29, 2023, the District issued C.J. a truancy ticket instead of providing him with necessary services, accommodations, or preventative measures as required by state and federal law. During the truancy proceedings BISD administrator Mr. James Branam, the principal at BHS, told Judge Skotnik that C.J. had hundreds of absences, was not making progress in any of his classes, and would probably not graduate. Principal Branam did not discuss C.J.'s disabilities or the District's failure to provide services, accommodations, or preventative measures. C.J. stated that the principal did not have his updated grades and progress indicators from his classes. As a result of the truancy referral and Principal Branam's statements, the municipal court Judge Skotnik ordered C.J. to drop out of BISD and enroll in a GED program. In years of studying truancy practices in Texas, the undersigned organizations have seen that these orders are usually made at the recommendation of school staff who work in lockstep with the courts in truancy matters. Judge Skotnik also required C.J. to sign a no-trespass agreement and instructed him not to return to BHS for the rest of his life.

In complying with the municipal court's order, however, C.J. was arrested and imprisoned for violating his probation. While incarcerated, C.J. was not given any educational support or services. C.J. was not allowed to return to the DAEP until after the April 27, 2023, meeting with Probation, the BISD Police Department, and the Superintendent of BISD. Even in allowing C.J. to return, the District again failed to provide C.J. with the necessary accommodations and instead put that burden on C.J. The Superintendent requested that C.J. talk to his doctors about changing the medication that makes him sleepy in class[26] and required him to sign a new probation agreement. The agreement dictated that C.J. would attend school at BISD as directed and get his diploma, abide by all rules and guidelines of the DAEP, remain always engaged with his studies and with staff, always show respect to BISD staff, make appropriate progress in each class, and receive a positive report from the DAEP each Friday or spend the weekend in the Fannin County Jail.

In total, C.J. was incarcerated for over 35 days due to the District's failure to accommodate and discriminatory methods of administration. The District denied C.J. the benefits of public education through missed educational opportunities by referring him to municipal court and subjecting him to a GED order, preventing him from entering the school until after the April 27 meeting, and using jail as a threat and a tool for any minor violation after his return. Additionally, although C.J. obtained his high school diploma, he was deprived of myriad benefits associated with such a diploma, including the ability to apply to higher education and obtain employment. Due to BISD's failure to provide

[25] 28 C.F.R. § 35.130(a), (b)(1)(i).

[26] The IDEA prohibits state and local educational agency personnel from requiring any student to obtain a prescription for medication covered by the Controlled Substances Act (21 U.S.C. § 812) as a condition of attending school, receiving an evaluation, reevaluation, or receiving services under the IDEA. 34 C.F.R. § 300.174.

C.J. with adequate preparation for college and career, as well as its denial of necessary services for C.J. to access his education, the District's rush to graduate C.J. denied him the opportunity to make progress on standardized tests. These low test scores, in turn, limit his ability to take credit bearing community college courses and his employment prospects.

c. The hostile environment perpetuated by the District was compounded by the actions of the Bonham Municipal Court.

For C.J., the hostile environment perpetuated by the District is compounded by the actions of the Bonham municipal court which has the authority to push students out of school. Under state law, a Texas truancy court may order a student who is at least 16 years old to drop out, complete a GED prep course, and take the GED.[27] This law enables the District to use the truancy system to force out C.J. and other students, particularly students with disabilities.

Although the state law requires specific procedures for truancy referrals and hearings, the District and Bonham Municipal Court failed to abide by those requirements before pushing C.J. out. Before referring students to truancy court, the District is required to put in place enhanced interventions to address students' attendance issues.[28] The District's truancy prevention measures must include at least one of the following: a behavior improvement plan that includes a specific description of required or prohibited behavior, the period the plan will be effective, and penalties for additional absences; school-based community services; or referral to counseling, mediation, mentoring, teen court, community-based services, or other services to address the student's truancy.[29] Each referral to truancy court must include a statement certifying that the school applied the truancy prevention measures, and that such measures failed to meaningfully address the student's attendance.[30] Each referral must also specify whether the student is eligible for or receives special education services.[31] Further, the truancy court must dismiss the petition if the District does not comply with these requirements.[32] Separately, a truancy court must dismiss a petition if it does not satisfy the elements required for truant conduct, is not timely filed, or is otherwise substantively defective.[33] A truancy petition must also be dismissed where the student has a mental illness.[34]

Here, the District violated Texas law by failing to provide preventative measures and the Bonham Municipal Court failed to dismiss the case on the insufficient petition and because of C.J.'s mental illness. Instead, the District funnels students into a court system where judges can impose GED orders on students without ensuring that their constitutional rights, including rights to counsel and due process of law, are protected.

