



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2015

Ms. Cynthia L. Benavides
General Counsel for the Weslaco Independent School District
Jones, Galligan, Key & Lozana, L.L.P.
P.O. Drawer 1247
Weslaco, Texas 78599-1247

OR2015-25418

Dear Ms. Benavides:

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# 589147.

The Weslaco Independent School District (the "district"), which you represent, received a request for twelve categories of information pertaining to specified district students. You claim some of 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.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental or an adult student's 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" is

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

disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider your argument against disclosure of 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. This section encompasses the National School Lunch Act (“NSLA”), 42 U.S.C. §§ 1751 *et seq.* Section 1758(b)(6) of title 42 of the United States Code governs the use and disclosure of applications for reduced price lunches made pursuant to the NSLA, and reads in pertinent part:

(A) In general

The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in paragraph (3)(F), (4), or (5), shall be limited to—

(i) a person directly connected with the administration or enforcement of this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*) (including a regulation promulgated under either this chapter or that Act);

(ii) a person directly connected with the administration or enforcement of—

(I) a Federal education program;

(II) a State health or education program administered by the State or local education agency (other than a program carried out under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 *et seq.*; 42 U.S.C. 1397aa *et seq.*)); or

(III) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the school lunch program under this chapter;

(iii) (I) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

(II) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by this paragraph or paragraph 3(F), (4), or (5);

(iv) a person directly connected with the administration of the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.) solely for the purposes of—

(I) identifying children eligible for benefits under, and enrolling children in, those programs, except that this subclause shall apply only to the extent that the State and the local educational agency or school food authority so elect; and

(II) verifying the eligibility of children for programs under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*); and

(v) a third party contractor described in paragraph (3)(G)(iv).

(B) Limitation on information provided

Information provided under clause (ii) or (v) of subparagraph (A) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits is made or for whom eligibility information is provided under paragraph (3)(F), (4), or (5), unless the consent of the parent or guardian of the child for whom application for benefits was made is obtained.

42 U.S.C. § 1758(b)(6)(A),(B). You inform us that at the state level, the Texas Department of Agriculture (“TDA”) oversees Texas public schools’ participation in the federal school nutrition programs, including publishing an administrator’s reference manual to assist the schools with the administration and enforcement of federal statutes and regulations. You note the TDA states that “[d]isclosure of eligibility information about participants beyond that authorized by the statute is permitted only with consent.” You state that consent must be in writing and, in the case of a child participant, signed by the parent or guardian who is a member of the applicant household. 7 C.F.R. § 245.6(i) (prohibiting disclosure of NSLA application to any individual without right of access under NSLA unless a guardian who is a member of the applicant household has given written consent). In the instant case, the requestor does not fall into any of the permissible categories set forth by section 1758(b)(6)(A) allowing disclosure of any information obtained from an application for free or reduced price meals. You state the district has not received written consent from any parents or guardians to release the information at issue. Accordingly, we find the information you have indicated is confidential under section 1758 of title 42 of the United States Code and must be withheld pursuant to section 552.101 of the Government Code. As you raise no further exceptions to disclosure, the district must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with a large initial "N" and "A" followed by a stylized "Ybarra".

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 589147

Enc. Submitted documents

c: Requestor
(w/o enclosures)