



THE TEXAS CIVIL SERVICE CRISIS:

PART ONE OF THREE REPORTS ON
THE PUBLIC SECTOR IN TEXAS

March 2009

A Principled Approach to Government

Summary:

It is evident that the public sector in Texas is in crisis, plagued by poor performance and even criminal behavior on the part of some public employees, notably at state schools and in the foster care system.

By choosing to attack the private sector in order to protect state jobs, critics of outsourcing have ignored the failings of the public sector and neglected the needs of some of the most vulnerable Texans.

THE TEXAS CIVIL SERVICE CRISIS

For more information about this document, please contact the Texas Conservative Coalition Research Institute:

Brent Connett, Task Force Director and Policy Analyst – brent@txccri.org

Tom Aldred, Policy Analyst – tom@txccri.org

Texas Conservative Coalition Research Institute

P.O. Box 2659, Austin, TX 78768

(512) 474-6042

www.txccri.org

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THE TEXAS CIVIL SERVICE CRISIS:

PART ONE OF THREE REPORTS ON THE PUBLIC SECTOR IN TEXAS

There is a crisis in the public sector in Texas. It is a crisis that periodically makes front page news, yet for the most part is obfuscated by a well-orchestrated attack on the private sector by public employee unions, public sector advocates, and the mainstream media. These attacks typically focus on the alleged failures of the private sector – especially when a function once performed by a state agency is now handled by a private contractor – and suggest either overtly or implicitly that a private contractor is failing where state workers would have succeeded, or worse, that the profit-motivated private sector is simply denying services to eligible Texans.

An Attack on the Private Sector

The debate between those who seek to protect the state's role in the provision of human services and those who advocate for a bigger role for the private sector in Texas has become polarized. It is a debate that is difficult to comprehend outside the context of the expansion of private sector involvement in human services programs that has occurred in Texas since 2003. Opponents of greater private involvement have attacked the performance of contractors, predicating their arguments on the premise that the state can do a better job for needy Texans who rely on government assistance programs.

However, it is evident that the public sector in Texas is in crisis, plagued by poor performance and even criminal behavior on the part of some public employees, notably at state schools and in the state's foster care system. By choosing to attack the private sector in order to protect state jobs, critics of outsourcing have ignored the failings of the public sector and neglected the needs of some of the most vulnerable Texans.

The reorganization of Health and Human Services in Texas that was begun by House Bill 2292 (78R) in 2003 has given the opponents of outsourcing to the private sector abundant fodder – justified or not – at which to take aim. Specifically, HB 2292 directed the Health and Human Services Commission (HHSC) to contract with private entities for a range of services, including “purchasing functions for the commission and the health and human services agencies,” and “the operation of call centers.”ⁱ

The coordinated attack on this unprecedented attempt to improve services and promote greater efficiency began *before the legislation was enacted*: The Legislative Budget Board's fiscal note on HB 2292 indicated that the legislation would result in a reduction of 2,362.5 full time state employees by the end of fiscal year 2005. Not surprisingly, public employee unions launched a coordinated effort to defeat the legislation in order to protect public sector jobs at the expense improving services to needy

Texans. According to the House Research Organization, opponents of HB 2292 argued that “use of call centers to determine eligibility would result in a loss of state jobs.”ⁱⁱ

When the legislation was considered by committees in the Texas Houseⁱⁱⁱ and Senate^{iv}, it was opposed by nine witnesses from the Texas State Employee Union (TSEU), as well as representatives from the Texas Public Employees Association (TPEA), the Communication Workers of America (CWA), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the Texas Federation of Teachers (TFT) and the Center for Public Policy Priorities (CPPP), a public policy organization with an emphasis on “economic and social conditions of low- and moderate-income Texans.”^v