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[27] TEX. FAM. CODE § 65.103(a)(3).
[28] TEX. EDUC. CODE § 25.0915
[29] *Id.*
[30] *Id.* § 25.0915(b)(1).
[31] *Id.* § 25.0915(b)(2).
[32] *Id.* § 25.0915(c)(1).
[33] *Id.* § 25.0915(c) (2)-(4).
[34] TEX. FAM. CODE § 65.065.

i. **Bonham Municipal Court violated C.J.'s rights by failing to appoint counsel for his truancy case.**

1. The Bonham Municipal Court violated C.J.'s right to counsel secured by the Sixth and Fourteenth Amendments to the U.S. Constitution.

The Due Process Clause of the Fourteenth Amendment provides individuals the right to appointed counsel when their loss of liberty is at stake.[35] Moreover, under the Sixth Amendment, indigent individuals have a right to appointed counsel in criminal misdemeanor proceedings where incarceration is possible.[36] When a Texas truancy court judge determines that a student has failed to comply with a truancy court order, the judge can either refer the student to "the appropriate juvenile court for delinquent conduct for contempt of the justice or municipal court order" or "retain jurisdiction of the case, hold the child in contempt . . . and order [a fine and/or the suspension of the student's driver's license or permit]."[37] If the juvenile court finds that the student engaged in contempt of the truancy order, then the judge can "admonish the child[38], orally and in writing, of the consequences of subsequent referrals to the juvenile court, including: (A) a possible charge of delinquent conduct for contempt of the truancy court's order or direct contempt of court; and (B) a possible detention hearing."[39] Because incarceration is a possible consequence of not complying with a truancy order, C.J. should have been provided with the assistance of counsel.

Despite the harm that a truancy conviction poses, including the GED order and risk of incarceration and restraint of liberty, the Municipal Court did not appoint counsel for C.J. Without sufficiently understanding his legal rights or the court proceedings, C.J. was incapable of protecting his rights and defending himself against the truancy charge and GED order. During the municipal hearing, C.J. and his grandmother told Judge Skotnik that he had a pre-existing order from another court that required him to "obtain his high school diploma, and abide by all rules and guidelines of the Bonham Independent School District." Judge Skotnik replied that he did not care, told them to get a lawyer, and that he wanted them out of his courtroom. Even though Judge Skotnik was aware that, on one hand, abiding by the GED and no trespass orders would put C.J. at risk for imminent imprisonment for violating a probation condition in a different court, or on the other hand, failure to abide by the GED and no trespass orders would put C.J. in contempt of the municipal court, Judge Skotnik still did not appoint an attorney.[40] Indeed,

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[35] *See Gideon v. Wainwright*, 372 U.S. 335, 342 (1963)*; Argersinger v. Hamlin*, 407 U.S. 25, 29-30 (1972).
[36] *Argersinger*, 407 U.S. at 40.
[37] TEX. CODE CRIM. PROC. art 45.050.
[38] TEX. FAM. CODE § 65.252(b)(3) ("Child" means a person who is 12 years of age or older and younger than 19 years of age.")
[39] TEX. FAM. CODE § 65.252(b)(3).
[40] Texas law also provides for the appointment of an attorney in truancy cases. TEX. FAM. CODE § 65.059(b) provides that the court may appoint an attorney if the court determines it is in the best interest of the individual.

Judge Skotnik's own comments indicated that he knew that an attorney was necessary to protect C.J.'s rights.

Accordingly, Bonham Municipal Court violated C.J.'s constitutional right to counsel.

2. The Bonham Municipal Court's failure to appoint counsel for C.J. in his truancy case violates his right to Due Process.

Even if the truancy case in the municipal court proceeding did not risk C.J.'s incarceration as it did, the Due Process Clause of the Fourteenth Amendment requires a case-by-case determination of whether counsel should be appointed for indigent individuals who risk a deprivation by the court.[41] Such a determination requires courts to consider three factors to determine whether an individual has a due process right to appointed counsel: the private interests at stake, the risk of an erroneous result absent appointed counsel, and the government's interests in the proceeding.[42] The Municipal Court, however, refused to consider these factors and determine which indigent individuals require appointed counsel in truancy proceedings, denying C.J. access to due process.

a. C.J. had significant private interests at stake in truancy case proceedings.

