



**DALLAS COUNTY**

**BILL HILL  
DISTRICT ATTORNEY  
CIVIL DIVISION**

RECEIVED  
OCT 04 2005  
OPINION COMMITTEE

RECEIVED  
OCT 03 2005  
OPEN RECORDS DIVISION

FILE # ML-44439-05  
I.D. # 44439

September 28, 2005

CMRRR# 7001 2510 0003 7112 6136

Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

RQ-0400-GA

Re: Request for an opinion regarding the interpretation of H.B. 1575

Dear General Abbott:

During the 79<sup>th</sup> Regular Legislative Session, H.B. 1575 amended Section 25.0951 of the Texas Education Code, which authorizes school districts to file truancy cases against students with unexcused absences. The purpose of this letter is to seek an opinion regarding the interpretation of the new language in the statute. There is a difference of opinion between the Dallas Independent School District ("DISD") and the County as to the interpretation of the new language.

Basically, there are three questions that we are asking:

1. Under § 25.0951(a) of the Texas Education Code, as amended by H.B. 1575, does the 7 day filing deadline begin after the 10<sup>th</sup> unexcused absence in a 6 month period?
2. Is a dismissal under § 25.0951(d) of the Texas Education Code, as amended by H.B. 1575 with or without prejudice and if it is dismissed without prejudice, can the school district immediately re-file the case and simply add additional absences to its petition?
3. May a school district file a case on a student under § 25.0951(b) of the Texas Education Code even if the student has accumulated 10 or more unexcused absences by the time the school district is ready to file the case or is it mandatory that the school district file under § 25.0951(a)?

## I. BACKGROUND

### A. Overview of the Truancy Court System in Dallas County

Historically, Dallas County managed truancy cases through the Justice of the Peace (“JP”) court structure. There were 14 JP courts in Dallas County at that time, and each of the 15 school districts could file truancy cases in any one of them. The JP courts were responsible for many different kinds of cases, so the priority given to truancy cases tended to vary from court to court. The judges didn’t put much stock in the efficacy of the process given that truancy cases were not taken seriously by other components of the juvenile justice system. Schools were equally disenchanted with the way in which truancy cases were handled by the local system. Due to the ineffectiveness of the system at large, all parties concerned with truancy took a “why bother” approach to the issue.

Changing the culture of the local truancy community necessitated implementing several major alterations in ideology and process. The first change involved developing a way in which the new “contempt” cases could be processed without overtaxing an already overloaded juvenile justice system, while simultaneously assigning appropriate sanctions to a new category of juvenile offender. This goal was partially achieved by creating the Dallas Challenge Contempt Enforcement Center. The Contempt Center was designed by a local non-profit agency (Dallas Challenge, Inc.), initially funded by the Criminal Justice Division of the Governor’s Office, and sanctioned by the Dallas County Commissioners Court and the Dallas County Juvenile Board. It was brought on line in September of 1996 as a deferred prosecution program tasked with receiving contempt referrals from the JP system, stabilizing truant youth in an educational setting, and preventing their progression in the juvenile justice system. A critical agreement was reached with all concerned that gave increased credibility to the program: failures at the Contempt Center would be sent to the Dallas County Detention Center, and the District Attorney would file the contempt cases in district court. This was a major step forward and lent credence to the idea that Dallas County was serious about truancy. It insured that truancy cases would not fall through any “cracks” in the system.

Another important change centered on the process by which the system would maintain legal integrity. The 14 JP courts and 15 independent school districts would have to follow a prescribed plan of action if the new process were to be legal and functional. The District Attorney and a County Commissioner designed all the legal forms, outlined a process, and met repeatedly with judges and school officials to hammer out the final program protocols. School districts agreed to use a common set of documents to file cases, JP courts agreed to use standardized adjudication orders and contempt orders, and the juvenile department agreed to accept contempt referrals after all options had been exhausted. It took approximately one year for this process to culminate in an agreement, but an agreement was reached and the new system was put into action in September of 1996. Structurally, vertical integration had been achieved.

