



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 17, 2022

The Honorable Briscoe Cain
Chair, House Committee on Elections
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0406

Re: Whether a school district may withhold medical or health information about a minor child from the child's parent or legal guardian (RQ-0460-KP)

Dear Representative Cain:

You asked for an opinion related to a school district's authority to withhold medical or health information about a minor child from the child's parent or legal guardian.¹ You explain that parents and teachers have raised concerns to you that some school districts may be withholding medical or health information, purportedly believing that Title IX authorizes them to do so. Request Letter at 1. You therefore ask whether a school district "may, pursuant to Title IX, withhold medical or health information" about a minor child from the child's parent or guardian. *Id.*

Texas and federal law mandate that parents have the right to access all educational information about their children, which includes medical or health information.

The Texas Legislature has repeatedly reaffirmed the rights of parents in educating their children. A "parent is entitled to full information regarding the school activities of a parent's child except as provided by Section 38.004."² TEX. EDUC. CODE § 26.008(a). An employee of a school district must obtain written consent of a child's parent before conducting a psychological examination, test, or treatment, except as expressly provided by other law. *Id.* § 26.009(a)(1). Regarding student records, the Education Code expressly provides that parents are entitled "to access to all written records of a school district concerning the parent's child," specifically including counseling records, psychological records, health information, and teacher and

¹See Letter from Honorable Briscoe Cain, Chair, House Comm. on Elections, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (May 5, 2022), <https://www.texasattorneygeneral.gov/requests/ken-paxton/rq-0460-kp>.

²Section 38.004 requires the Texas Education Agency to adopt a policy governing the reports of child abuse or neglect, and the policy "must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parents if necessary." TEX. EDUC. CODE § 38.004(a).

counselor evaluations. *Id.* § 26.004(b).³ In addition, “[a]n attempt by any school district employee to encourage or coerce a child to withhold information from the child’s parent is grounds for discipline.” *Id.* § 26.008(b).

In addition to state law, the federal Family Educational Rights and Privacy Act (“FERPA”) likewise generally grants parents “the right to inspect and review the education records of their children.” 20 U.S.C. § 1232g(a)(1)(A). The term “education records,” as used in FERPA, is defined broadly to include “records, files, documents, and other materials which (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). An educational agency or institution which denies or prevents parents or legal guardians of its students from inspecting and reviewing the education records of their children in violation of FERPA may not receive federal funding. *Id.* § 1232g(a)(1)(A).

Parents possess a fundamental right to make decisions concerning the care, custody, and control of their child, and school districts and officials must work with parents in furtherance of the child’s education.

The United States Supreme Court has explained repeatedly since 1923 that parents have the fundamental right to make decisions concerning the care, custody, and control of their child.⁴ Mirroring this longstanding precedent, the Education Code provides: “Unless otherwise provided by law, a board of trustees, administrator, educator, or other person may not limit parental rights.” TEX. EDUC. CODE § 26.001(c).

In 2016, this office addressed a similar question related to a school district’s adoption of “Transgender Guidelines” that attempted to limit school personnel’s ability to share gender identity information with a student’s parent or guardian under the Education Code. *See* Tex. Att’y Gen. Op. No. KP-0100 (2016) at 1; *see also* TEX. EDUC. CODE §§ 26.001–.013. In adopting that chapter, the Legislature emphasized that “[p]arents are partners with educators, administrators, and school district boards of trustees in their children’s education. Parents shall be encouraged to

³Section 611.0045 governs the right of a patient to access mental health records and, in narrow circumstances authorizes a health care professional to limit access to records “if the professional determines that release . . . would be harmful to the patient’s physical, mental, or emotional health.” TEX. HEALTH & SAFETY CODE § 611.045(b); *see Abrams v. Jones*, 35 S.W.3d 620, 628 (Tex. 2000) (concluding that a parent’s right to access mental health records is limited by section 611.0045 in rare circumstances).

⁴*See, e.g., Troxel v. Granville*, 530 U.S. 57, 65 (2000) (observing that “the interest of parents in the care, custody, and control of their children[] is perhaps the oldest of the fundamental liberty interests recognized by this Court”); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (recognizing the “fundamental liberty interest of natural parents in the care, custody, and management of their child”); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (“The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (“It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”); *Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925) (holding that parents have the right “to direct the upbringing and education of children under their control”); *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923) (holding that a person has a right to “establish a home and bring up children” and “to control the education of their own”).

actively participate in creating and implementing educational programs for their children.” TEX. EDUC. CODE § 26.001(a).

Far from creating a partnership among parents, educators, and administrators regarding a child’s education, efforts to withhold health or medical information about their child relegate parents to a subordinate status, which violates the parents’ constitutional rights. Limiting parents’ access to information in this way impairs their ability to “actively participate” in their child’s education, contrary to parents’ fundamental rights and state law. *See* TEX. EDUC. CODE § 26.001(a).⁵

Encouraging a child to withhold information from the child’s parent is grounds for disciplinary action under the Education Code. *Id.* § 26.008(b). Failing to work in partnership with parents in furtherance of the child’s education and to share requested information could subject the school district to additional legal challenges, civil liability, and financial loss. Thus, under both state and federal law, a school district may not withhold medical or health information about a minor child from the child’s parent or legal guardian.

Title IX does not authorize a school district to withhold medical or health information about a minor child from the child’s parent or legal guardian.

Title IX is a federal law passed as part of the Education Amendments of 1972. *See* Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235 (codified as amended at 20 U.S.C. §§ 1681–1688). Congress’s purpose in passing Title IX was to address concerns about discrimination against women in education. *See North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 523–24 (1982). “Title IX prohibits sex discrimination by recipients of federal education funding.” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005). The statute provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). Nothing in the text of Title IX, nor in the regulations adopted pursuant to that federal statute, discusses parental access to information or authorizes a school district to withhold medical or health information about a minor child from the child’s parent or legal guardian. *See* 34 C.F.R. §§ 106.1–.82. Accordingly, nothing in the text of Title IX supports any argument that the statute can be used as a basis to withhold medical or health information about a minor child from the child’s parent or legal guardian.

⁵Parents’ fundamental right to make decisions concerning the care, custody, and control of their child is also reflected in Education Code subsection 37.115(g), which prohibits a threat assessment and safe supportive school team established by the board of trustees of a school district from providing “a mental health care service to a student who is under 18 years of age unless the team obtains written consent from the parent of or a person standing in parental relation to the student before providing the mental health care service.” TEX. EDUC. CODE § 37.115(g).

S U M M A R Y

Chapter 26 of the Education Code expressly provides that parents are entitled to the health information of their child, and the Family Educational Rights and Privacy Act grants parents the right to inspect and review the education records of their children, including health information.

Parents possess a fundamental right to make decisions concerning the care, custody, and control of their child, and school districts and officials must work in partnership with parents in furtherance of the child's education. Failing to work with parents and provide requested information about a student could subject the school district to legal challenges, civil liability, and financial loss.

Title IX prohibits educational institutions from discriminating against students on the basis of sex. Nothing in the text of Title IX, nor in the regulations adopted pursuant to that federal statute, discusses parental access to information or authorizes a school district to withhold medical or health information about a minor child from the child's parent or legal guardian.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
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