THE ATTORNEY GENERAL OF TEXAS

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July 7, 1977

Mr. Robert C. Elder, Jr.
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Dallas, Texas 75202

Open Records Decision No.165

Re: Whether information as to educational level and years of experience of teachers and administrators is public; whether disciplinary information not directly identifying students is pubiic.

Dear Mr. Elder:

On behalf of the Dallas Independent School District, you request our decision under section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act. The District has received a request for information concerning teachers, administrators, the schools, student body composition, and disciplinary action administered to students. Most of the information is available in the form requested, on computer tapes. The District has provided some of the information, but contends that other portions are excepted from disclosure.

The request asks for information about all teachers and administrators in the district including name, identification number, school to which assigned, sex, race, tenure in district, tenure at the school, position held, tenure in position, salary, educational level, and tenure in profession. You request our decision as to whether the last two items listed, educational level and "tenure in profession," are excepted from required public disclosure by section 3(a)(2) as "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . ."

We are aware of no legal authority which has held information of this type to be private. You have referred us to none. In Open Records Decision No. 67 (1975), we decided that disclosure of educational background and work experience of certain public employees in that instance would not constitute a "clearly unwarranted invasion of personal privacy."

The Texas Supreme Court has said that in order to be regarded as private, information must "contain highly intimate or embarassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities." Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 683 (Tex. 1976). A similar exception for personnel files in the Federal Freedom of Information Act, 5 U.S.C. § 552(b)(6), has been described as extending only to intimate details of a highly personal nature. Ditlow v. Schultz, 517 F.2d 166, 169-70 (D.C. Cir. 1975); Rural Housing Alliance v. Department of Agriculture, 498 F.2d 73, 77 (D.C. Cir. 1974); Robles v. Environmental Protection Agency, 484 F.2d 843, 845 (4th Cir. 1973); Getman v. National Labor Relations Board, 450 F.2d 670, 675 (D.C. Cir. 1971).

We do not believe that information concerning a teacher's or an administrator's educational level or experience in his or her profession can be reasonably regarded as highly intimate or highly personal. Even if the disclosure of such information were considered to involve some minimal privacy interest, we believe that this type of information is relevant and pertinent to the affairs of government and is of legitimate public concern. It is our view that disclosure of such general and basic factual information concerning a public employee's qualifications to hold his or her position would not constitute a clearly unwarranted invasion of personal privacy, and is not excepted by section 3(a)(2).

The request also asks for certain demographic information about the student population of the schools. The request expressly excludes the names or identifying numbers of the students, and is requested in a form readily available on your computer. The request is for the age, sex, race, ethnicity, zip code, grade and school of all students.

The District has no objection to furnishing this information, but you ask whether the notice requirements concerning the release of directory information contained in the Family Educational Rights and Privacy Act of 1974 (The Buckley Amendment), 20 U.S.C.A. § 1232g(a)(5)(B), are applicable.

The federal act concerns disclosure of personally identifiable information from the education records of students. The information requested does not personally identify any of the students, nor does it appear to disclose personal or unique characteristics which would make a student's identity

easily traceable. Information of this type does not constitute "education records" within the meaning of the federal act or regulations. 20 U.S.C.A. § 1232g(a)(4)(A)(i); 45 C.F.R. § 99.3 (1976) (definitions of "Directory information;" "Education records;" and "Personally identifiable.") We have previously held that information concerning the racial or ethnic composition of student bodies in each school in a school district is public and required to be disclosed, and that the achievement test scores by grade and school are public. Open Records Decision No. 132 (1976). We pointed out in that decision that the Buckley Amendment does not restrict disclosure of this type of information. The fact that the information is based on student records or education records or files which are not themselves required to be disclosed because they personally identify the student is not relevant. The information requested is public, and the Buckley Amendment is not applicable to it.