Despite opposition from labor interests, the legislation was enacted in 2003 and has formed the basis for a greater use of the private sector in Texas’ Health and Human Services programs ever since. Other legislation has also been enacted to further the role of the private sector in Human Services programs. For example, in 2005, Senate Bill 6 provided for the contracting out of substitute care and case management services under the authority of the Department of Family and Protective Services. SB6 was opposed by TSEU, despite receiving overwhelmingly favorable testimony in legislative committee hearings.^{vi} According to the House Research Organization, opponents of SB6 argued that “privatization would require a complete transformation of the CPS system, necessitating highly-trained professionals, [and] strong oversight.”^{vii}

As the outsourcing contemplated by HB 2292 was begun, TSEU, TPEA, TFT, CPPP and others launched phase two of their attack: convincing policymakers and the public that the contracting would harm the provision of services to needy Texans. In their defense of public sector jobs, these advocacy organizations used concern for children, the elderly, and the needy as a façade to pounce on the plan that would outsource thousands of state jobs. To this day, their carping continues to obstruct a genuine discussion of how the state can best help low-income and needy groups.

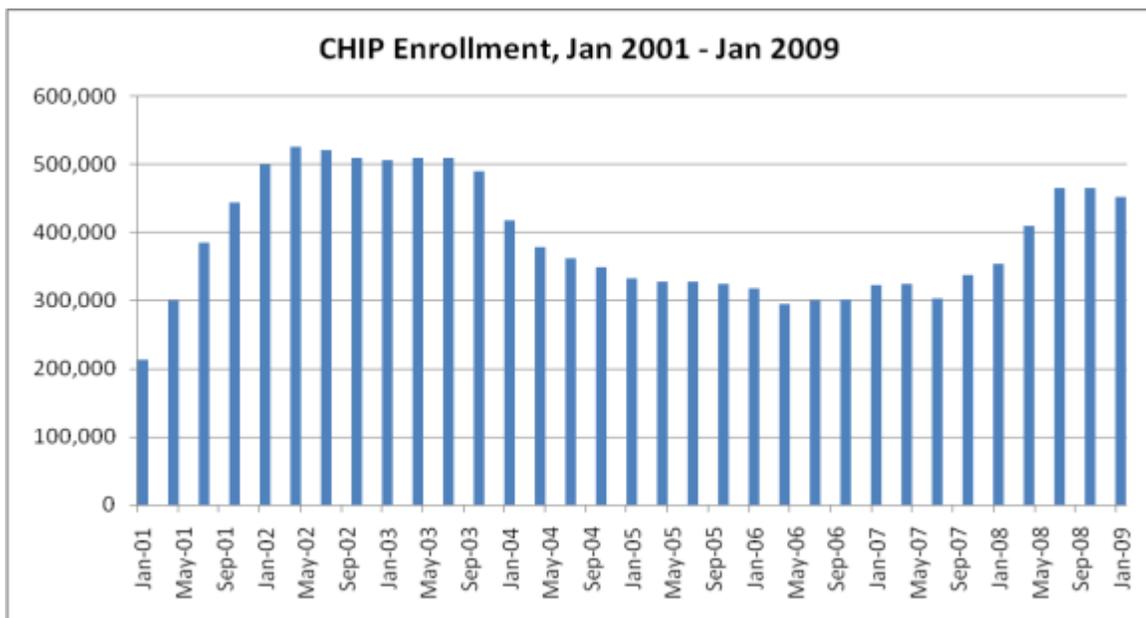
In a May 2006 press release, the Texas Federation of Teachers “urged state officials to fix the [Children’s Health Insurance Program] eligibility process and stop allowing children from low-income working families to be knocked out of this essential health-care program for no good reason.”^{viii} While there may have been problems with outsourcing, there have always been problems associated with state-operated eligibility systems. Furthermore, these exaggerated complaints were intended only to keep state workers employed and to keep Texans stuck in government programs that are intended be a safety net, not a lifelong entitlement.

