



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 13, 1993

Mr. Nick Blain
Superintendent
Liberty-Eylau Independent School District
2901 Leopard Drive
Texarkana, Texas 75501

OR93-551

Dear Mr. Blain:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.¹ Your request was assigned ID# 19473.

The Liberty-Eylau Independent School District (the "school district") has received a request for certain school records. Specifically, the requestor seeks:

1. copies of all in-service or staff development sessions attended by the requestor;
2. copies of all pages of the requestor's grade book covering the time the requestor was a teacher for the Bowie County School of Success; and
3. copies of the requestor's daily plan book.

You do not raise any objections to the release of the requestor's in-service record or his daily plan book. We therefore assume for the purpose of this opinion that the school district will provide copies of the above mentioned information to the requestor. You object, however, to the release of the grade book and claim that section 552.114 of the Open Records Act exempts the book from required public disclosure.

¹We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Section 552.114 excepts "a student record at an educational institution funded wholly or partly by state revenue." Section 552.026 incorporates another source of law, specifically, the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), into the Open Records Act, providing:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. *See generally* Open Records Decision No. 431 (1985). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) . . .) of students without the written consent of their parents to any individual, agency, or organization, other than to the following--

(A) other school officials, *including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests.*

20 U.S.C. § 1232g(b)(1) (emphasis added). "Education records" are records that:

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A). Sections 552.114 and 552.026 may not be used to withhold entire documents; the school district must delete information only to the extent "reasonable and necessary to avoid personally identifying a particular student" or "one or both parents of such a student." Open Records Decision No. 332 (1982) at 3. Thus, an educational agency or institution must withhold from required public disclosure only information identifying or tending to identify students or their parents.

You state that "the grade book is a part of the students' record." We agree. Open Records Decision No. 120 (1976) at 2 ("student records" include grades). You also claim that the requestor "cannot be recognized as any person and/or entity which has access to student records." As superintendent of the school district, we accept your determination

of the legitimacy of the requestor's claim to access of the records as required by FERPA. See 20 U.S.C. § 1232g(b)(1)(A). Furthermore, because the names in the grade book are alphabetized, and because the requestor has first hand knowledge of the identities of the students listed in the book, the identities of the students are, in this case, easily traceable. See Open Records Decision No. 165 (1977) at 4 (quoting 45 C.F.R. § 99.3 (1976)) (standard for "personally identifiable" information is whether a student's identity would be "easily traceable"). Additionally, de-identifying the grade book is impossible. Accordingly, the school district must withhold the entire grade book under section 552.114 of the Open Records Act.

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 contact this office.

Yours very truly,


Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

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Ref.: ID# 19473

Enclosures: Marked documents

cc: Mr. Ronald Green
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(w/o enclosures)