



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

February 9, 1990

Mr. David M. Feldman  
Attorney at Law  
Vinson & Elkins  
816 Congress Avenue  
Austin, Texas 78701-2496

Dear Mr. Feldman:

As attorney for the Fort Bend Independent School District, you forwarded to this office a request under the Open Records Act for various records concerning allegations of abuse of a student. This matter was designated ID# 6446 and was recently reassigned to me. This decision is OR90-056.

By letter of August 29, 1989, you informed us that the subject matter of this request is now in litigation. McDowell v. Pam Thompson, No. H-89-2261 (S.D. Tex. filed July 6, 1989). By letter of September 28, 1989, you forwarded to us an additional request for information on this matter. Counsel for Mr. McDowell is seeking tape recordings or transcripts of statements of other students regarding the charges of abuse. He has provided written authorizations from the students involved and apparently takes the position that these statements are student records within the scope of section 3(a)(14) of the Open Records Act.

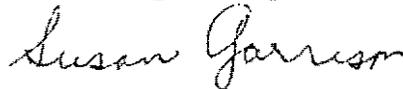
Any portions of the tape recordings that are "student records" within 3(a)(14) are probably also "education records" within the Family Educational Rights and Privacy Act of 1974. 20 U.S.C. § 1232g; see, e.g., Open Records Decision Nos. 427 (1985); 96 (1975). Thus, the federal act may be relevant to the latter request. Section 3(a)(3) of the Open Records Act may not be applied to deny a student his right under the Family Educational Rights and Privacy Act, as incorporated into section 14(e) of the Open Records Act, to inspect his education records. Open Records Decision No. 431 (1985). However, we do not want to further delay a decision on the rest of the records while we determine whether the tape recordings contain education records. We will proceed to address the remainder of the

records by this letter and will reserve the question of the tapes for a future letter. If the requestor has already received the student statements or if he no longer wants them, please let us know.

We have examined the pleadings in Melody McDowell b/n/f/ Steve McDowell and Eileen McDowell v. Pam Thompson and have determined that section 3(a)(3) of the Open Records Act excepts the requested information from disclosure to the public. Accordingly, you need not release it to the requestor.

We are returning the photocopies of records to you, but we will keep the tapes until we have been able to resolve the questions pertaining to them. If you have any questions about this matter, please refer to OR90-056.

Yours' very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/le

Enclosures: photocopies of records

cc: P. Stephen McDowell  
1122 Cardinal Avenue  
Sugar Land, Texas 77478