Similarly, a CPPP report argued that “Texas needs an eligibility system capable of serving more than 4 million low-income Texans who rely on public benefits to meet their basic needs and enrolling millions more who are eligible but unserved.”^{ix}

As the attacks reached a crescendo, they began to take their toll on policymakers. In late 2006, HHSC announced that it would delay transferring operation of parts of Texas’ foster care system to a private contractor. *The Austin American-Statesman* (November 4, 2006) reported that “state officials have

postponed awarding a \$500 million, five-year contract that would outsource part of Texas' foster care system.”^x

By spring of 2007, lawmakers were ready to halt the outsourced call center projects. The role of call centers in the Children’s Health Insurance Program (CHIP) had been a constant area of complaint for privatization’s opponents. Their criticisms, which focused on the role of the outsourced call center and eligibility determination work in declining CHIP caseloads, were entirely unfounded. Left unacknowledged was the fact that, since its inception in 2000, CHIP had always relied on a call center approach with eligibility services provided by a private contractor. Similarly, while CHIP enrollment did decline in 2004 and 2005, that decline more likely related to the tighter eligibility requirements imposed by HB 2292 than the continuing operation of call centers that had been in place since 2000:



Source: HHSC, Statewide CHIP Enrollment, Renewals, Attempted Renewals, and Disenrollment by Month

The fact that CHIP enrollment has risen since mid-2007, when eligibility was broadened by enactment of House Bill 109 (80R), confirms that the enrollment decline between 2003 and 2006 was related to eligibility changes, not the performance of call center staff.

While liberal groups criticized the performance of contracted eligibility staff, a glance back at the functioning of the eligibility process when it was orchestrated by the Health and Human Services Commission (HHSC) revealed that the previous system was severely flawed. Testifying before the House Committee on Government Reform, Christy Black of the National Center for Policy Analysis pointed out that:

Under the old system, each application for a social service had to be made in-person at a state office during business hours (8 a.m.–5 p.m.) and each visit required an average wait of two to three hours (on days with light numbers of applicants). At each visit an applicant interacted with an average of three to four employees and in almost three-fourths of cases (72 percent),

eligibility was not determined during the initial interview - requiring additional verification and often additional office visits.^{xi}

In contrast, the outsourced eligibility system allowed clients a greater flexibility over how and when they could apply. This reduced the time clients had to spend on the application process and on traveling to state eligibility offices, and gave them a greater opportunity to devote their time to work and supporting their families.

In short, the eligibility processes employed by the private contractors – such as Accenture – long an object of derision, were manifestly superior to those employed by the state. While Accenture’s call centers were considered inadequate because of “long wait times”, documents presented to the House Human Service Committee show that the average call wait time dropped from a high of fifteen minutes, in May 2006, to approximately one minute in just two months.^{xii}

More to the point, how did those times compare to wait periods in government offices? Unfortunately, the Health and Human Services Commission is primarily measured by the number of CHIP and Medicaid beneficiaries served. Questions as to how quickly they are enrolled (much less the quality of care delivered) are secondary. The opponents of outsourcing should hold the state to the same rigorous standards to which they hold the private sector.

By the end of the 81st Legislative Session, it will be almost six years since the legislation enacted by HB 2292 became effective. Opponents of outsourcing are claiming victory. Recently, TSEU announced that it had:

[W]on a major victory in our long-running fight against the privatization and elimination of state human services programs. HHSC and the state legislature have backtracked on plans to eliminate face-to-face eligibility and the state employees who do the work, convert eligibility to call centers, and shutter hundreds of local human services offices.^{xiii}

Texas stands at a crossroads: one path leads to further contracting of human services functions, the other leads to a larger role for the state. Opponents of the private sector route continue to blame outsourcing for a crisis in the Texas public sector. In its legislative goals for 2009, TSEU demands that the Legislature “cancel privatization of human services,” and “reverse the crisis caused by years of downsizing.” The labor union goes on to caution that:

While we have made significant gains, the fight is not over. Despite the catastrophic and costly failings of the call center privatization scheme...HHSC is still moving forward to resuscitate call center and privatization plans.^{xiv}

Labeling the performance of call centers as “catastrophic” underscores TSEU’s unwillingness to confront the horrendous behavior of employees in the public sector, as evidenced by a glut of media reports and official state accounts since at least January 2001.

