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Education Code and School-Related Offenses

Presented by
Judge Brian Holman
Lewisville Municipal Court

Do you recognize them?



Dylan Harris and Eric Klebold
Columbine High School - April 20, 1999



Have We Over-reacted?

What We'll Cover:

- Education Code Violations
- School-Related Offenses
- Recent Changes to Juvenile Law

Education Code Violations

Section 25 - School Attendance

Section 37 - Penal Provisions

Fail to Attend School

Section 25.094, Education Code

- Section 25 - School Attendance
 - "Mandatory Filing": 10+ days in 6 months
 - "Discretionary Filing": 3+, but < 10 days in 4 Weeks
 - Art. 45 CCP (Procedural Provisions)

Fail to Attend School
Section 25.094, Education Code

- **New Changes - Age Restrictions**
 - Age is now a jurisdictional issue in Truancy/Fail to Attend Cases
 - 10-11 yr. olds dealt with through *Juvenile Court*
 - 12-17 yr. olds
 - 18+ may not be criminally prosecuted (Although still subject to compulsory attendance)

Fail to Attend School
Section 25.0915, Education Code

- **Truancy Prevention Measures**
 - Outlines school attendance officer's duty to apply "truancy prevention measures" to "meaningfully address the student's conduct" before filing complaint with court
 - All new complaints must:
 - Certify that truancy prevention measures were applied, but failed to "meaningfully address the student's conduct"; and
 - Specify if the student is eligible for/receives special education services

Fail to Attend School

- **Criminal Disposition Orders**
 - Under 45.054, CCP, Court "**shall dismiss the complaint**" for Failure To Attend upon compliance with court's order, if Defendant:
 - Successfully complied with conditions imposed; or
 - Presents proof that individual has obtained a high school diploma or a high school equivalency certificate
 - Court can waive fine/costs for "financial hardship"
 - No timeline for compliance!!!

Fail to Attend School

- **Criminal Disposition Orders (cont'd)**
 - Court *shall* expunge FTA conviction if Court **finds**:
 - Successfully complied with 45.054 conditions; or
 - Before 21st birthday, Presents proof that individual obtained a high school diploma or a high school equivalency certificate
- Cases open for potentially long periods of time
- What is a “finding”? (Similar to Deferred Disposition?)

Parent Contributing to Non-Attendance

Section 25.093, Education Code

- Parent “criminally negligent” if he/she fails to require child’s attendance at school
- Each day is separate offense that can be “stacked”
- Fines are split between court and school district
- Enforceable by contempt (i.e., jail)

Disruption of Class

Section 37.124, Education Code

“Disruption of Class” – a person, on school property, or on public property within 500 feet of school property, intentionally disrupts the conduct of classes or other school activities.

- “School property” includes the campus or grounds on which a public school is located and any grounds or buildings used by a school for school-sponsored activity.
- “Public property” includes a street, highway, alley, public park, or sidewalk.

Disruption of Class
Section 37.124, Education Code

"Disrupting" includes:

- emitting intense noise that prevents / hinders classroom instruction;
- enticing / attempting to entice students away from class or other school activity;
- preventing / attempting to prevent students from attending class or other school activity; and
- entering classroom without consent of either principal or teacher and, by misconduct or use of loud/profane language, disrupting class activities.

• New Defense: if the "person" was a student in the sixth grade or lower, not an offense.

Disruption of Transportation
Section 37.126, Education Code

"Disruption of Transportation" – a person intentionally disrupts, prevents, or interferes with lawful transportation of children to / from school or school sponsored activity on vehicle owned or operated by county / independent school district.

• New Defense: if the "person" was a student in the sixth grade or lower, not an offense.

Disorderly Conduct
Section 42.01, Penal Code

- In school context, conduct which causes:
 - immediate breach of peace by language - 42.01(a)(1)
 - immediate breach of peace by gestures - 42.02(a)(2)
 - Noxious Odors - 42.02(a)(3)
 - Unreasonable Noise - 42.02(a)(5)
 - Fighting - 42.01(a)6

• New Defense: if the "person" was a student in the sixth grade or lower, not an offense.