Judge Skotnik subjected C.J. to a variety of consequences that harmed his significant liberty and property interests. C.J. was subjected to and received an order requiring him to drop out of school and obtain his GED, an order preventing him from returning to BHS for the rest of his life, and the imposition of a fine and court fees pending compliance with the aforementioned orders. Further, as a direct consequence of complying with the Municipal Court's order, C.J. was then imprisoned for probation violation in his criminal case.

b. The risk of erroneous deprivation is high absent counsel.

The Municipal Court erroneously deprived C.J. of his liberty and property interests given the significant challenges he faced in presenting his defense and his documented disabilities.

As previously discussed, C.J. lacked an adequate understanding of his rights in the municipal court truancy process given his age and disability. In fact, C.J. was provided

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[41] *Lassiter v. Dep't of Soc. Servs*., 452 U.S. 18, 26 (1981); *see also Tennessee v. Lane*, 541 U.S. 509, 532–33 (2004) (describing the duty of providing counsel to "certain criminal defendants" as arising from "the well- established *due process principle* that, 'within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard'") (emphasis added).

[42] *Lassiter*, 452 U.S. at 31 (applying *Mathews v. Eldridge*, 424 U.S. 319 (1976)).

and signed an "Acknowledgement of Rights & Guilty/No Contest Plea" for the wrong charge.[43] Additionally, the court record contained no documentation of his attendance record or the District's preventative measures in his truancy case. Further, at no point did Judge Skotnik inform C.J. of the right to request that his case be dismissed for mental illness under Texas law. [44] Because C.J. did not have an attorney and Judge Skotnik did not inform him of such right, he was unaware of this law and therefore did not make the request. Further, C.J. was unaware of what possible consequences could occur due to his efforts to comply with the dueling court orders from the Municipal Court and the District Court, and was unaware how to challenge these conflicting court orders. As a result of the truancy case, C.J. suffered incarceration, lack of medication for a period of his incarceration and after his incarceration, and missed educational services and supports.

c. C.J.'s interests significantly outweighed Bonham Municipal Court's interest in denying appointed counsel.

None of Bonham's interests in truancy court proceedings outweighed C.J.'s significant personal interests and high risk of erroneous deprivation absent counsel. Moreover, many of Bonham's interests are better served by the appointment of counsel to indigent children and individuals. Erroneous truancy findings do not serve Bonham's interest in preventing truancy and keeping students in school. As the court discussed in *Lassiter*, the adversarial system assumes that "accurate and just results are most likely to be obtained through the equal contest of opposed interests."[45] Absent counsel for C.J., he was overwhelmingly disadvantaged, resulting in a highly unequal contest—one with a high risk of inaccurate outcomes. Thus, Bonham's interest in accurate and just decisions was best served by appointing counsel for C.J. who cannot afford representation.

The cost of appointed counsel to the Bonham Municipal Court did not outweigh the risk of the erroneous deprivation of C.J.'s interests.[46] Additionally, appointed counsel may decrease the amount of court time necessary for truancy cases as cases may be more quickly dismissed on grounds provided by Texas law and fewer students may be erroneously convicted resulting in fewer review hearings.

Even if C.J. did not risk incarceration in truancy proceedings as he did, because Bonham's interests in truancy proceedings did not outweigh the interests of C.J. charged with truant conduct and his high risk of erroneous deprivation, the Municipal Court should have appointed counsel for C.J. Currently, the Bonham Municipal Court does not even examine these factors to determine whether appointing counsel is necessary to protect students' rights to due process.[47]

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[43] Although C.J. was charged with truant conduct, the "Acknowledgement of Rights & Guilty/No Contest Plea" was for the charge of "Parent Contributing to Non Attendance/Thwarting Public Attendance."
[44] TEX. FAM. CODE § 65.065.
[45] *Lassiter*, 452 U.S. at 28.
[46] *See, e.g., Lassiter*, 452 U.S. at 27–28; *Pasqua v. Council*, 186 N.J. 127, 144–46 (2005) (holding the cost of providing appointed counsel did not outweigh private interests in civil contempt proceedings).
[47] In fact, Judge Skotnik told C.J. that he did not care when C.J. tried to explain about the other court order, and told him to get a lawyer and get out of his courtroom.

