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NOV 23 2010
OPINION COMMITTEE



FILE # ML-46629-10

I.D. # 46629

RR-0933-GA

TEXAS YOUTH COMMISSION

CHERYLN K. TOWNSEND
Executive Director

November 22, 2010

The Honorable Greg Abbott
Attorney General of Texas
Opinion Committee
209 West 14th Street, 6th Floor
Austin, Texas 78701

Via Certified Mail 70081300 0001 2201 7165
Copy Via Hand Delivery

Dear General Abbott:

This letter is sent to request a written opinion on the interpretation of Article 15.27 of the Code of Criminal Procedure, which governs notice to schools regarding arrests and adjudications of students attending those schools. In particular, I am requesting an opinion regarding what must be included in such notices when a student on Texas Youth Commission (TYC) parole transfers to a new school.

1. Jurisdiction

As head of a department of state government, this request is authorized by Government Code §402.042(b)(2). This question affects the public interest and concerns my official duties. Government Code §402.042(a).

2. Background

Youth X has been on TYC parole since August 2010. His parole is currently supervised by TYC's Austin District Office. Youth X enrolled at a high school in the Austin Independent School District (AISD) on August 23, 2010. He had not been previously enrolled in the school.

Article 15.27 of the Code of Criminal Procedure provides that TYC is to provide oral notice within 24 hours and written notice within 7 days to the school when one of its parolees transfers to a new school. The notice must contain a "statement of the offense...on which the adjudication...is grounded and a statement of whether the student is required to register as a sex offender under Chapter 62." "Statement of offense" is not defined.

To implement Art. 15.27, TYC established 37 TAC §81.36(c), which reads:

c. Notification Requirements.

1. For youth in a non-secure placement or on TYC parole, TYC staff shall provide the following information, in oral and written form, to school officials:
 - A. the offense(s), including dates of action, resulting in commitment to and classification within TYC;
 - B. whether or not the youth is a registered sex offender;
 - C. any court adjudication/conviction subsequent to commitment to TYC, including the date of the action and the offense/allegation; and
 - D. any arrest/detention/referral to court that is still pending final disposition.
2. TYC staff must provide oral notice no later than 24 hours after enrollment and written notice no later than seven (7) calendar days after enrollment to the school officials of the information listed in paragraph (1) of this subsection.
3. TYC staff shall notify school officials of any new arrest, referral to court, parole revocation, detention or adjudication/conviction of a youth already enrolled in school. Oral notification shall be provided within 24 hours of TYC staff first becoming aware of the event. Written notification shall be provided within seven (7) days of TYC staff first becoming aware of the event.

Although TYC did not provide the notice within the time limits of Art. 15.27 and §81.36, oral and written notice was given to AISD on October 21, 2010. The notice stated that the student was committed as a result of a violation of probation and was on probation for having a weapon in a prohibited place. In response, the principal of the high school specifically asked for "information regarding any charges and/convictions [sic] pertaining to [Student X]" and for "the type of weapon and what type of facility was [Student X] found in possession." The principal insists that this information is needed to maintain a safe campus. This request was initially treated as a request under the Public Information Act (PIA). See Open Records Division file ID# 406233. AISD attorneys later explicitly stated that AISD was not requesting this information under the Public Information Act, so TYC withdrew a request for an opinion under the PIA. TYC has not provided the additional information on the grounds that it is beyond what is permitted under Art. 15.27.

AISD's sole complaint at this time is the content of the notice provided by TYC. AISD has since sent TYC a letter (redacted copy attached as Exhibit A), in which it demands "immediate compliance by the Texas Youth Commission with the District's request for information regarding [Student X] as required by Article 15.27 of the Code of Criminal Procedure." The letter also states that "[d]emand is hereby made for immediate and full production of all information regarding [Student X] that will enable AISD to take precautions against violence, protect students and personnel, and further its educational purposes."

For the twelve years §81.36 has been in place, TYC has provided notice under (c)(1) by providing only the name of the crime for which a TYC parolee was adjudicated. In most instances, schools are satisfied with that information. Very few schools have requested more information; however TYC has not provided additional information. Until now, no school had ever claimed the legal right to more information from TYC. Furthermore, there are currently other students in AISD for whom notice of the name of the crime has been given, with no follow-up request for more information.

