

TRIA

TEXAS RIOGRANDE LEGAL AID
YOUTH GUIDE SERIES

Defending
AGAINST A
FAILURE TO
ATTEND SCHOOL
Charge

IN JUSTICE OF THE PEACE (JP)
OR MUNICIPAL COURT

A GUIDE FOR YOUTH & PARENTS

DEFENDING AGAINST A FAILURE TO ATTEND SCHOOL CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

In Texas, Failure to Attend School cases are heard in Justice of the Peace (JP) or municipal courts. These courts will *not* provide you with a free lawyer, but it is a good idea to bring your own lawyer to court. Failure to Attend School laws are complicated, and convictions have serious consequences. A conviction may become part of your *adult criminal record* and could be seen by potential employers and others.

Texas RioGrande Legal Aid, Inc. (TRLA) provides free legal assistance to students from low-income households. To apply for our services, call 1-888-988-9996. TRLA cannot accept all cases. Even if we cannot represent you, we may be able to provide you with advice that will help you to defend yourself in court.

When you are ticketed, *you and a parent* must appear in court. Never ignore an order to appear in court! A “no-show” can lead to an automatic conviction for Failure to Attend School **and** a second conviction for Failure to Appear. You can be fined for failing to appear, and, once you turn 17, a judge may issue a warrant for your arrest. Take your Failure to Attend School charge seriously. This guide provides basic information to help you to understand the laws, your options, and defenses.

In this guide, you will find answers to the following questions:

- What are possible charges for too many unexcused absences?
- What is “Failure to Attend School?”
- What are some of my rights as a defendant (the person charged with a crime)?
- What are some defenses I might have for an individual absence?
- What are some of my options to fight the charge against me?
- Are there any other ways to get the charges against me dropped?
- How should I talk to a prosecutor (the lawyer for the State) or judge?
- What can happen if I plead guilty or no contest?
- How do I avoid a fine or court cost that I cannot afford to pay?

TRLA

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DEFENDING AGAINST A FAILURE TO ATTEND SCHOOL CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

1) What are possible charges for too many unexcused absences?

- You can be charged with Failure to Attend School;
- Your parents can be charged with Parent Contributing to Nonattendance if they act with "criminal negligence;" or
- Both you and your parent or guardian can be charged.

2) What is "Failure to Attend School?"

A Failure to Attend School charge is a Class C misdemeanor, the lowest level of crime in Texas. Even these low-level crimes can have serious consequences. The judge can order you to pay a *fine of up to \$500*. The judge can also ask you to pay court costs and complete a number of tasks.

You violate the law if you fail to attend school three or more days or parts of days within a four-week period in the same school year. You also violate the law if you fail to attend 10 or more days or parts of days within a six-month period in the same school year. Generally, a tardy should not be counted as an absence. You can find the law for Failure to Attend School in the Texas Education Code under section 25.094.

Some students do not realize they can earn unexcused absences for missing *part* of a school day. For example, even if you have a doctor's appointment in the morning and get a doctor's note, you can receive an unexcused absence if you do not return to school in the afternoon (unless the doctor's note excuses you for the rest of the day).

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3) What are some of my rights as a defendant (the person charged with a crime)?

- Right to be informed of the charges against you – **It is a good idea to ask the clerk at the court for a copy of your case file *before* your court date so that you can be prepared. The court file should state the dates the school says you were absent.**
- Right to be considered innocent until proven guilty beyond a reasonable doubt.
 - + To prove you are guilty, the State must present evidence to the court. You can ask the prosecutor to see that evidence *before* your hearing.
 - + Examples of “evidence” could include:
 - A statement from you admitting your guilt.
 - Your attendance records.
 - An attendance contract that you signed with the school.
 - An attendance officer’s notes.
 - A statement from an attendance officer.
 - A statement from the school saying it tried truancy prevention steps to improve your attendance, but they did not work.
- Right to have an attorney represent you.
- Right to a trial by a jury or judge.
- Right to choose a plea – 1) not guilty; 2) guilty; or 3) no contest
 - + Not guilty – Pleading not guilty means you deny guilt, and that you want to exercise your right to a trial.
 - + Guilty or No Contest – By pleading guilty, you give up your right to a trial and accept the conviction. A NO CONTEST PLEA IS VERY SIMILAR TO A GUILTY PLEA, because both **result in a conviction on your adult criminal record.**

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4) What are some defenses I might have for an individual absence?

