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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

March 12, 2002

Dr. Phillip J. McDaniel  
Superintendent, Rock Hill School District  
P. O. Drawer 10072  
Rock Hill, South Carolina 29731

Dear Dr. McDaniel:

You have asked us to clarify an opinion of this Office dated June 7, 2001. In that opinion, we recognized that an individual school board member has "access to all records of the School District." You wish to know whether the Family Education and Privacy Rights Law (20 U.S.C. § 1232(9)) [Buckley Amendment] prohibits an individual school board member from having access to student records, as distinguished from other records (such as financial records, personnel records) of the District.

**Law / Analysis**

Consistent with the June 7, 2001 opinion, an earlier opinion of former Attorney General Medlock, see Op. Atty. Gen. Op. No. 83-10 (April 6, 1983) concluded that "School Trustees in Greenville County should have broad authority to request production of school records by virtue of their position of authority as to school affairs as well as under the Freedom of Information Act." The 1983 Opinion of former Attorney General Medlock referenced Op. Atty. Gen., Op. No. 77-227 (July 21, 1997), an opinion of former Attorney General Daniel R. McLeod, which had stated that a school board trustee "as a member of the governing board of the school district, has the authority to require the production of any and all records of the school district pertaining to its affairs for the reason that, as a member of the board, he has the duty and responsibility of managing and controlling the affairs of that school district."

However, the 1983 opinion also contained limitations upon the broad authority of a school board member to have access to school records. The opinion further commented that the general authority, cited by General McLeod, which supported access of an individual board member to school records generally, "may not extend to matters barred from disclosure." In that light, we noted that "the Buckley Amendment (20 U.S.C. § 1232 G(b)(1)) prohibits release of student records to school officials within the agency except those who have legitimate educational interests in the records."

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Implementing regulations concerning the privacy requirements of the Buckley Amendment and exceptions thereto are found at 34 C.F.R. §99.31. Such Regulation provides as follows:

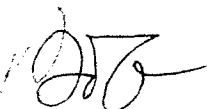
99.31 Under what conditions is prior consent not required to disclose information?

(A) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests .... (emphasis added).

It would appear that the opinions of former Attorneys General McLeod and Medlock are controlling with respect to this situation. Undoubtedly, each member of a school board possesses "broad authority to request production of school records ...." However, such authority "may not extend to matters barred by disclosure" such as the situation where records are made private pursuant to federal law. Specifically, the federal Buckley Amendment and its implementing regulations require that the agency or institution must have determined that an individual Board member possesses "legitimate educational interests" justifying disclosure of student records. Such would mean that, in the context of a School Board, the Board has made the determination that an individual Board member possesses the requisite "legitimate educational interests" to obtain access to student records. Typically, such would occur through some type of delegation of authority by the Board to an individual Board member or members. Thus, consistent with the Opinion of former Attorney General Medlock, such delegation must necessarily occur to provide a Board member or members access to student records. Of course, the Board as a body would have such access as the head of the educational "agency," in this instance, the school district. See, 1980 WL 101603 (Va.A.G., June 12, 1980).

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

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