

I am reaching out with an update on the status of your open records request related to a confidential settlement agreement into which the District entered during the summer of 2024. For ease of reference, I have reproduced your request below:

1. The parties and principal settlement terms of the Settlement for Student JH as approved by the BOE on 07/18/2024.
2. The electronic recording of the meeting portion relating to the agenda item Settlement for Student JH for the BOE meeting on 07/18/2024. **Note:** the YouTube video of this meeting cuts off before the agenda item is reached.
3. Accounting ledger records relating to the Settlement for Student JH as approved by the BOE on 07/18/2024. **Note:** Only looking for payments to settle the suit, not payments for services that may be associated. If it would be easier and faster to include more data that is fine.
4. Communication of notice to the district of an intent to sue or demand letter relating to the Settlement for Student JH. **Note:** The date the district received the notice is sufficient to satisfy this request.

In response to items 2 and 4 of your request (reproduced above), the District has no responsive documents to provide to you. There is no other video recording of the 7/18/24 Board of Education meeting; the recording publicly available on YouTube is the only available recording.

Your requests numbered 1 and 3 are more complicated. As you are aware, minor students enjoy robust privacy protections under such federal statutes as the Family Educational Rights and Privacy Act (“FERPA”), among others. FERPA is a federal law that affords parents the right to have access to their children’s education records and the right to have control over the disclosure of personally identifiable information from the education records. The FERPA statute is found at 20 U.S.C. § 1232g and the FERPA regulations are found at 34 CFR Part 99. “Education records” are records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for or on behalf of the agency or institution. The District takes the position that the settlement agreement about which you seek information is a protected education record and is, therefore, exempt from production under even the Georgia Open Records Act (a state law). Indeed, O.C.G.A. § 50-18-72(a)(1) allows withholding of records “specifically required by federal statute or regulation to be kept confidential,” and O.C.G.A. §50-18-72(a)(37) allows the withholding of “[a]ny record that would not be subject to disclosure, or the disclosure of which would jeopardize the receipt of federal funds, under 20 U.S.C. Section 1232g or its implementing regulations.” **When there is a conflict between the transparency aims of the Georgia Open Records Act and confidentiality protections afforded to students under FERPA, FERPA controls.**

I understand your citation to the Georgia Open Meetings Act, O.C.G.A. § 50-14-3(b)(1)(E), which reads in relevant part: “No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote.” **The District’s position is that this state statute, too, is in conflict with FERPA’s privacy protections and must yield to federal law.**

In particular, 34 CFR § 99.3 requires written consent before an educational agency or institution discloses “personally identifiable information” (“PII”) from the student's education records. Under FERPA, "PII" includes traditional identifiers such as names, addresses, social security numbers, and date of birth. But it also extends much further. Important to your open records request, FERPA’s definition of “PII” includes (1) *information that, alone or in combination, is linked or linkable to specific students that likely would allow a reasonable person in the university community without personal knowledge of the relevant circumstances to identify the students with reasonable certainty; and also (2) information requested by a person whom the District reasonably believes knows the identity of the student to whom the education record relates.* The District has a reasonable basis to believe that you know the identity of the student involved in this settlement agreement. The specificity of this open records request, in connection with subsequent open records requests seeking information regarding specific community organizations’ communications and law enforcement information for specific schools as well as your status as an Alexander II Magnet School parent, indicates that you know the identity of this student and/or their family. Indeed, on your [public advocacy website](#), you write the following: “I know that some information cannot be shared openly, but I am more than willing to speak with anyone to privately to share appropriate information who wants to understand these issues further.” You also invite community members to “securely send sensitive information” to you via Signal on the same website, underscoring the District’s reasonable belief that you and others know the identities of the student and family to whom the records you seek relate.

And finally, the terms of the settlement agreement itself reflect the parties’ express intent to treat the agreement and related records as confidential education records. The District has maintained the Agreement as a confidential student record and may not legally disclose it or information derived from it to you or other members of the public.

Student privacy and confidentiality is a core priority of the Bibb County School District. While I understand the public interest in this matter, its nature is highly sensitive and confidential. In compliance with controlling federal law, neither the District nor our office is able to provide you with the information you seek.