The system worked as designed for the first five years of operation. Then, in 2001, frustration with one component of the process led to another major change. School districts, particularly the DISD, had become increasingly disenchanted with the length of time it took to get a case on the docket and heard by the JP courts. A typical case took 75 days from the time the school filed it to actually being heard by a judge. The JPs on the other hand felt that they were overloaded with cases from areas other than truancy and did not have the time and staff to fully accommodate school district demands for timely hearings. It was a frustrating situation for both sides, but a partial solution was reached through the design and implementation of specialized Truancy Courts.

Two Specialized Truancy Courts became operational in the fall of 2002. A third one was brought on line in the fall of 2003. These specialized courts hear nothing but truancy cases. They have no other responsibilities. Currently the DISD is the only school system that has access to the specialized courts. Cases which once took 75 days to hear are now placed on the docket 14-21 days of the initial filing. The goal in the future is to have truancy cases from all 15 school districts heard by specialized courts with a centralized filing component.

### **B. The Truancy Process in Dallas County**

The truancy intervention process begins in the local schools. Most districts use some form of diversion when it is first noticed that a student is accruing unexcused absences. The Dallas Independent School District (DISD), the largest in the county, requires the parent(s) and child to attend a mandatory meeting once the student has three unexcused absences. The intent of the class is to clarify the laws governing truancy, the consequences for continuing to be truant, and suggestions to the family for improving attendance. The DISD might also use other programs such as boot camps, counseling, or educational programs to get the youth back on track. All efforts are ultimately geared toward improving attendance and avoiding the need to use the court system as leverage. It is the first stage in a process that is designed to filter out the less serious cases so that only those students requiring more intensive sanctions end up in court.

Once the school district exhausts all diversion options, youth that continue missing school are filed on in one of the specialized truancy courts or, in the case of suburban districts, a JP court. The case is then put on the docket and a hearing is conducted to determine guilt or innocence. This procedure is the same regardless of the court in which it is heard. If the student is guilty of truancy, the case is held in abeyance pending compliance with the order to attend school with no unexcused absences. A review process is used in which a student returns to court within four to six weeks to determine whether or not he has adhered to the conditions outlined in the court order. A presiding judge has discretion over subsequent actions. The judge might file contempt at the first review if the child has violated any of the court order, or the child might be given a second chance if it appears that he is trying to get back on track. It is a decision contingent upon the circumstances surrounding the case. If, however, non-compliance continues to be an issue, the judge will file contempt and remand the student to the custody of the Dallas Challenge Truancy Enforcement Center ("TEC").

Once the presiding Judge decides to issue the contempt allegation, the offender is immediately taken into custody and transported to the TEC by a uniformed officer of the court. The youth's parent or legal guardian is ordered to appear at the TEC within 90 minutes of the time the youth is transported. The TEC is not a 24-hour facility and is only authorized to hold the youth in custody a maximum of 6 hours before they must appear before a Magistrate. This "custody" step is designed to get their attention and reinforce the idea that the consequences for chronic truancy are real and inevitable.

Youth are booked into the TEC by a uniformed court bailiff. A background check is then conducted to find out if the youth is already active in the juvenile justice system for other, more serious offenses. If they are in the system on previous charges, the youth is transported to the juvenile detention center for further action. The next step is to use a screening instrument (MAYSI) with each eligible youth to determine if there are issues requiring immediate attention. The main thrust is to assess whether or not the youth appears suicidal or homicidal. If either risk is present, the youth is referred to a psychiatric facility or a detention center.

When the parents arrive at the TEC, they and the remaining youth are escorted into an on-site courtroom where a Magistrate explains the program and finds out if the parents and youth are willing to cooperate with a deferred prosecution program. The parents have the option of working with the TEC for 3 to 6 months, or having the case filed with the District Attorney and being heard by a juvenile District Judge. Nearly all (99%) of the parents agree to the deferred prosecution option, at which time they are assigned a date and time to return for a complete assessment by an assigned TEC case manager.

