ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2011

Ms. Allyson Collins
Coordinator of Records and Legal Services
Eanes Independent School District
601 Camp Craft Road
Austin, Texas 78746

OR2011-09623

Dear Ms. Collins:

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# 422996.

The Eanes Independent School District (the "district") received a request for eight categories of information pertaining to a named district teacher and district policies. You indicate the district has released some of the requested information with redactions pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.[1] You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 21.355 of the Education Code. Section 21.355(a) provides that "[a]

[1]The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: http://www.oag.state.tx.us/open/20060725usdoe.pdf.

document evaluating the performance of a teacher or administrator is confidential." Act of May 25, 2011, 82nd Leg., R.S., H.B. 2971, § 1 (to be codified at Educ. Code § 21.355(a)). In addition, a court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* We understand that the employee at issue was employed as a teacher, with supplemental coaching duties, and was required to hold and did hold the appropriate certificate or permit. However, we note that the submitted information consists of a reprimand relating to the teacher's duties as a coach. Upon review, we conclude you have failed to demonstrate how the submitted information consists of an evaluation or written reprimand as contemplated by section 21.355 of the Education Code. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities). Accordingly, the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355(a) of the Education Code. As you raise no further exceptions to disclosure of the submitted information, it must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

Tamara H. Holland

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bs

Ref: ID# 422996

Enc. Submitted documents

c: Requestor
(w/o enclosures)