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OPINION COMMITTEE

JERI YENNE

CRIMINAL DISTRICT ATTORNEY
BRAZORIA COUNTY

November 21, 2011

FILE # ML-46888-11

I.D. # 46888

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

Via Certified Mail, Return Receipt Requested

RQ-1022-GA

Dear General Abbott:

Pursuant to Texas Government Code section 402.043, the Brazoria County District Attorney's Office respectfully submits this request for the Attorney General's opinion concerning the prosecution of adult students for failure to attend school pursuant to Texas Education Code sections 25.085 and 25.094.

FACTS

The Legislature recently amended Texas Education Code section 25.094 to limit the range of students' ages that commit an offense for failure to attend school to "12 years of age or older and younger than 18 years of age." TEX. EDUC. CODE § 25.094(a). However, Texas Education Code section 25.085 provides that if a school district has adopted a policy requiring adult students who voluntarily attend school to comply with the district's attendance policy, Section 25.094 applies to that student. *Id.* § 25.085(f).

With the recent amendment to Section 25.094, Brazoria County Justices of the Peace and school administrators are questioning whether adult students commit an offense under the Education Code for failure to attend school.

QUESTION PRESENTED

Whether students 18 years of age or older and younger than 21 years of age commit an offense under Texas Education Code section 25.094 if the students are registered in a district that has a policy under section 25.085 requiring the student to attend school?

ARGUMENT & AUTHORITIES

Texas Family Code subsection 25.094(a), which the Legislature recently amended, provides the following:

- (a) *An individual commits an offense if the individual:*
 - (1) *is 12 years of age or older and younger than 18 years of age;*
 - (2) *is required to attend school under Section 25.085; and*
 - (3) *fails to attend school on 10 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.*

However, subsections (e) and (f) of Texas Family Code section 25.085 state the following:

- (e) *A person who voluntarily enrolls in school or voluntarily attends school after the person's 18th birthday shall attend school each school day for the entire period the program of instruction is offered. A school district may revoke for the remainder of the school year the enrollment of a person who has more than five absences in a semester that are not excused under Section 25.087. A person whose enrollment is revoked under this subsection may be considered an unauthorized person on school district grounds for purposes of Section 37.107.*
- (f) *The board of trustees of a school district may adopt a policy requiring a person described by Subsection (e) who is under 21 years of age to attend school until the end of the school year. Section 25.094 applies to a person subject to a policy adopted under this subsection. Sections 25.093 and 25.095 do not apply to the parent of a person subject to a policy adopted under this subsection.*

Sections 25.094 and 25.085 appear to contradict each other in regard to students 18 years of age or older and younger than 21 years of age. The language in section 25.085, though, seems to carve out an exception to section 25.094's general age restriction. Subsection 25.085 plainly states that Section 25.094 applies to a student who voluntarily enrolls in a district that has adopted a policy requiring students 18 years of age or older and younger than 21 years of age to attend school.

Would your office please provide this office with a letter opinion setting forth an answer to the following question:

Pursuant to Texas Education Code section 25.085, are students 18 years of age or older and younger than 21 years of age enrolled in districts that allow students within this age range to voluntarily attend school subject to prosecution under Section 25.094?

This office is looking forward to your response to this request on the above question. Please let me know if you would like any further briefing.

Sincerely,

A handwritten signature in cursive script that reads "Jeri Yenne". The signature is fluid and connected, with a long horizontal tail on the final letter.

JERI YENNE