The Failure of the Public Sector

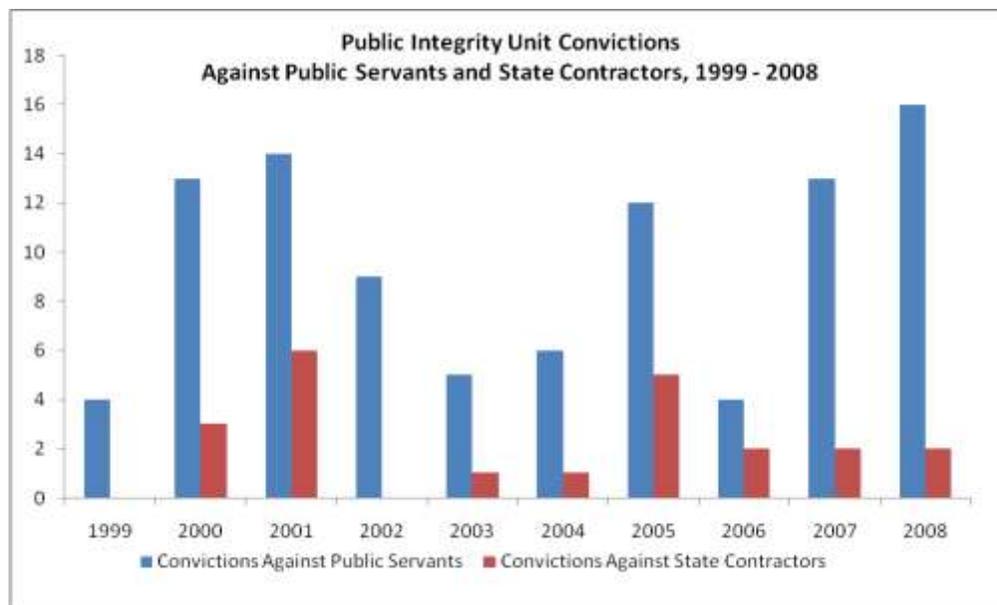
Far worse than the alleged shortcomings of private sector contractors are the abject failures of the public sector and its employees to live up to even basic standards of decency or provide the minimum standard of care to the neediest Texans.

While there are many recent examples of public sector failures, none is more reprehensible than the abuse and neglect of mentally retarded Texans at state schools. Since at least 2004, mentally retarded persons were neglected and abused under the watch of, and sometimes at the hands of, public employees. A U.S. Department of Justice (DOJ) study of state schools found “systemic deficiencies” throughout the 13 state schools that house nearly 5,000 residents.^{xv}

The public system was so mismanaged and incapable of change that, in 2008 alone, 114 residents of state schools died; 53 of those deaths were due to preventable conditions that, according to the Department of Justice, are “often the result of lapses in care”.^{xvi}

The most basic (and disheartening) test of those charged with delivering state services is whether they can provide those services without committing crimes. In this test, state employees perform demonstrably worse than those in the private sector working under contract with the state.

In response to an information request by the Texas Conservative Coalition Research Institute, the Public Integrity Unit of the Travis County District Attorney’s Office confirms that, over the past decade, it has won convictions against four times as many state employees as it has state contractors:



Source: Travis County District Attorney, Public Integrity Unit, Information Request, March 9, 2009.