Because of the current dispute over the required content of the notice, and the prospect of future disputes, TYC requests that the Attorney General advise what must be included in notices to schools under Art. 15.27 in such cases.

3. Argument

Code of Criminal Procedure Art. 15.27 governs the provision of information to schools regarding students with criminal histories. Subsection (h) lists the crimes which must be reported (felonies and some misdemeanors). There are two types of notice, arrest notice (governed by subsections (a) and (e-1)) and adjudication or deferred prosecution notice (governed by subsections (b) and (e-2)). Arrest notice informs a school that a student has been arrested, while adjudication notice informs a school that a student has been adjudicated.

Subsection (c) provides that parole and probation departments, specifically including TYC, must provide notice whenever a probationer or parolee "transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, referral to a juvenile court, conviction, or adjudication occurred." Notice of an "arrest or referral [shall be] in a manner similar to that provided for by Subsection (a) or (e)(1)" and notice of a "conviction or delinquent adjudication [shall be] in a manner similar to that provided for by Subsection (b) or (e)(2)". Subsections (a) and (e)(1), and (b) and (e)(2), respectively, are identical regarding the content of notice, so for convenience this letter will only speak of subsections (a) (arrest notice) and (b) (adjudication notice).

Subsection (a) specifies that arrest notice must "contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code". Subsection (b) requires that adjudication notice "must contain a statement of the offense...on which the adjudication...is grounded and whether the student is required to register as a sex offender under Chapter 62". Thus, adjudication notice requires far less detail than arrest notice. The apparent purpose of the greater detail for arrest notice is so that schools can determine whether the offense reported mandates removal of the student from school. Texas Juvenile Law, 7th Edition, at 550. See also Education Code §37.006 (required removal of students who engage in conduct constituting a felony).

Student X is not required to register as a sex offender, has no adjudications or convictions subsequent to placement in TYC and has not been arrested, referred, or had his parole

revoked while attending school. Therefore, the only notice TYC must provide to the school is the "statement of offense" upon which the youth's commitment was based.

AISD argues that Attorney General opinion DM-294 (1994), which interpreted the original version of Art. 15.27, settles the dispute. According to DM-294, before Art. 15.27 was enacted in 1993, law enforcement often declined to tell schools anything at all regarding crimes committed by students, due to confidentiality concerns. The original version of Art. 15.27 stated that law enforcement had to notify the school "of that arrest or detention". According to DM-294, some law enforcement authorities interpreted that to mean only that they had to tell the school that a student had been arrested or detained, without any further details. The Attorney General ruled instead that the notice should include "the nature of the charges against an arrested or detained student, the identities of any alleged victims who are students or school personnel, and all other information about an arrest or detention of a student that will enable the school official to take appropriate action to prevent violence, protect students and school personnel, and further education purposes."

TYC believes that DM-294 does not apply to the adjudication notice TYC is required to give under Art. 15.27(b) and 37 TAC §81.36(c)(1). First, DM-294 provided interpretation on arrest notice, not adjudication notice. "We believe...the statute should be interpreted as authorizing notification of all the circumstances surrounding an arrest or detention that would be relevant to the considerations of necessary precautions to protect students and employees and prevent disruption of school activities." DM-294 at 4. "The old law hindered efforts to deter school crime because it prevented law enforcement authorities from reporting to a school that there was probable cause to believe that one or more students had committed a serious crime and therefore might pose a threat to the school environment." DM-294 at 3. The opinion quoted legislative history discussing gang members having fights one day, and being in school the next day. *Id.* Finally, DM-294 only construes subsection (a) and (e)(1), and does not mention subsections (b) and (e)(2).

The Attorney General's 2009 Juvenile Justice Handbook states that DM-294 applies to "the circumstances surrounding the arrest or detention of a juvenile", *id.* at 11, not to an adjudication. Additionally, the Attorney General's 2010 School Crime and Discipline Handbook also cites DM-294 as applying to "arrest or detention", not adjudication. *Id.* at 61. It is therefore reasonably interpreted that DM-294 does not apply to adjudication notice.