- You are younger than 12 years old, or age 18 or older.
- **The State's complaint against you is incomplete, because it did not include a statement from your school saying the school tried truancy prevention steps and that those steps failed to meaningfully address your attendance. A school MUST take these measures before a school files charges against you.** Examples may include offering counseling to help with the problem causing you to miss school, conducting a home visit, or calling your parent if you are not in school that day.
- The State's complaint against you is incomplete, because it did not say whether you are eligible for or you receive special education services
- You were not actually absent on the day or part of day the school claims you were.
- A school official or a court has excused your absence.
- Your unexcused absence was not voluntary (for example, because your absence was related to your disability).
- You were visiting a doctor, psychologist or other health care professional.
- You did not go to school because you had an appointment in court.
- You did not go to school because you were suspended or expelled.
- You were observing a religious holy day.
- You had an appointment at a government office to become a U.S. citizen.
- You were participating in a naturalization oath ceremony.

It is important to raise these defenses even if they apply to only *one or some* of your unexcused absences and even if your unexcused absences are over the legal limit. These defenses could provide a better understanding of your situation, which could matter in discussions with a prosecutor or in court.

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5) What are some of my options to fight the charge against me?

As soon as you are charged, you can ask your principal to hold an Attendance Committee meeting or you can speak with your school's attendance officer to explain your side of the story and ask if they are willing to write a letter to the court or prosecutor to drop the charges against you. Take your parent with you. Make sure you let your school know if you have any defenses. ***If you speak with a school official about your case, BE POLITE. Always keep in mind that the school official could become a witness against you, so think carefully about what you want to say before your meeting. For advice about what statements may be self-incriminating (statements that you make to a witness that could later be used against you), contact TRLA.***

If your school does not agree to drop the charges and you believe you are innocent or have a good defense, plead not guilty at your court date and let the court know you wish to speak with a prosecutor. Pleading **not guilty** means the court will set a date for trial in your case, but that does not necessarily mean you will go to trial.

Before your trial court date, you should talk with a prosecutor to ask if he or she will dismiss your case. Find out from the court clerk when prosecutors are available to meet with you. If you plan to talk to a prosecutor, then it is best to plead **not guilty**. You can always change your plea later if you want to want to make an agreement with the prosecutor.

6) Are there any other ways to get the charges against me dropped?

Yes. **If you graduate from high school or get a GED** after you are charged but *before* your case is resolved, bring proof of graduation (for example, a diploma) or a GED to the court. Then, the court must dismiss your case.

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7) What if the school agrees that my case should be dropped?

A prosecutor may be willing to dismiss charges against you if the principal or a school attendance officer, often called the “complaining witness” (CW), agrees that the case against you should be dropped. If you have had a lot of unexcused absences and do not have a good defense for those absences, a school attendance officer may still be willing to make a deal with you if you go to summer school or enter a credit recovery program, for example.

If the CW agrees that you should not face charges, politely ask him or her to sign a document called a Statement of Non-Prosecution saying so. If possible, get the Statement signed by a notary public, who you can usually find at a bank, lawyer’s office, or shipping center. **TRLA may be able to help you with that process if you are eligible for our services.** Even if you are not eligible, you may use the form in this guide. Be smart. If you ask the CW to sign the statement and he or she says “no,” calmly walk away and do not argue. *Never* threaten a CW. Doing so may result in a new charge against you!

A Statement of Non-Prosecution will likely help you, but a prosecutor does not have to dismiss your case. The prosecutor may double check that the CW agreed that the charges against you should be dropped, and then decide whether to dismiss.

8) How should I talk to a prosecutor (the lawyer for the State) or judge?

- *Speak Confidently* – Speak loudly enough to be heard. Look people in the eye.
- *Do Not Lie* – If you do not know the answer to a question, say “I don’t know.”
- *Be Respectful* – Address the judge as “Your Honor.” Use “sir” and “ma’am.”
- *Dress Appropriately* – Dress like you work in an office (Males: slacks and tucked-in shirts; Females: blouse and slacks or a dress or skirt to the knees).
- *Arrive Early* – Plan on having to find parking and the specific courtroom.

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9) What can I bring to court to help my case?