Beyond the overwhelming number of prosecutions of state employees, compared to state contractors, the litany of criminal abuses, failures, and malfeasance by public sector employees as reported in the media and by state reviews over the past decade confirms a pattern of systemic failure in Texas' public sector:

Public Sector Failure, Abuse, and Neglect, by Month: 2001 – 2009

Month	Reported Failure, Abuse, or Neglect
March 2009	<p>Police present photographic evidence that state school employees staged fights among disabled residents of the Corpus Christi State School.^{xvii}</p> <p>The <i>Dallas Morning News</i> reported that between 2003 and 2005, students of South Oak Cliff High School in Dallas were forced into bare-fisted cage fights against other students.^{xviii}</p>
February 2009	<p>A ten-year old child at Lufkin State School was given a near-fatal overdose of insulin by medical staff.^{xix}</p> <p>The San Antonio State School is revealed to have the highest rate of abuse and neglect of any state school facility: 27 cases of abuse and/or neglect for every 100 mentally disabled Texans it houses.^{xx}</p> <p>Figures released by the Texas Department of Family and Protective Services reveal that there were 574 confirmed cases of abuse and/or neglect at state schools in 2008.^{xxi}</p> <p>Midland Independent School District fires its police officer after he was arrested and charged with having an inappropriate relationship with a 14 year old student and sexually assaulting her.^{xxii}</p>
December 2008	<p>U.S. Department of Justice study of state schools finds “systemic deficiencies” throughout the state school system. The report notes that in 2008, 114 residents of state schools died and that 53 of those deaths were due to preventable conditions that were “often the result of lapses in care”.^{xxiii}</p> <p>Houston ISD teaching assistant arrested for possession of marijuana, becoming the thirteenth HISD employee arrested on drug charges in 2008.^{xxiv}</p>
November 2008	<p>Dallas ISD Employees caught using fake social security numbers, having been told in 2004 that the practice was “illegal.”^{xxv}</p>

Dallas ISD administrators discovered that they had overspent their 2007 budget by \$64 million and had already run up an \$84 million deficit in 2008.^{xxvi}

August 2008

A report revealed that the Health and Human Services Commission had continued to pay 1,229 former staff of its agencies whose employment had been terminated. In total, \$738,192 was paid to former employees in 2007 and 2008; 44 percent of the overpayments had not been recovered as of August 2008.^{xxvii}

The same State Auditor's Office report found that 43 Health and Human Services Commission employees were placed on emergency leave between September 2006 and July 2008 because "their annual criminal background checks contained information that required further investigation." The length of time employees spent on emergency leave ranged from 3 to 343 days; with an average duration of 70 days.^{xxviii}

July 2008

State Auditor's Office report finds that the Department of Aging and Disability Services did not provide alternative living arrangements to 70 percent of state school residents who had requested them.^{xxix}

May 2008

A Texas School for the Deaf Employee was arrested for allegedly paying a student to expose himself.^{xxx}

October 2007

Texas Education Agency (TEA) data reveals that Texas ranks second in the nation in the number of teachers sanctioned for sexual misconduct. Specifically, the report finds that 200 Texas teachers received sanctions for sexual misconduct between 2001 and 2005; additionally, 1,300 certified teachers received sanctions during the same period for offenses ranging from mail fraud and violating open records to kidnapping and attempted murder.^{xxxi}

May 2007

93 Dallas Independent School District employees were cited by an investigation into \$71.5 million in charges on the school district credit card account that included "hundreds of questionable purchases, including flat-screen televisions and gold-plated flatware."^{xxxii}

March 2007

A pattern of sexual abuse perpetrated by Texas Youth Commission staff at state school facilities emerges.^{xxxiii}

February 2007

A report by the State Auditor's Office revealed that Texas Department of Transportation staff did not have dependable financial information regarding ongoing construction projects: "There is a lack of reliable information

regarding projected toll road construction costs, operating expenses, revenue, and developer income.”^{xxxiv}