Another portion of the request asks for information concerning disciplinary action involving corporal punishment, suspensions, and requests for third party hearings. The request asks for detailed information about each instance of disciplinary action in a form readily available on computer tape. The request is keyed to the District's forms on which this information is assembled and asks for the school, grade of student, the primary, secondary and tertiary reasons for administration of punishment, the week during which the punishment was administered, the referring teacher by teacher identification number, whether or not the student punished was at the time participating in extra-curricular activities, and a list of previous disciplinary action taken against the student. In regard to corporal punishment, the request asks for the number of "licks" administered. In regard to suspensions, it asks for the title of the individual suspending the student, and whether the student was suspended pending a parent conference, whether a third party hearing was requested, and the reasons for such request. The request for this information from these standard forms expressly excludes that information as to the student's name, address, phone number, identification number, month or date of birth, but does include location by school or zip code, year of birth, sex, and race.

There is no question that information concerning disciplinary action taken against an identifiable student is excepted from required disclosure under section 3(a)(14) of the Act as a student record and that such disclosure would be in

contravention of the provisions of the Buckley Amendment, and thus, contrary to section 14(e) of the Open Records Act. Attorney General Opinion H-447 (1974); Open Records Decision Nos. 142 (1976), 42 (1974). See Attorney General Opinion H-749 (1975); Open Records Decision No. 96 (1975).

It is the District's position that even with the name, address, month and date of birth, and identification number deleted from these records that the information still presents a personal profile of sufficient detail to identify students, and is thus excepted from disclosure as a student record under section 3(a)(14) and as an "education record" the disclosure of which is restricted by the Buckley Amendment.

The requestor's position is that the removal of the personally identifying information makes it highly unlikely as a practical matter that the data sought would allow identification of particular students. He contends that it would require a vast expenditure of time to gather additional information through interviews to put together the puzzle of the identity of a particular student, and even with "Herculean efforts" a student's identity could only be guessed, and not known with certainty. The requestor cites a report indicating that the number of suspensions in the District in 1972-73 was 10,851, and that an effort to personally identify a particular student from data of this magnitude would be "literally to try to find the needle in the haystack."

The issue is whether this information is personally identifiable as to particular students so as to bring it within the restrictions of the Buckley Amendment. The regulations issued under 20 U.S.C.A. § 1232g, 45 C.F.R. § 99.3 (1976), define the critical term as follows:

> "Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

Items (a), (b), and (c) are not relevant since they are specifically excluded from the request. The standard established in items (d) and (e) is whether or not the information given "would make the student's identity easily traceable." Id. (Emphasis supplied).

The District has not shown that disclosure of the requested information would make student identity easily traceable, or suggested how it might do so. The requestor's position that the possibility of identifying particular students from among this mass of computerized data would be unlikely and impractical, and in any case certainly not easy, is a reasonable one.

The Supreme Court was recently confronted with a very similar issue in Department of the Air Force v. Rose, 425 U.S. 352 (1976). The case involved a request for disclosure of Air Force Academy cadets' disciplinary records under the Federal Freedom of Information Act, 5 U.S.C. § 552. The government contended that disclosure, even with names and other identifying facts deleted, would constitute a clearly unwarranted invasion of personal privacy so as to bring the information within exemption (b)(6) of the federal act, since the possibility of identifying the disciplined cadets by those close to the incident would still exist. The Court rejected the argument that disclosure was barred in any case in which it could not be guaranteed that disclosure would not trigger recollection of identity in any person whatsoever, and held that a workable compromise between individual privacy rights and the public's right to information about the government could be achieved by deletion of personally identifying information. It is significant that the Court indicated that disclosure of the disciplinary summaries was required even though it could not be guaranteed that no one might identify the cadet involved. The Court noted that the protection afforded individuals under the Federal Act "was directed at threats to privacy interests more palpable than mere possibilities." Id. at 380, n. 19.

The Buckley Amendment regulations take this same reasonable and practical approach, and do not require absolute certainty that a student's identity will never be revealed in connection with disciplinary information such as that at issue here. We find as a matter of fact that the disclosure of the specific information in the form requested would not make the

student's identity easily traceable. Thus, the information is not "personally identifiable" so as to make it an "education record" within the meaning of the Buckley Amendment.

It is our decision that the disciplinary information requested is not excepted from required public disclosure under sections 3(a)(14) or 14(e), and must be made available.

Very truly yours,

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Attorney General of Texas

APPROVED:

DAVID. M. KENDALL, First Assistant

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Opinion Committee

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