



TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ <http://www.tea.state.tx.us>

Jim Nelson
Commissioner of Education

November 14, 2000

The Honorable John Cornyn
Attorney General of Texas
Price Daniel Building
P. O. Box 12548
Austin, Texas 78711

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OPINION COMMITTEE

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FILE # ML-41754-00
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Dear General Cornyn:

Please find enclosed an opinion that was previously mailed on January 7, 2000, that presents questions related to the application of §323.019 of the Texas Government Code. I requested your opinion on the issue presented in the enclosed letter and exhibits.

Unfortunately, it appears that this request was never received in your office. Due to the importance of the issues and the lapse of time since the request was originally mailed, I respectfully request an expedited opinion on the questions presented.

If you have any questions regarding this request, please contact me at 463-9720.

Sincerely,

David A. Anderson
General Counsel

Enclosure

DAVID



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COPY

Jim Nelson
Commissioner of Education

January 7, 2000

Attorney General John Cornyn
Office of the Attorney General
PO Box 12548
Austin, Texas 78711

Dear General Cornyn:

This letter is to request your opinion regarding the application of Section 323.019, Texas Government Code ("Section 323.019"), to information subject to federal confidentiality requirements under the Family Education Rights And Privacy Act ("FERPA")¹.

FERPA generally limits the ability of an "Education agency or institution"² that receives federal education funds to release information that identifies an individual student, absent written permission from the parent³. Certain exceptions are allowed, including release to other schools in which a student enrolls, "State and local education authorities", and representatives of the U.S. Department of Education⁴.

The Texas Education Agency gathers a great deal of student-identifiable information from Texas school districts⁵. Each student in Texas is identified by either a social security number or a locally generated identification number, allowing data regarding courses, attendance, and performance on state-mandated tests to be tracked over time. While much of the aggregated information regarding students at a campus or school district is publicly available, records that would identify individual students are subject to the restrictions under FERPA⁶.

Section 323.019 was enacted in the 1999 Legislative session as Senate Bill 1367⁷. It generally requires state agencies to provide statistical information to the Texas Legislative Council. With respect to student-identifiable information subject to FERPA, the statute designates employees of Legislative Council as "state school officials", presumably within the scope of 34CFR Section 99.31(a)(3)(iii) ("State and local educational authorities"). The Legislative Council is required under Section 323.019 to maintain confidentiality of any student-identifiable data and destroy any data no longer needed for the analysis undertaken⁸.

The Texas Education Agency has received a request from the Texas Legislative Council, which is attached as Exhibit "A", requesting student-identifiable information pursuant to Section 323.019. The agency previously received a

similar request prior to the passage of Senate Bill 1367 and requested guidance from the United States Department of Education by letter dated February 4, 1998⁹. We have not as of this date received a reply to that request. By copy of this letter, I am inviting the Department to participate in your deliberations in any manner that you find appropriate.

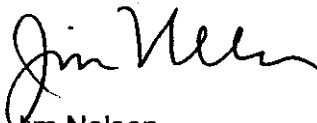
The agency currently shares student-identifiable information with the Texas Higher Education Coordinating Board under an exception regarding research to improve instruction¹⁰ and with the State Auditor's Office as part of its audit function regarding compliance with federal program requirements¹¹. The Texas Education Agency has generally declined to share student-identifiable information with other state agencies out of concern that doing so would violate FERPA¹².

The enactment of Section 323.019 raises questions about compliance with FERPA. I would appreciate your response to the following questions:

1. May the Texas Education Agency, consistent with FERPA, release student-identifiable information to the Texas Legislative Council pursuant to Section 323.019 of the Texas Government Code?
2. If your answer to question number 1 above is "yes", are there any limits on the use or retention period imposed under FERPA that are not also required by Section 323.019?
3. If your answer to question number 1 is "yes", is the purpose of the request or use that will be made of the data relevant to the ability of the Texas Education Agency to comply with the request? Specifically, do the provisions of 34CFR Section 99.35 limit the ability of the agency to comply with a request under Section 323.019?

Thank you for your prompt attention to this request. Should you need any additional information, please contact David Anderson, General Counsel, at (512) 463-9720.

Sincerely,



Jim Nelson
Commissioner of Education

Cc: Mr. Steve Collins, General Counsel
Texas Legislative Council

Mr. LeRoy Rooker
FERPA Family Policy Compliance Office
United States Department of Education

¹ 20 U.S.C. Section 1232g. For purposes of this request, "FERPA" also refers to the implementing regulations of the U.S. Department of Education found at Chapter 99 of Title 34 of the Code of Federal Regulations.

² FERPA definitions can be found at 34CFR Section 99.2.

³ See, 34 CFR Sections 99.2 and 99.30. Parents and "eligible students" who are 18 or attending postsecondary institutions have additional rights of access to and some control over information regarding the student. Confidentiality under FERPA is recognized in the Texas Public Information Act at Section 552.026, Texas Government Code. See also Section 552.008, Government Code, "Information for Legislative Purposes".

⁴ Exemptions to confidentiality are set out generally at 34 CFR Section 99.31.

⁵ This data is largely collected via the Public Education Information Management System ("PEIMS"), as authorized under Section 42.006, Texas Education Code. Note that student-identifiable data collected via PEIMS is subject to FERPA under the redisclosure provisions of 34CFR Section 99.33.

⁶ The agency's policy is to regard any data element containing five or fewer students as subject to FERPA.

⁷ Acts 1999, 76th Legislature, Ch. 1585.

⁸ These restrictions in Section 323.019(d) and (e) are consistent with reading "state school officials" as "State and local education authorities" under 34 CFR Section 99.31(a)(iii) by tracking limits to which disclosure to such "authorities" are subject under 34 CFR Section 99.35.

⁹ A copy of the request and the underlying Legislative Council request is attached as Exhibit "B".

¹⁰ See, 34CFR Section 99.31(a)(6). The MOU between the Coordinating Board and the Agency has been extended by letter agreement dated July 30, 1999, a copy of which is attached as Exhibit "C". The agency has also not received any input from the Department of Education in response to the invitation contained in that letter. The agency has also in the past made limited disclosure of student information for research projects conducted at the request of a school district.

¹¹ This arrangement was predicated on the Department of Education's response to a similar issue involving the State of Michigan. A copy of that letter dated August 21, 1995 is attached as Exhibit "D".

¹² The agency has worked with several other entities that provide human service benefits to allow parental permission to be given on the application forms for those programs, thereby allowing release of limited data for the purpose of those specific application-based programs under 34CFR Section 99.30.