



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 7, 1988

Honorable Terral Smith
State Representative
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769

LO-88-80

Dear Representative Smith:

You ask about the interpretation of section 14.05 of the Family Code, which provides in part:

(a) The court may order either or both parents to make periodic payments or a lump-sum payment, or both, for the support of the child until he or she is 18 years of age in the manner and to the persons specified by the court in the decree. The court of continuing exclusive jurisdiction may modify an existing order or enter a new order extending child support past the 18th birthday of the child, whether the request for such an order is filed before or after the child's 18th birthday, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma. The order for periodic support may provide that payments continue until the end of the school year in which the child graduates. (Emphasis added.)

You describe a situation in which a 19-year-old "is failing most of his classes, has an attendance record of less than 40%, and is only a high school junior at age 19." You explain that a parent of the 19-year-old stopped paying support and was held in contempt. You state that the judge who held the parent in contempt refused to consider the 19-year-old's attendance and performance records. Your specific question is:

Does Section 14.05, Family Code, require payment of child support beyond the age of 18 even when the child in question is not diligently pursuing a high school diploma?

Section 14.05 of the Family Code does not require support of a child who has passed his 18th birthday. Rather, it permits a judge to order support of a child who is 18 or older if the child is "fully enrolled" in a program leading toward a high school diploma. We think that a child's performance and attendance records are factors a judge may properly consider in determining whether to order child support payments for a child who has passed his 18th birthday. The appropriate remedy for a parent who believes circumstances warrant a change in a child-support order, however, is to file a motion for modification under section 14.08 of the Family Code, not to refuse to pay. Stubbs v. Stubbs, 715 S.W.2d 373, (Tex. Ct. App. - Houston [1st Dist.] 1986 no writ).

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/bc

Ref.: RQ-1474
ID# 3868