



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2012

Mr. Leonard J. Schwartz
General Counsel
Texas School for the Deaf
1102 South Congress Avenue
Austin, Texas 78704

OR2012-05728

Dear Mr. Schwartz:

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# 451285.

The Texas School for the Deaf (the "school") received a request for (1) any documents sent to a named parent pertaining to her child during a specified time period; and, for another specified time period, (2) all Admission, Review, Dismissal (ARD) documents; (3) all behavior management plans; (4) the last Full Individual Evaluation (FIE) performed on the child at issue; (5) all correspondence between specified parties regarding the child at issue; (6) board meeting notices, information, and the agenda for a specified board meeting; and (7) Individualized Educational Program (IEP) report cards. You state you have released some information to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments.

You contend the remaining requested information is educational records that are exempt from disclosure under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office 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.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information"

¹A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You state the remaining requested information consists of education records of the requestor’s client’s child. Because our office is prohibited from reviewing education records to determine whether the appropriate redactions have been made, we will not address the applicability of FERPA to the requested records, other than to note parents and their legal representative have a right of access to their own child’s education records, and their right of access prevails over a claim under section 552.103 of the Government Code. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; Open Records Decision No. 431 (1985) (information subject to right of access under FERPA may not be withheld pursuant to statutory predecessor to Gov’t Code § 552.103); *see also Equal Employment Opportunity Comm’n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (holding FERPA prevails over inconsistent provision of state law). Such determinations under FERPA must be made by the educational authority in possession of the education records.² As you state FERPA applies to the remaining requested information, we do not address your argument under section 552.103 of the Government Code.

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 451285

c: Requestor

²In the future, if the school does obtain parental or an adult student’s consent to submit unredacted education records and the school seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.