

Disability Rights Texas and Susman Godfrey File Action Against Austin Independent School District For Failure to Support Thousands of Students with Disabilities

03.29.2021 | 10 | 21NEWS

Disability Rights Texas (DRTx), the protection and advocacy agency for adults and children with disabilities in Texas, and leading trial firm Susman Godfrey LLP filed a lawsuit today against the Austin Independent School District (AISD) on behalf of DRTx and five individual child plaintiffs. The complaint alleges that AISD is failing thousands of students with disabilities due to its refusal to address longstanding, systemic issues impacting its evaluation system, including staff shortages and increasing backlogs of outstanding evaluations. In the past year, the AISD's broken evaluation system has resulted in the delayed initial evaluations of at least 800 students, and the delayed re-evaluations of an additional estimated 1,600 students. As alleged in the complaint, these delays are in direct violation of the timelines established by federal and state law.

As a result of AISD's failures, these students are not receiving critical special education services or are receiving services based on out-of-date evaluations. Some students are not receiving any educational services due to delayed evaluations. These students have been denied the free and appropriate public education (FAPE) to which they are legally entitled.

For example, plaintiff J.R. is a four-year-old boy with autism and expressive language disorder. Though children usually start public school at age 5, younger children are entitled to public education if evaluated and found to have a disability. Because of AISD's failure to evaluate J.R., he is receiving no education services.

The other child plaintiffs include a six-year-old boy with a sensory processing disorder and ADHD; a five-year-old girl with suspected anxiety, obsessive-compulsive disorder, oppositional defiant disorder, and selective mutism; a six-year-old girl with a speech impairment and dyslexia; and a ten-year-old boy with an emotional disturbance, specific learning disability and autism. DRTx believes each child will qualify for special education services when fully evaluated.

Texas state law requires that a school district respond to a parent's written request for an initial special education evaluation within 15 school days, by (1) providing consent for evaluation, or (2) a prior written notice explaining why the district is not agreeing to evaluate. Once consent is provided, the initial special education evaluation is to be completed within 45 school days.

After children are enrolled in special education, federal regulations require re-evaluation at least every three years unless a parent and the school district agree that it is unnecessary.

“One might think, or the district might lead you to believe, that the pandemic is the cause for this delay, but that is not the case,” said Dustin Rynders, supervising attorney at DRTx. “Our investigation shows AISD has a history of these delays. They are robbing so many students not only of what their right is legally to have, but of the chance for a successful future.”

“For far too long students in need in Austin have gone unrepresented,” says [David Peterson](#), Partner at Susman Godfrey and lead counsel on the matter. “It is time for someone to take a stand and get these children the attention and support they deserve. Susman Godfrey is proud to partner with DRTx to give a voice to these children.”

The failure of AISD to provide evaluations is unfortunately part of a long-held practice of the state of Texas denying students with disabilities. A 2016 investigative report of the *Houston Chronicle* entitled “Denied” revealed tens of thousands of students were being deprived of special education services because of an illegal cap required by the Texas Education Agency to limit enrollment in special education services.