Furthermore, in 1997, the Legislature changed the law upon which DM-294 relied. As noted, Art. 15.27(a) now provides that arrest notice must "contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code". This is far less than what DM-294 stated was required under the old law.

DM-294 also relies on a provision in Art. 15.27(g) that was removed from the statute in 1997, which formerly stated:

On receipt of a notice under this article, a school official may take the precautions necessary to prevent further violence in the school, on school property, or at school-sponsored or school-related activities on or off school property, but may not penalize a student solely because a notification is received about the student.

Without this provision, DM-294's reasoning is consequently weaker.

In summary, TYC disagrees that DM-294 requires TYC to give AISD the additional information requested under Art. 15.27(b).

4. Request for opinion

TYC requests an opinion on:

- a. What constitutes a "statement of offense?"
- b. Is stating the name of the crime alone sufficient as a "statement of offense"?
- c. Whether requests for additional information are beyond the scope of Art. 15.27(b), and
- d. Whether DM-294 is applicable to the adjudication notice?

Thank you in advance for your consideration of this request for an opinion.

Sincerely,



Cheryl K. "Cherie" Townsend
Executive Director

- c: Toysha Martin, General Counsel, TYC
Melvin A. Waxler, General Counsel, AISD
Sara Hardner Leon, Powell & Leon, LLP
William Bednar, Powell & Leon, LLP

Exhibit A

POWELL & LEON^{LLP}

Blake G. Powell
Sara Hardner Leon
Andrew D. Clark
Jennifer M. Engdale
William C. Bednar *of Counsel*

November 17, 2010

Via CMRRR No. 7007 3020 0000 2298 3128
And e-mail cherlyn.townsend@tyc.state.tx.us
Cheryl K. Townsend, Executive Director
Texas Youth Commission
4900 N. Lamar Blvd.
P.O. Box 4260
Austin, TX 78765

Re: Demand for Article 15.27 Information
[REDACTED]

This firm represents the Austin Independent School District (AISD). This letter is to seek immediate compliance by the Texas Youth Commission with the District's request for information regarding [REDACTED] as required by Article 15.27 of the Texas Code of Criminal Procedure.

Article 15.27 requires the Texas Youth Commission, within 24 hours after learning of a paroled student's reenrollment in a new school, to notify the superintendent or designee of sufficient details of the student's conviction and the acts committed to enable school officials to take precautions against violence, protect students and personnel, and further educational purposes. See, Tex. Atty. Gen. Op. DM-294 (June 2, 1994).

[REDACTED] enrolled at Anderson High School on August 23, 2010. AISD never received the notice mandated by Article 15.27. On September 23, 2010, the school discovered from his records that TYC was his previous school, ascertained that he was on parole, and orally requested his parole supervisor, Ms. Virginia Martinez, to provide the Article 15.27 information. In response to a follow-up written request on October 21, Ms. Martinez stated only that he was on parole for a felony weapons adjudication in "places prohibited" and was on probation from another county. She stated that she was prohibited from disclosing any further information. Further attempts to achieve voluntary compliance with Article 15.27 have been fruitless.

In communicating with Mr. Eldred about this student, it has come to the District's attention that there may be additional students currently enrolled in the Austin Independent School District for whom the Commission has similarly failed to make the required disclosure.

Demand is hereby made for immediate and full production of all information regarding [REDACTED] that will enable the AISD to take precautions against violence, protect students and personnel, and further its educational purposes. If the District does not receive this information within 72 hours after your receipt of this letter, legal action to enforce the Commission's obligations under Article 15.27 may be taken, including an application for declaratory judgment, writ of mandamus, and the imposition of attorneys' fees and costs as provided by law. Further, for any other students enrolled in AISD for whom a disclosure is required under Article 15.27, the District requests that such information be provided expeditiously. Please give this matter your immediate attention and provide the information requested at your earliest opportunity.

Very truly yours



William C. Bednar
For the firm

Cc:

Melvin A. Waxler
General Counsel
Austin Independent School District

MWaxler@austinisd.org

Toysha Martin
General Counsel
Texas Youth Commission

toysha.martin@tyc.state.tx.us

Charles K. Eldred
Assistant General Counsel
Texas Youth Commission

charles.eldred@tyc.state.tx.us