



The Senate of The State of Texas

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OPINION COMMITTEE

RQ-0260-JC

March 1, 2001

Susan Gusky
Opinions Committee
Texas Attorney General's Office
209 West 14th Street
Austin, Texas 78711

FILE # mh-41908-01

I.D. # 41908

Dear Ms. Gusky:

Please accept this letter as formal representation for an Attorney General's opinion regarding clarification with regard to student absences as stated in the following two statutes in the Texas Education Code (TEC). The codes are stipulated as follows:

§ 25.086. Exemptions

(a) A child is exempt from the requirements of compulsory school attendance if the child:

(3) has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;

§ 25.092. Minimum Attendance for Class Credit

(a) Except as provided by this section, a student may not be given credit for a class unless the student is in attendance for at least 90 percent of the days the class is offered.

It has come to the attention of my office that students are being unduly penalized for not attending classes due to medical reasons, even when under the care of a physician. It is my understanding of this statute that students with a medical condition, under the care of a doctor, are exempt from compulsory attendance and therefore, should not be penalized by the 90 percent attendance rule cited above.



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As an example, a school may accept a student's medical exemption notice, but may penalize the student for failure to attend classes 90 percent of the time and require the student to attend an alternative education setting (i.e., Saturday School). In addition, and in many cases, a student who has completed the required make-up work during the medical absence, is also being required to attend a compulsory alternative education setting (i.e., Saturday School).

Please be aware that Commissioner's Decision number 167-R5-293 gives protection under the 90 percent rule to students who enroll after the school-start date. That decision is stipulated as follows:

"One must ask why a transfer student is denied credit for a class that she never could have attended . . . It is beyond comprehension why a transfer student should be so penalized. Although not listed as an extenuating circumstance in board rule, I conclude that the intent of the 90-day rule (no the 90% rule) was to deal with absences after enrollment."

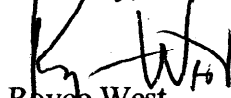
It is my understanding of this ruling that a student who begins school two weeks after the first day of class, contingent on the completion of make-up work, is not subject to penalty. Schools may interpret this ruling to mean that these students are exempt from penalty and are not required to attend compulsory alternative education setting (i.e., Saturday School). This practice, however, appears to be in direct contrast to the penalties that may be applied to students who have medical documentation for exemptions.

In summary, I seek your direction in clarification of the following question:

Is a student who is exempt from compulsory school attendance pursuant to TEC § 25.086 (a) (3) subject to penalty under TEC § 25.092 (a)?

Your response to this question and your consideration are greatly appreciated. Please contact my aide, LaJuana Barton, at 463-0123.

Sincerely,



Royce West
State Senator
District 23

RW:lb