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OPINION COMMITTEE The State of Texas
House of Representatives

April 19, 2007

The Honorable Greg Abbott
Office of the Attorney General
Opinions Committee
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FILE # ML-45203
I.D. # 45203

RQ-0584-GA

Dear General Abbott:

I am writing to request an opinion clarifying the application of §25.0951 of the Texas Education Code, which governs a school district's filing of a complaint with a court for a student's failure to attend school, in light of Office of Attorney General Opinion No. GA-0417. Section 25.0951 requires school districts to file truancy complaints within seven school days of the most recent unexcused absence listed in the complaint, when the complaint is based upon ten or more unexcused absences that have occurred within a six-month period. The complaint should list at least ten such absences. In contrast, no time limit exists for truancy complaints based upon three or more unexcused absences within a four-week period. However, once a student has missed ten or more days within a six-month period, the seven-day filing rule applies. My specific questions are:

1. Does a school district's failure to file a truancy complaint or referral under §25.095(a) of the Texas Education Code within the seven day period after the tenth unexcused absence affect in any way its ability to file a complaint or referral against the same student based on a subsequent absence, assuming that the most recent ten absences are within a six-month period?
2. Other than the dismissal of an untimely complaint, does the Education Code impose any other consequences upon a school district for failing to file a complaint or referral within seven days of a student's tenth (or more) unexcused absence? Section 25.094 of the Texas Education Code establishes that it is a criminal offense for a student to fail to attend school without excuse on ten or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period. Texas Education Code §25.094(a) Section 25.0951 establishes the requirements for school districts filing a complaint with a court when a student violates Section 25.094.

Section 25.0951 states that "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" file a complaint against the student or the student's parent or both in a county, justice or municipal court or refer the student to juvenile court. *Id.* §25.0951(a).

You interpreted this provision in a March 27, 2006 opinion letter, in which you stated that "a school district's failure to file a complaint or referral within seven [school] days of the tenth unexcused absence inevitably leads to the complaint's or referral's failure." OAG Opinion No. GA-0417 page 5. You rejected the argument that the



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seven day limit did not begin until the school district makes the determination that the absences were unexcused. *See id.* You also indicated that, despite the fact that the language of the statute refers to ten "or more" and bases the time limit on the "last absence," the school district has an "obligation" to file the complain or referral within seven school days of the tenth absence, even if further absences occur afterwards. *See id.*

Section 25.0951(d) requires a court to dismiss a complaint or referral made by a school district that fails to comply with that section. You interpreted this provision as requiring a dismissal with prejudice. Thus, "if a complaint or referral is dismissed for the school district's failure to timely file, any subsequent re-filing of the complaint based upon the same ten unexcused absences also must be dismissed for untimeliness." OAG Opinion No. GA-0417 page 6 .

However, you then stated that "if the student has failed to attend school without excuse since the original complaint was filed...the statute can be read to require the school district to file a new complaint or referral within seven school days of the latest absence that lists the latest absence as well as some or all of the absences listed in the original complaint." *Id.* This statement seems to assume that a complaint was filed after the tenth absence and dismissed for untimeliness, and I am requesting a clarification of your opinion with regard to situations where the school district does not file a complaint at all until after a subsequent absence (e.g. the eleventh, twelfth, or even twentieth absence).

Under the plain language of the statute a complaint should not be dismissed as long as: 1) it lists at least ten unexcused absences that occurred within a six-month period, and 2) it was filed within seven school days of the most recent absence listed. This is the case whether the most recent absence is the tenth, twentieth, or thirtieth that the student has had, and whether or not any complaints or referrals have been filed for previous absences. Thus, even if a school district fails to meet the deadline for filing a complaint against a student, it has another seven-day window to file if that student has another unexcused absence, as long as at least nine of the previous absences were within six months of the most recent one. In addition, despite the fact that a school district appears to be affirmatively required by §25.091(a) to file a complaint or referral within seven school days after a student's tenth unexcused absence (and, indeed, after subsequent absences as well), the statute indicates that the only legal consequence for failure to meet this obligation is that a complaint or referral based on those particular ten absences will be dismissed as untimely.

This interpretation of the statute is necessary to avoid the absurd result of truant students becoming "prosecution-proof" for their future absences in the event that a school district fails to file a timely complaint after the tenth absence. It allows school districts greater flexibility in managing their truancy caseloads, which can often become burdensome. Some districts unfortunately have serious truancy problems and lack the resources to be able to always file a complaint within seven days after every single instance of a tenth absence. The above interpretation ensures that they will not have to waste their already limited resources by knowingly filing untimely complaints in order to preserve the right to prosecute students' future truancy. Some prosecutors have refused to go forward with truancy complaints filed within seven days after a student's eleventh or twelfth absence simply because the school district had not filed a complaint after the student's tenth absence. Your clarification of this issue is necessary to resolve these misunderstandings.

If I may provide additional information or you have any questions, please do not hesitate to call me. Thank you for your assistance.

Best Regards,


Charlie Howard