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OPINION COMMITTEE

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Attorney General of Texas
Opinion Division
Austin, Texas

RQ-0625-GA

Dear General Abbott:

Pursuant to Texas Government Code Section 402.043 the Brazoria County Criminal District Attorney's office respectfully submits this request for the Attorney General's opinion.

The Justice Courts of Brazoria County, Texas handle a substantial volume of cases dealing with unexcused absences accrued by public school students (i.e., see Exhibit "A", an e-mail from the clerk of the Justice of the Peace Court, Precinct 3, Place 1, Brazoria County, Texas).

This office has received several questions from Brazoria County Justices of the Peace about changes to Texas Education Code Section 25.0951. This section deals with the proper procedure for a school district to file a complaint or a referral on a student or his or her parent as a result of failure to attend school. As most recently amended by the 79th Legislature (prior to the recently completed 80th Legislature) the provision reads as follows:

- (a) If a student fails to attend school without excuse on ten 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 under Section 25.093 or 25.094, as appropriate, or refer this student to a Juvenile Court in a county with a population of less than 100,000 for conduct that violates Section 25.09; 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) A Court shall dismiss a complaint or referral made by a school under this Section that is not made in compliance with this Section that is not made in compliance with this section.

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Texas Education Code Section 25.093 provides that a parent contributing to nonattendance is subject to being assessed a Class C misdemeanor. Texas Education Code Section 25.094 subjects a student who fails to attend school to being assessed a Class C misdemeanor. Texas Family Code Section 51.03(b)(2) finds that such absence constitutes "conduct indicating a need for supervision" which triggers probation but not commitment to the Texas Young Counsel.

Senate Bill 1161, effective June 15, 2007 (according to Texas Legislature Online) changes the threshold for filing a complaint from seven school days to ten school days (see Exhibit "C"). The date from which the school days are counted as the student's last absence. The author/sponsor's statement of intent in the Bill analysis on this provision states that, "The office of the Attorney General issued a ruling that the case must be dismissed if the complaint against the student is not filed within the seven days. This time limit has proven to be very difficult for school districts to comply with. By changing the time limit to ten days, few of these cases will have to be dismissed." (see Exhibit "D")

Another law, House Bill 2884, effective September 1, 2007 (see Exhibit "E") sets the threshold for filing a complaint at seven days. But the date from which the seven school days is counted is the day of the student's tenth absence (not the last absence). The Bill analysis as to this provision suggests that this amendment was a "nonsubstantive change" (see Exhibit "F", section 25).

The Brazoria County Criminal District Attorney's office has two questions concerning these statutes. They are as follows:

1. Which provision, that of Senate Bill 1161 or that of House Bill 2884 amending Texas Education Code Section 25.0951 will be applicable on September 1, 2007?
2. The Opinion of the Attorney General's office in GA-0417 states (as to Texas Education Code Section 25.0951, Vernon's supplement, 2005) "a school district may, however, file a new complaint with an unexcused absence that occurred subsequent to the absences noted on the original complaint, but it must do so within seven days of the latest unexcused absence." Does that conclusion apply to the law as set out in House Bill 2884?

WHAT'S THE LAW? SENATE BILL 1161 OR HOUSE BILL 2884

Senate Bill 1161 passed the Senate on April 16, 2007 by a 30-0 vote. It passed the House of Representatives on May 23, 2007 by a 144-0 vote. It was signed in the House and Senate on May 25, 2007 and by the Governor on June 15, 2007. It became effective June 15, 2007 (See Exhibit "G").

House Bill 2884, (apparently an omnibus juvenile reform bill), passed the House of Representatives on May 11, 2007 by a 135-0 vote and the Senate on May 23, 2007 by a 31-0 vote. It was subsequently passed as amended on May 23, 2007 by a 137-0 (three abstentions) vote of the

House and the Senate concurred in the amendment on May 28, 2007. It was signed by the Governor on June 15, 2007. It became effective on September 1, 2007 (see Exhibit "H").

If Senate Bill 1161 took effect June 15, 2007 and House Bill 2884 took effect September 1, 2007, it is this office's position that the time limit for filing the non-attendance complaint is ten days from the student's last absence if the last absence occurred between June 15, 2007 and August 31, 2007 and seven days from the student's tenth absence after August 31, 2007.

But if it is determined that Senate Bill 1161 was enacted after House Bill 2884 then this office maintains that the seven day window (and counting the seven days from the student's tenth unexcused absence) remains in effect after August 31, 2007.

Texas Government Code §311.025 states that if statutes enacted at the same session of the legislature are irreconcilable the statute latest in the date of enactment prevails. This request for an opinion assumes that the provisions of House Bill 2884 and Senate Bill 1161 are irreconcilable (if your office disagrees with this assumption, please advise). §311.025(d) states that the date of enactment is the date of which the last legislative vote is taken on the bill enacting the statute. If such latest date cannot be determined by legislative journals or other records, the date of enactment is according to §311.025(c), (1-3) in order or priority, the date on which the last presiding officer signed the bill, the date on which the Governor signed the bill or the date upon which the bill became law by operation of law.

The Texas Legislature Online History for Senate Bill 1161 displays the following dates (see Exhibit "G"):

Last Legislative Vote:	May 23, 2007 (House)
Last Date Signed:	May 25, 2007 (House and Senate)
Date Signed by Governor	June 15, 2007

The Texas Legislature Online History for House Bill 2884 displays the following dates (see Exhibit "H"):

Last Legislative Vote	May 25, 2007 (House)
Last Date Signed	May 28, 2007 (House and Senate)
Date Signed by Governor	June 15, 2007

If in fact, the provisions are irreconcilable, this office contends that House Bill 2884 prevails over Senate Bill 1161 and the window of opportunity for filing a non-attendance complaint is seven days beginning with the student's tenth unexcused absence.

CAN UNEXCUSED ABSENCES BE USED TO SUPPORT MORE THAN ONE
COMPLAINT?

In Texas, Atty. Gen. OP. GA-0417, your office considered whether or not a dismissal or a non-attendance complaint because of untimely filing acted as a dismissal "with or without prejudice." The opinion held that,

If the student has failed to attend school without excuse since the original complaint was filed, however, 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.

This office is concerned that the "10th absence" language creates a situation where an untimely filing of a non-attendance complaint dismisses with prejudice the consideration of those absences occurring prior to the untimely filing of the complaint and that a school district must wait until a student has accumulated an additional ten unexcused absences before a new complaint can be timely filed. This office believes that such an interpretation removes §25.0951 as a tool which our public schools (and our Justices of the Peace) can use to improve student attendance. Please advise us as to whether such concern is warranted.

This office is looking forward to your response to this request for your opinions on the foregoing questions.

Sincerely,



JERI YENNE

cc: all Justices of the Peace for Brazoria County, Texas