Prohibited Organizations
Section 37.121, Education Code

Fraternalities, Sororities, Secret Societies & Gangs

- Focus is on associations, not individuals
- Characteristics - Membership is based on decisions of existing members rather than free choice of qualified students.
- Exceptions - "agencies for public welfare"
 - (i.e., Boy Scouts, Girl Reserves, DeMolay, Rainbow Girls)

Hazing
Section 37.152-153, Education Code

- Personal Hazing (Class B, A, or State Jail Felony depending on severity of injury)
- Organizational Hazing (Class C)
 - If organization condones or encourages hazing or if officer or combination of members, pledges, or alumni commits or assists in commission of hazing.
 - Consent to hazing is not a defense

School Board Rules
Section 37.102, Education Code

- Section 37.102(a): local school boards may adopt "rules for the safety and welfare of students, employees, and property and other rules it considers necessary to carry out this subchapter and the governance of the district."
- Section 37.102 (c) makes any violation of a rule adopted under this section is a Class C misdemeanor.

New Changes in Juvenile Law

Bullying in Schools
 Sec. 25.0342, Education Code

- New law, H.B. 1942, takes “preventative” approach to reduce bullying (direct & electronic) in schools
- Gives schools greater flexibility in dealing with “bullying” behavior
- Prohibits disciplinary measures by schools against students for use of “reasonable self-defense” to bullying
- Does this create a legal defense for disorderly conduct (fighting) in school?

Discharging Fines Costs Through Community Service or Tutoring

- H.B. 350 adds Art. 45.0492, C.C.P.
- Defendant younger than under 17
- Assessed Fine/Costs for offense occurring in school building or grounds
- Enrolled at that school at time of offense
- Court can order community service or attend **tutoring program**
- Standard Community Service provisions apply

Discharging Fines Costs Through Community Service

- H.B. 1964 adds Art. 45.0492, C.C.P.
- Court can order community service in lieu of fine/court costs
- Defendant younger than under 17
- No more than 200 hours
- Court can grant C.S. without considering resources or waiting for non-payment
- *No mention of tutoring or location of offense*

Confidentiality of Juvenile Records

- H.B. 961 adds Art. 44.2811 and 45.0217 to CCP
- Nondisclosure orders **no longer required** upon conviction
- Once judgment is "satisfied", record becomes "confidential" by operation of law
- Information now released to *juvenile, parent, attorney, court, criminal justice agency, DPS*

Confidentiality of Juvenile Records

- Expressly **excludes** traffic offenses from confidentiality rule
- Effective immediately and is retroactive to all juvenile convictions

***Still does not cover deferred dispositions or Teen Court

Exchange of Confidential Juvenile Information

S.B. 1106 amends Ed. Code Sec. 37.084 and Family Code Sec. 58.0051, 58.0052 and 58.106

- Sec. 37.084 **requires** sharing among “juvenile service providers” (JSPs)
- Sec. 58.0051 & 58.0052 define types of records and who are “JSPs”
- Sec. 58.106 adds **municipal** courts to entities having access to JJIS

Confidential Juvenile Information

Educational Records

- Identity
- Special Needs
- Educational Accommodations
- Assessment or Diagnostic Test Results
- Attendance & Disciplinary Records
- Medical Records
- Psychological Diagnoses

Non-Educational Records

- Identity
- Medical Records
- Assessment Results
- Special Needs
- Program Placements
- Psychological Diagnoses

Confidential Juvenile Information

“Juvenile Service Provider” (JSP) includes:

- a state or local juvenile justice agency
- health and human services agencies
- DPS
- TEA (Texas Education Agency)
- an independent school district
- a juvenile justice alternative education program
- a charter school
- a local MHMR authority
- **a court with jurisdiction over juveniles**
- a district or county attorney’s office
- a children’s advocacy center

Confidential Juvenile Information

- Courts can request educational records of a student who has been *“taken into custody”*
- JSPs can request non-educational records for other JSPs
- JSP must *“certify in writing”* that records will not be disclosed to unauthorized third parties
- Records may be used only to *“verify identity”* and *“provide delinquency prevention or treatment services to the student”*

Limited Immunity From Prosecution of Alcohol Offenses

- Amends Sec. 106.04 (Consumption)
Sec. 106.05 (Possession)
- Provides limited immunity from prosecution of certain alcohol offenses if:
 - First to request medical assistance for self/others
 - Request was for *“possible alcohol overdose”*
 - Remained on scene until medical help arrived
 - Cooperated with medical and police personnel

Questions? Comments? Concerns?

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Complaints? Criticisms?

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