In summary, the failure of the Municipal Court to appoint counsel to C.J. in his truancy charge, who risked incarceration and was subject to a multi-jurisdictional court process, runs afoul of rights guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. The constitutional entitlement to appointed counsel is particularly compelling considering C.J.'s limited understanding of the Municipal Court's truancy process and documented disability.

V. REMEDIES

Based on the District's violation of students' constitutional and civil rights, we respectfully request that the Department of Justice protect students from further violations by requiring BISD to:

- Pay compensatory damages to C.J. and B.E. for the injuries caused by the District's violations.

- Return B.E. to the regular education program at LH Rather Jr. High School.

- Modify the District's programs and activities so that the District stops engaging in unconstitutional and unlawful acts, and develop policies and procedures for ending any such unconstitutional and unlawful acts and the hostile and intolerant environment, including but not limited to the following:
  - Require the District to implement mandatory and effective training programs for District faculty, staff, and students on issues related to discrimination and methods to intervene to stop students from harassing other students based on race or disability status;
  - Require the District to adopt policies with specific guidelines for instructing teachers, police officers, and administrators about how to address complaints by students who have been subjected to trauma, taunted, harassed, or discriminated against because of their race or disability status;
  - Require the District to conduct assemblies for all students in the District addressing issues of diversity and tolerance, wherein students are instructed about laws prohibiting harassment and discrimination based on race or disability status;
  - Require the District to implement an evidence-based restorative practices program including a mediator and/or other staff member to provide active monitoring for the schools and to address instances of harassment and discrimination that arise at the schools;
  - Require the District to hire an independent expert to evaluate any student with a disability enrolled at the DAEP to determine what accommodations and modifications are necessary for the student to access education;
  - Require the District to engage evidence-based direct instruction for students at the DAEP; and
  - Require the District to collect and maintain statistical data concerning each complaint of harassment based on race or disability status made by a student,

as well as the specific action district principals, assistant principals, teachers, and administrators took to resolve the complaints.

- Adopt or revise written policies to explicitly state that the District may not discriminate against, exclude from participation, or deny the benefits of a public education to qualified individuals with disabilities because of disability-related absences.
- Identify an ADA coordinator responsible for monitoring truancy referrals and GED recommendations for students with disabilities.
- Re-evaluate a student's disability accommodations and modifications and provide services and supports before referring a student with disabilities to truancy court.
- Ensure that the student and parents/guardians/caretakers have actual knowledge of the district-level, school-level, and classroom-level truancy prevention measures applied for the student, including access to written copies in a language they understand.
- Modify the District's programs and activities and make reasonable accommodations so that the District does not discriminate against students with disabilities. This includes modifying attendance policies to ensure that disability-related absences are properly excused and do not lead to court referral and that any requirements for submitting excuses accommodate students with disabilities. Staff, including police department staff, should be trained on how to determine accommodations in a flexible and interactive manner, based on a student's individualized needs. Common accommodations would include allowing additional time for excuses to be provided to the attendance office and providing reminders when excuse notes are needed.
- Review actions of the District's police department, its process for training officers to prevent racial and disability discrimination, its process for handling complaints of race and disability discrimination, and make any changes necessary to avoid race and disability discrimination by its police department.
- Determine if truancy is related to a student's disability before any truancy referral, by determining if the absence was caused by student's disability or school's failure to provide appropriate academic or behavioral programming to meet the educational needs of the student.
- Certify that absences were not caused by a student's disability, the district's failure to provide appropriate services for a student's disability, or the district's failure to modify attendance policies as necessary to accommodate a student's disability before referring a student to truancy court.
- Collect and maintain statistical data concerning GED referrals and orders, disaggregated by race and disability status.
- Provide oral and written notice to the student and parent at the time of removal to the DAEP specifying the length of the removal period, after which the student will return to the main campus, including that the District cannot modify the removal period for the same alleged "offense."

Additionally, we respectfully request that the Department of Justice require Bonham Municipal Court to:

- Provide a system of appointed counsel via a contract with a legal services non-profit for truancy cases.

- Train judges and court staff in: adolescent brain development; trauma informed responses; implicit bias; common causes of truancy and effective responses; mental health issues and symptoms in children; developmental disabilities; and special education requirements.
- Collect and maintain statistical data concerning GED referrals and orders, disaggregated by race and disability status.
- Eliminate standard GED order forms and certify that Texas law truancy requirements have been met and alternatives have been explored and failed before GED can be ordered.

Respectfully submitted,

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Date: February 6, 2024