Prosecutors will be more open to negotiate and judges will be more open to dismiss your case if it is the first time you have been charged with a crime or if you present evidence of your good character. For example, bring letters of support from a teacher, community leader or employer and copies of good grades and any awards. Also, tell the prosecutor or judge if the situation at school or home has changed in a way that will positively impact your attendance in the future. For example, if you were missing school because of a family medical emergency, bring evidence of the emergency (doctor or hospital records).

10) What if I missed school because of a major issue in my life?

Explain that to a prosecutor or judge and bring proof, if possible. The following are examples of such issues:

- You are a victim of bullying at school.
- You are a survivor of domestic violence.
- You have unreliable transportation.
- You are homeless or have unstable housing.
- You have a disability or are receiving special education services. (See the TRLA guide called "Defending Children with Disabilities").

Just because one of these issues is relevant to your case does not mean a prosecutor or judge will choose to automatically dismiss your charge.

11) What if a prosecutor does not dismiss my case or makes me a bad offer?

You can go to trial. **For help, call TRLA at 1-888-988-9996. If you plan to ask TRLA for help, do so sooner rather than later. TRLA usually cannot help at the last minute.**

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12) What can happen if I plead guilty or no contest?

- Fines up to \$500 – you have a right to ask the court to waive the fine and other costs if they would cause hardship to you.
- Court costs – these are separate from the fine.
- Requirement to perform community service
- Requirement to attend truancy- and dropout-prevention programs
- Requirement of a parent to “check-in” with the school each week to make sure you are attending school
- Deferred Disposition, which cannot extend beyond 180 days or the end of the school year, whichever period is longer

13) What is Deferred Disposition?

If your case is not dismissed right away, the prosecutor might offer you “Deferred Disposition.” Deferred Disposition allows you to resolve your case *without* a final conviction on your record. It is a form of dismissal that first requires you to meet certain conditions like community service or payment of a fine. You will have a deadline to complete these conditions. ***If you complete the conditions, the judge dismisses your case. You may then say you were not convicted of the charge.***

Sometimes the court will give you extra time to complete the conditions of your Deferred Disposition. If you need extra time, you should ask the court for an extension *before* your deadline has passed. You may have to pay a fee for the extra time. If that happens, you can ask the court to waive the fee.

If you fail to complete the conditions, a judge must hold a hearing where you will have an opportunity to show good cause why you could not complete the conditions. The judge may decide to give you more time. If not, he or she may order a punishment (for example, a fine, community service, or both). You will then have a final *conviction on your adult criminal record.*

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14) How do I avoid a fine or court cost that I cannot afford to pay?

You may request a waiver of the fine, court cost, or both, by talking with a prosecutor or judge. To show that you cannot afford to pay, you can fill out and bring to court a Request for Waiver of Fines and Costs to show the prosecutor or judge. You may use the form included in this guide. You can also offer to perform community service instead of paying fines.

You should tell the prosecutor or judge if there are good reasons why you cannot pay a fine or court costs. Some good reasons might be that you or your family members:

- are unemployed or make minimum wages.
- have a health problem and need expensive medical care.
- have a lot of debt.

The court may allow you to pay at a later date or waive the fine or court costs if your family is unable to pay. If the court orders you to pay a fine or court cost and you do not pay, the court can treat your failure to pay as a violation of a court order. *If you still owe a fine when you turn 17, the court may issue an arrest warrant. **If that happens, you have options. Call TRLA at 1-888-988-9996.***

15) How do I avoid being ordered to do community service I cannot complete?

You should tell the prosecutor or judge if there are good reasons why you cannot complete community service. Some good reasons might be that:

- You do not have time because you care for your siblings or others.
- You do not have reliable transportation to get you to a community service site.
- You are currently involved in several extracurricular or volunteer activities, and community service would take away from the work you already do. (If so, bring in letters of support from an adult supervisor.)

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16) If I am found guilty, can I get the conviction off of my record?

Yes. In Failure to Attend School cases, the court MUST erase the conviction from your record if you:

- Graduate or earn a GED and present proof (for example, a diploma) to the court before you turn 21; OR
- Meet all conditions set by the court, for example, pay your fine or complete your community service requirement.

Even if you do not meet these conditions, you may still be able to clear your record. **For help, call TRLA at 1-888-988-9996.**

17) How do I prevent future Failure to Attend School charges?

