ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2005

Mr. Marc Barenblat
Texas State Board for Educator Certification
1701 North Congress Avenue, 5th Floor
Austin, Texas 78701

OR2005-06297

Dear Mr. Barenblat:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 227300.

The Texas State Board of Educator Certification (the "board") received a request for the information received by the board that the requestor has been sanctioned in Florida. You state you have released most information but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). Such information includes

information that directly identifies a student as well as information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related).

The board is not an educational agency or institution for purposes of FERPA. *See* 20 U.S.C. § 1232g(a)(3) (defining educational agency or institution under FERPA). While FERPA permits certain individuals, agencies, and organizations to have access to education records held by an educational agency or institution, the board is not such an individual, agency, or organization. 20 U.S.C. § 1232g(b)(1). However, FERPA allows education records to be released to a third party with the written consent of the student's parents. *Id.* § 1232g(b)(1). A third party that receives education records from an educational agency or institution is prohibited from subsequently releasing this information without the written consent of the parents of the student. *Id.* § 1232g(b)(4)(B).

The submitted information consists of handwritten statements of students in a Florida school district, as well as an administrative complaint of the Florida Education Practices Commission. In your briefing submitted pursuant to section 552.301(e) of the Government Code, you do not explain, nor are we able to discern, from what person or entity the board obtained the submitted information or whether this person or entity is an education agency or institution for purposes of FERPA. Accordingly, we determined that additional information was required to render a decision in this instance and provided written notice of this determination to both the board and the requestor. *See* Gov't Code § 552.303(b), (c). The board has not submitted the necessary additional information. *See id.* § 552.303(d) (upon notice a governmental body shall submit the necessary additional information not later than the seventh calender day after the date notice is received). A governmental body's failure to submit to this office the required additional information results in the legal presumption that the information is subject to required public disclosure and must be released unless a compelling reason exists to withhold the information. *Id.* § 552.303(e). Since you have not demonstrated that FERPA applies to the submitted information, the board must release the submitted information in its entirety.[1]

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

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[1] We note that you have stated the redactions in the submitted documents were marked before the board received the information.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 227300

Enc. Submitted documents

c: Mr. Medardo E. Leyva
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(w/o enclosures)