- June 2006 A teacher at Lewisville Independent School District was charged with having an improper relationship with a student after she was alleged to have had sex with a student several times at her apartment.^{xxxv}
- April 2006 Almost two dozen state correctional employees are arrested in a five week period, charged with offenses ranging from sexual harassment of employees to rape of a male convict and smuggling controlled substances into a prison.^{xxxvi}
- 2005 48 foster children died in homes or institutions regulated by the state.^{xxxvii}
- 761 Texas Department of Criminal Justice employees arrested throughout 2005.^{xxxviii}
- 2004 38 foster children died in homes or institutions regulated by the state.^{xxxix}
- July 2004 A report by the State Auditor’s Office finds that the Health and Human Services Commission issued \$20 million in “unnecessary or excessive” payments to a CHIP provider, constituting “an abuse of the Commission’s fiduciary responsibility to appropriately oversee [CHIP funds].”^{xl}
- May 2004 A report into the Texas Department of Human Services’ management of contracts related to the Texas Integrated Eligibility Redesign System (TIERS) concluded that “The contracts did not contain performance measures or evaluation methodologies...DHS has no way to hold the contractors accountable for their performance.”^{xli}
- March 2004 Fort Worth Independent School District assistant athletic director is charged with defrauding the school district out of more than \$10 million.^{xlii}
- 2003 30 foster children died in homes or institutions regulated by the state.^{xliii}
- November 2003 An audit by the State Auditor’s Office finds that the Health and Human Services Commission “does not adequately monitor and enforce its contracts with managed care organizations (MCO) that administer Medicaid managed care and the Children’s Health Insurance Program (CHIP).” The report identified \$13 million in funds due to the state that the Commission was not actively attempting to recoup.^{xliv}

- April 2003 In a report on the state’s prescription drug rebate program, the State Auditor’s Office found that, as a result of errors by Health and Human Service Commission staff, 11,356 rebate transactions – worth between \$16.2 million and \$2.69 billion in total – could not be accounted for. The audit also found that “rebate staff have made at least \$13.6 million in reductions to rebate amounts without properly verifying that the numbers of drug units involved in these transactions were correct.”^{xlv}
- February 2003 The State Auditor’s Office reported that “some Texas health and human services agencies do not adequately protect the confidential client information...[as a result] individuals inside and outside these agencies [could] gain unauthorized access to automated systems and read, copy, modify, or delete confidential client information.” The report concluded that the issues were violations of the Texas Administrative Code, and affected services including: “physical and mental health, child abuse and neglect, the elderly, Medicaid and Medicare, drug and alcohol abuse, physical and mental disability, and children’s health insurance.”^{xlvi}
- June 2002 The State Auditor’s Office finds that “The Department of Mental Health and Mental Retardation (MHMR) and the Department of Human Services (DHS) do not adequately establish and monitor their community service contracts to ensure that client services result in appropriate outcomes and that funds are properly managed.”^{xlvii}
- January 2002 The Austin Independent School District is convicted of tampering with a governmental record after school district officials are found to have altered data on standardized assessment tests.^{xlviii}
- September 2001 A report by the *Fort Worth Star-Telegram* reveals that over 200 teachers and other employees working in Tarrant County schools have criminal records “ranging from rape and drug use to hot checks and shoplifting.”^{xlix}
- January 2001 A report finds that, as result of a backlog at the State Board of Educator Certification, convicted felons have retained their certification as Texas teachers. Offences ranged from child molestation and rape to drug use and theft.^l

The summary of criminal cases and civil matters underscores that state employees and state agencies *are falling far short of basic moral and ethical standards, and that interest groups such as TSEU ought to spend as much time addressing civil service reform as it does attacking private contractors.*

The Path Forward

Those who oppose outsourcing and greater use of the private sector in the delivery of government services typically focus their arguments on the occasional failures of a private contractor, within a paradigm that suggests that the state is the default option to provide a “safe” standard of service to needy Texans. However, as the list of cases shows, that paradigm is manifestly false: the state frequently falls short of the basic standard of care and cannot be counted on as a safe default option.