Do not miss school unnecessarily. Get organized! Keep a file of your absences and all related documentation, for example, notes from a doctor. Ask the school to sign and date your note and make you a copy for your file. If you are worried about too many absences, immediately check with the attendance office or ask for a copy of your attendance records. If your records are inaccurate, ask the school to fix them.

If you have good reason to be absent, tell the school before or immediately after your absence. If you are absent because you were sick, but you did not see a doctor, make sure you provide a note signed by your parent describing why you were absent. Make sure you know whether the school excused your absence or not.

Follow up! Find out if your school district allows you or your parents to track your absences online. If not, you can use a chart like the one in this guide to track your absences.

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Chart: Tracking my absences

Date of absence <i>Examples</i>	Time missed (all day? one period?)	Reason for absence	Information on my absence provided to my school <i>(phone call, parent letter, doctor's note)</i>	Did the school excuse my absence?
09-29-11	1st-3rd periods	I had a dentist appointment.	I have a note from the dentist. I gave it to my first period teacher.	Yes
02-16-12	All day	I was sick with a fever.	None	No
03-05-12	1st period	I could not get out of bed because of a bad reaction to my new medication.	I have a letter my mother wrote to the Principal. I left it with assistant at the front office.	I am not sure. I need to check with the attendance officer.

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Chart: Tracking my absences

Date of absence <i>Examples</i>	Time missed (all day? one period?)	Reason for absence	Information on my absence provided to my school <i>(phone call, parent letter, doctor's note)</i>	Did the school excuse my absence?

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STATE OF TEXAS §

COUNTY OF _____ §

STATEMENT OF NON-PROSECUTION

KNOW ALL BY THESE PRESENTS

That the undersigned person does hereby make the following Statement of Non-Prosecution in State of Texas vs. _____,
Cause No. _____ in _____ Court of _____ County, Texas,
wherein Defendant is charged with Failure to Attend School under Texas Education Code Section 25.094.

"My name is _____, the complaining witness against the Defendant in this case. It is my wish that all charges in relation to these matters be dismissed and that there be no further action taken. I do not intend to pursue the prosecution of the Defendant. I desire and intend not to appear as a witness against Defendant in court pertaining to this matter. I ask that I not be subpoenaed to do so.

"I am not making this Statement to frustrate the ends of justice, nor have I been offered any benefit to testify falsely, to withhold testimony, or to avoid the legal process or any official legal proceedings.

"I am making this Affidavit voluntarily, of my own free will, free of any duress or coercion. If the charges against Defendant are dismissed, I will in no way disparage or complain of the District/County Attorney's office for failure to prosecute this case."

WITNESS MY HAND this _____ day of _____, 20____.

Complaining Witness

STATE OF TEXAS §

COUNTY OF _____ §

ACKNOWLEDGEMENT

BEFORE ME, the undersigned authority, on this day personally appeared _____ (Complaining Witness), known to me to be the person whose name is subscribed to the above and foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20____.

Notary Public in and for the State of Texas

DEFENDING AGAINST A FAILURE TO ATTEND SCHOOL CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

CASE NO. _____

STATE OF TEXAS

§
§
§
§
§
§
§

IN _____ COURT

[court name and number]

v.

OF

[your name]

_____ COUNTY, TEXAS

REQUEST FOR A WAIVER OF FINES AND COSTS

TO THE HONORABLE JUDGE OF SAID COURT:

My name is _____, my date of birth is _____,
my address is _____,

and I make this Request for a Waiver of Fines and Costs. This Court may waive fines and costs if it finds that I am indigent and discharging fines and costs would impose financial hardship on me. I am indigent, and I am unable to pay a fine or court costs.

I declare under penalty of perjury that the foregoing is true and correct.

I ask that the Court grant this request and waive all fines and court costs.

Executed in _____ County, State of _____,
on the _____ day of _____, 20____.

Respectfully,

[Your signature]

Declarant



TRLA

**TEXAS RIOGRANDE LEGAL AID
YOUTH GUIDE SERIES**

Texas RioGrande Legal Aid, Inc. (TRLA) is a non-profit organization that provides free legal services to low-income residents in 68 counties of Southwest Texas. The TRLA Youth Guide Series is an initiative of TRLA's Juvenile Justice Team and its School-to-Prison Pipeline Project (SPPP). The SPPP is supported by Equal Justice Works and the Texas Access to Justice Foundation. Please note that the TRLA Youth Guide Series is not meant as legal advice and the information it contains is subject to change as new laws are passed.

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