The assessment process and related recommendations and actions are at the heart of what the TEC is about. Research supports the idea that serious companion issues generally accompany chronic truancy, and it is almost axiomatic that a youth will not be stabilized in an educational setting until these issues are addressed. A thorough assessment of youth and parents is an important component in determining the actions necessary to a successful plan of action.

A case plan is developed from the assessment process. The case plan serves as a means of assigning appropriate intervention programs and monitoring participation and progress in the programs. The TEC uses over 50 community-based organizations to assist in getting youth back in school and on the right track. The most common problems requiring interventions are: drug use, physical abuse, sexual abuse, mental health issues, pregnancy/parenting, and anger management. Moreover, most of the youth are behind academically and require tutoring and special attention.

Once the case plan is developed and agreed to by the participants, they appear before a Magistrate who explains their legal situation, reviews the conditions of participation, and makes sure they understand the necessity of attending assigned programs. The Magistrate also allows parents and students to ask questions about the case, the process, and the court's expectations. Participants are then assigned a report back date and time.

Attentive and thorough case management is also a critical component of a successful deferred prosecution program. The assigned TEC case manager is responsible for monitoring the case and taking action when necessary. School attendance and program participation is monitored bi-weekly. The case manager intervenes when it appears that a youth is deviating from the plan. Preparing progress reports to the court is a key role performed by the case manager. The case manager documents all aspects of the case, ensures that each youth appears before an on-site Magistrate once per month, and makes a final recommendation on case disposition.

If a case is closed successfully, no further action will be taken against the parent or child on the specific charge that got them to the TEC. Unsuccessful cases are forwarded to the District Attorney for filing in the District Courts. The District Attorney reviews these cases and ultimately makes to decision of whether or nor the case merits prosecution. Cases that are prosecuted are usually placed on formal probation for 3 to 6 months and are supervised and monitored by an officer of the court (probation officer).

### **C. The Truancy Problem**

The number of cases filed by the DISD in the Dallas County Truancy Courts is as follows:

2002-2003 school year = 21,000  
2003-2004 school year = 19,000  
2004-2005 school year – 17,000 (school district instituted a pre-court diversion program which resulted in fewer filings)

Repeat Offender filings in Dallas County typically run about 35%. Repeat offender is defined as a child who was placed under a court order during the previous school year, and has returned the following year with a truancy filing.

Empirical evidence strongly suggests that educational level is directly correlated with drug use, delinquency, serious crimes, and future incarceration. Chronic truancy, left unattended, will continue to produce persons with below average educational skills and will perpetuate a system in which limited education equates to fewer opportunities for legitimate advancement. It is with these factors in mind that the truancy system in Dallas County was re-invented.

## **ARGUMENT**

### **A. Filing Deadline**

Beginning September 1, 2005, section 25.0951 of the Education Code, shall read:

(a) If a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a school district shall **within seven school days of the student 's last absence:**

(1) file a complaint against the student or the student's parent or both in a county, justice, or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or

(2) refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code.

(b) If a student fails to attend school without excuse on three or more days or parts of days within a four-week period but does not fail to attend school for the time described by Subsection (a), the school district may:

(1) file a complaint against the student or the student's parent or both in a county, justice, or municipal court for an offense under Section 25.093 or 25.094, as appropriate, or refer the student to a juvenile court in a county with a population of less than 100,000 for conduct that violates Section 25.094; or

(2) refer the student to a juvenile court for conduct indicating a need for supervision under Section 51.03(b)(2), Family Code.

(c) In this section, "parent" includes a person standing in parental relation.

**(d) A court shall dismiss a complaint or referral made by a school district under this section that is not made in compliance with this section.** [The amended portions of the statute are shown in bold print.]