The fundamental problem with the public sector is that the supposed prerogatives of the bureaucrat are placed above the clear needs of program beneficiaries and often to the detriment of the taxpayer. State workers may occasionally be fired, but ultimately the same systems and management structures remain in place. Adherence to the law and ethical practices must never be tethered to pay scales, otherwise good conduct is always up for sale.

In contrast, the private sector has an incentive to perform well because profit and reputation are at stake. When private contractor Accenture and the State mutually ended their contract for welfare eligibility determination in March 2007, the contractor was only paid for work that had been completed. No such fiscal accountability is possible where state workers are concerned. In contracting with private companies, the state can (and does) establish higher performance targets than it expects the contractor to meet.

After repeated episodes in which state workers have failed to do their job, the case for further outsourcing is stronger than ever. Paying state workers more money and expecting them to do a better job is a false promise to taxpayers and the people served by government programs. The accountability and performance targets of the private sector are needed to improve the delivery of government services and provide value for taxpayers.

There is ample evidence of a crisis in the public sector in Texas. This evidence plainly refutes the claims by opponents of the private sector that the public sector is a safe alternative that guarantees a basic quality of care and service to needy Texans. It is vital that the state address the crisis in the public sector by fundamentally reforming the delivery of human services; the measurable performance targets and fiscal accountability of the private sector must be used as a model. Only then will Texas develop a system that can meet the needs of those who rely on state assistance and deliver value for taxpayers.

The second report in this series is forthcoming and will focus on the successes of the private sector and how they can be used as a model for public sector reform in Texas.

ENDNOTES

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- ^{iv} Witness List for Senate Finance Committee Report (House Bill 2292), May 22, 2003.
- ^v Center for Public Policy Priorities, "What we do"; <http://www.cppp.org/about/whatwedo.php>
- ^{vi} Witness List for Senate Health and Human Services Committee (Senate Bill 6), February 3, 8, &10, 2005.
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- ^{viii} "TFT, Coalition Partners Urge State Reversal of Botched Eligibility/Enrollment Changes in Children's Health Insurance Program (CHIP)," May 26, 2006.
- ^{ix} "Updating and Outsourcing Enrollment Public Benefits," Center for Public Policy Priorities, November 13, 2006.
- ^x "Foster Care Privatization on Hold," *The Austin American Statesman*, November 4, 2006.
- ^{xi} Testimony prepared for the House Committee on Government Reform, Christy G. Black, National Center for Policy Analysis, July 26, 2006.
- ^{xii} Prepared Testimony for the Texas House Human Services Committee, Randy Willis, Texas Access Alliance, February 23, 2007.
- ^{xiii} Texas State Employee Union, Health and Human Services Caucus; http://www.cwa-tseu.org/public/caucuses/human_services/hhsc_wedidit.html
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- ^{xvi} "Statewide CRIPA Investigation of Texas State Schools and Centers," US Department of Justice, Civil Rights Division, December 1, 2008.
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- ^{xxiii} "Statewide CRIPA Investigation of Texas State Schools and Centers," US Department of Justice, Civil Rights Division, December 1, 2008.
- ^{xxiv} "Another HISD Employee Arrested for Drugs," KHOU, December 15, 2008.
- ^{xxv} "Dallas ISD faulted for using fake Social Security numbers," *Dallas Morning News*, November 14, 2008.
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- ^{xxviii} SOA report (No. 08-047) on Human Resources Management at Health and Human Services Agencies; August 2008.
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- ^{xxx} "Texas School for the Deaf Employee Arrested," KVUE.com, May 13, 2008.
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- ^{xxxix} "Strayhorn: More dying in foster care," *Dallas Morning News*, June 24, 2006.
- ^{xl} SAO report (No. 04-042) on *The Health and Human Services Commission's Administration of the CHIP Exclusive Provider Organization Contract*, July 2004.
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