



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 30, 1990

Honorable Ernestine V. Glossbrenner
Chairman
Public Education
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

LO-90-13

Dear Representative Glossbrenner:

You ask about the proper interpretation of section 21.041 of the Education Code, which governs school attendance and class credit.

The original version of section 21.041 was enacted as part of House Bill 72, the 1984 education reform bill. H.B. 72, Acts 1984, 68th Leg., 2d C.S., ch. 28, Art. IV, part D, § 1. As originally enacted, section 21.041 provided:

(a) A student may not be given credit for a class if the student has more than five days of unexcused absence during a semester.

(b) In this section, 'unexcused absence' means an absence not excused under Section 21.035 of this code.

Id. In 1989 the legislature amended section 21.041 so that subsection (a) reads as follows:

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 80 days during a semester.

Acts 1989, 71st Leg., ch. 353, at 1430, and ch. 813, § 2.12, at 3688.¹ Subsection (b), as amended, provides for school

1. Two different bills passed by the 71st Legislature amended section 21.041 of the Education Code. Acts 1989, (Footnote Continued)

district committees that may award class credit to students who attend a class fewer than 80 days during a semester because of extenuating circumstances.

Your question is whether a day on which a student's absence is excused in accordance with section 21.035 of the Education Code counts as a day of attendance for purposes of section 21.041.

By its plain language, section 21.035 sets out a requirement for actual attendance. The reason for an absence is not relevant under subsection (a). Rather, it is a factor to be considered under section (b) in determining whether a student should receive credit despite having attended class fewer than 80 days during a semester. The legislative history of section 21.041 supports our reading. The bill analysis to one of the bills that amended section 21.041 states:

The legislation would require that a student attend class for 80 days in a semester in order to receive credit, and makes no distinction between excused and unexcused absences. Since the calendars for schools call for between 86 and 89 school days, this would allow a student to miss between six and nine total days and still receive credit. Additionally, districts would be required to set up attendance committees that could grant credit to a student who attends school less than 80 days due to extenuating circumstances. The districts would decide how extenuating circumstances are defined. This would provide for a system that would teach students to be responsible for their absences regardless of the reason.

Bill Analysis, S.B.1112, 71st Leg. (1989) (emphasis added).

(Footnote Continued)

71st Leg., ch. 353, at 1430, and ch. 813, § 2.12, at 3688. The wording of subsections (b) and (d) of section 21.041 is not identical in those two bills. Because the difference in wording is not relevant to your question, we do not consider whether the two versions are in conflict or which would control in case of a conflict.

Honorable Ernestine V. Glossbrenner - (LO-90-13)

In summary, section 21.041 of the Education Code sets out the number of days a student must attend a class in order to receive credit. It makes no distinction between excused and unexcused absences. In extenuating circumstances, a student may be granted class credit despite a failure to meet the attendance requirement.

Very truly yours,

A handwritten signature in cursive script that reads "Sarah Woelk". The signature is written in dark ink and is positioned above the typed name.

Sarah Woelk, Chief
Letter Opinion Section

SW//lcd

Ref.: ID# 9149