THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

June 2, 1989

Ms. Betty Murdock
Principal
Don Killough Middle School
7600 Synott Road
Houston, Texas 77099

Dear Ms. Murdock:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5986; this decision is OR89-152.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

You received a request from an attorney representing the temporary possessory conservators of a child attending Don Killough Middle School for copies of the child's "transcript and/or report card." You have provided for our review the court order awarding temporary custody of the child. The child's father has been appointed temporary managing conservator and the maternal grandparents have been appointed temporary possessory conservators. You inform us that both the temporary managing conservator and the temporary possessory conservators seek permanent custody of the child. You ask whether a copy of the child's educational records may be released to the temporary possessory conservators.

If a statute applicable to a governmental body declares that certain information is public, or is available to a specific individual pursuant to that statute, the governmental body must release it. See Open Records Decision No. 158 (1977). Section 14.04 of the Texas Family code provides, in pertinent part:

> (c) A possessory conservator has the right of access to medical, dental, and educational records of the child to the same extent as the managing conservator. The custodian of records shall delete all references in the records to the place of residence of the managing conservator of the child prior to their release to the possessory conservator. (Emphasis added.)

Section 14.04(c) of the Family Code entitles the possessory conservator access to these records to the same extent as the managing conservator.

Similarly, section 3(a)(14) of the Open Records Act authorizes the release of student records to a student, the student's parent, or legal guardian upon request. However, section 14(e) provides as follows:

> Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended. (The Buckley Amendment.)

The Buckley Amendment provides that no federal funding will be made available under any applicable program to an educational agency or institution that denies the parents of students the right to inspect and review the education records of their children, or releases the education records of students without the consent of the parents to anyone but certain numerated federal, state, and local officials and institutions. For purposes of the Buckley Amendment "parent" is defined to include "a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian." 34 C.F.R. § 99.3. Even divorced parents who are not managing conservators have a right of

access to their child's student records. Open Records Decision No. 42 (1974).

The court order awarding custody of the child in question designates the child's maternal grandparents as temporary possessory conservators with all the rights and responsibilities associated with that appointment. See Fam. Code § 14.04. We believe that temporary possessory conservators qualify as legal guardians under the Buckley Amendment, and as such the maternal grandparents are also entitled to access to the child's educational records. Please note that under the Buckley Amendment, the term "education records" means those records that are:

> (1) directly related to a student, and
>
> (2) maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. 1232g(a)(4)(A).

You must honor the request of the temporary possessory conservators for the records in question and for any other educational records you may have concerning the child. Please note that section 14.04 expressly provides that all references in these records to the temporary managing conservator's residence must be deleted. You must delete this information prior to releasing it to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-152.

Yours very truly,

Open Government Section
Opinion Committee

Open Government Section
of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/FAF/bc

cc: Bruce S. Kessler
Webb, Zimmerman, Beck, Fischman & Flaum, P.C.
Attorney for Mr. & Mrs. John Sutton
1990 Post Oak Boulevard
14th Floor
Houston, Texas 77056-3814

Ref.: ID# 5986