When interpreting a statutory provision, a court must ascertain and effectuate the legislative intent. *See McIntyre v. Ramirez*, 109 S.W.3d 741, 745 (Tex. 2003); *See In re Canales*, 52 S.W.3d 698, 702 (Tex. 2001); *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378, 383 (Tex. 2000) ("The primary rule in statutory interpretation is that a court must give effect to legislative intent."); *Ex parte Roloff*, 510 S.W.2d 913 (Tex. 1974) ("It is the duty of the court to ascertain the legislative intent."); *Magnolia Petroleum Co. v. Walker*, 83 S.W.2d 929, 934 (Tex. 1935) ("The dominant rule to be observed is to give effect to the intention of the Legislature."); *Mills County v. Lampasas County*, 40 S.W. 403, 404 (Tex. 1897) ("Strictly speaking, there is but one rule of construction, and that is that the legislative intent must govern. All other canons of interpretation, so called, are but grounds of argument resorted to for the purpose of ascertaining the true meaning of the law.").

To discern the Legislature's intent, one must begin with a statute's plain language, because the words the Legislature chooses are the surest guide to its intent. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999). When a statute is plain and unambiguous on its face, it should generally be construed as

written. *Id.* However, if a statute is ambiguous, one is justified in looking to its legislative intent. *Huntsville Independent School District v. McAdams*, 221 S.W.2d 546 (Tex. 1949). If the plain language leads to absurd results that the Legislature could not possibly have intended, or if the language is ambiguous one must consider extra-textual factors to determine the statute's meaning. *Boykin v. State*, 818 S.W.2d 782, 785-86 (Tex. Crim. App. 1991).

The County believes that H.B. 1575 by amending the language of § 25.0951 made the statute ambiguous. It is ambiguous because it provides a mechanism for a court to dismiss a case for a school district's failure to file by a deadline, yet the statute is unclear about how to compute the deadline. The County believes that the correct interpretation of H.B. 1575 requires a school district to file a case within 7 days after the occurrence of a 10<sup>th</sup> unexcused absence within 6 months. If DISD does not file the case within 7 days after the 10<sup>th</sup> unexcused absence, then the case shall be dismissed.

Looking at the legislative history, the goal of the new legislation is to require the school districts, such as the DISD, to file before the occurrence of too many unexcused absences. It should be noted that the average number of unexcused absences by the time a case is filed by DISD with the Dallas County Truancy Court is 43 days. Although 43 days is average, it is not unusual for the DISD to file cases after 40-70 unexcused absences. In fact, one truancy court reported a case being filed after 112 unexcused absences had accumulated.

The County has spoken with Ryan Turner of the Municipal Courts Association, who helped author H.B. 1575, and Representative Dutton's staff regarding the interpretation of the bill. They indicated that the intent of the new language is to encourage school districts to timely file their cases before too many absences accrue. It is important that the students who skip school get into the system as soon as possible. Delay can lead to further truancy, crime, delinquency, and drug and alcohol use. Those students who chronically skip school often fall behind and often drop out of school. This can lead to students not having the educational background necessary to compete in the job market.

The House Research Organization's bill analysis ("Exhibit A") reflects this view and states:

CSHB 1575 would give school districts a deadline for filing truancy complaints to ensure that courts were **notified about a truant in a timely manner**. Sometimes a school district may wait so long to file one of these complaints that appropriate action cannot be taken before a school year ends, by which time the child would have no hope of making up a semester's worth of work. Filing these complaints within two days [this was subsequently changed to seven days] should not be burdensome on school districts, and **the issue of truancy is sufficiently important to warrant this requirement** [Emphasis added].

The Senate Research Center's bill analysis ("Exhibit B") under "author's/sponsor's statement of intent" states that the bill provides for "court dismissal of complaints and referrals regarding truant behavior **when school districts fail to timely file them.**"

DISD contends that the bill does not require them to file the case within 7 days after the 10<sup>th</sup> absence. DISD reads the new language of § 25.0951(a) as meaning that they can file a case 7 days after the 10<sup>th</sup> or even the 50<sup>th</sup> unexcused absence because it states that a case can be filed if "a student fails to attend school without excuse on 10 or more days [emphasis added]." The County believes that the "or more" language is surplusage and merely means that after the 10<sup>th</sup> unexcused absence, more absences may accrue after the school district files a case within 7 days of the 10<sup>th</sup> unexcused absence. Because, as indicated from the legislative intent, H.B. 1575 requires a school district to file promptly rather than allowing a large number of days to accumulate, the logical point to begin the count of the 7 days would be from the 10<sup>th</sup> unexcused absence. Otherwise, there would be no measures to prevent a school district from taking the position that even the accumulation of even 50 unexcused absences would still allow the filing to be timely if the filing occurred within 7 days of the 50<sup>th</sup> unexcused absence.

Moreover, if the bill were to be read as meaning that a school district could file after the 10<sup>th</sup> unexcused absence accrued, the new language in § 25.0951(d), requiring truancy judges to dismiss a case when a school district fails to timely file, would be meaningless. This is because in effect there would not be a filing deadline (per DISD's interpretation) and therefore a court's duty to dismiss would never be triggered. This would be an absurd and unintended result. If H.B. 1575 was read DISD's way, the bill would be totally ineffectual to speed the filing time of the school district, therefore defeating the bill's legislative intent.

#### **B. Dismissal With or Without Prejudice**

H.B. 1575 amends § 25.0951 of the Texas Education Code by adding subsection d, which reads: "A court shall dismiss a complaint or referral made by a school district under this section that is not made in compliance with this section." The question has arisen whether the dismissal under this subsection is with or without prejudice. Additionally, if the dismissal is without prejudice, can the school district immediately re-file the case and simply add additional absences to its petition? If so, does this action run contrary to the intent or spirit of the changes to the statute in question (specifically the statute of limitations stated in § 25.0951(a))?

A dismissal is not an adjudication on the merits of a case. *Attorney Gen. v. Abbs*, 812 S.W.2d 605, 608 (Tex. App.—Dallas 1991, no writ). In most cases, a trial court can only dismiss a case without prejudice. *See Melton v. Ryander*, 727 S.W.2d 299, 303 (Tex. App.—Dallas 1987, writ ref'd n.r.e.). If an order does not state the case is dismissed with prejudice, it is presumed the dismissal is without prejudice. *Greenwood v. Tillamook Country Smoker, Inc.*, 857 S.W.2d 654 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1993, no writ). A plaintiff may refile a lawsuit if their case is dismissed without prejudice so long as the statute of limitations has not run.



In some cases, a trial court may dismiss all or part of a plaintiff's suit with prejudice. A dismissal with prejudice operates as a final determination on the merits of the case. *Mossler v. Shields*, 818 S.W.2d 752, 754 (Tex. 1991). If a plaintiff attempts to refile the lawsuit without appealing the order, the suit will be barred by res judicata. See *Hammonds v. Holmes*, 559 S.W.2d 345, 346-47 (Tex. 1977). A plaintiff can appeal the dismissal but cannot refile a lawsuit. See *Mossler*, 818 S.W.2d at 754.

The County contends that since the Legislature did not include the words "with prejudice," a case dismissed under this statute should be without prejudice. A dismissal under this subsection based on a school district not timely filing a case should not operate as a final determination on the merits of the case.

**C. Cases Filed under § 25.0951(b) of the Texas Education Code**

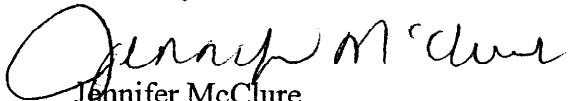
There is also a question as to whether a school district may file a case on a student under § 25.0951(b) of the Texas Education Code if the student has accumulated 10 or more unexcused absences by the time the school district is ready to file the case or whether it is mandatory that the school district file under § 25.0951(a).

**FINAL COMMENTS**

Dallas County appreciates your review of this brief and interpretation of H.B. 1575. We look forward to hearing your response.

Thank you for your assistance. If you have any questions, I can be reached at 214-653-6323.

Sincerely,



Jennifer McClure  
Dallas County Assistant District Attorney  
Civil Division

cc: Commissioner Mike Cantrell