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November 20, 1998

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EXCEPTIONAL CHILDREN DIVISION

Lowell Harris, Director
Exceptional Children Division
N C. Department of Public Instruction
301 N. Wilmington Street
Raleigh, North Carolina 27601-2835

Re. Advisory Opinion; Public Access to Teacher Licensure Status,
G.S §§ 115C- 319 and 320; G S § 132-1 *et seq*

Dear Lowell

By letter dated October 28, 1998, you requested the Attorney General's opinion on two issues. (1) can an LEA disclose the licensure status of certified personnel when a parent or other third party requests such information; and (2) can the State Board of Education or DPI disclose such information at the request of a parent or other third party

(1) *Public Inspection of Licensure Information in Custody of LEA*

Under the Public Records Act, Chapter 132 of the General Statutes, "public records" are defined to include all documents "made or received pursuant to law or ordinance in connection with the transaction or public business by any agency of North Carolina government or its subdivisions." G S. § 132-1. G.S. § 132-6 provides that every custodian of public records must permit them to be inspected and examined at reasonable times and under reasonable supervision.

The definition of "public records" in Chapter 132 is broad enough to include teacher licensing information in the custody of LEAs. However, the mere fact that teacher licensing information comes within the definition of "public records" does not, in this case, answer the question of whether LEAs must permit public inspection of such records Article 21A of Chapter 115C, "Privacy of Employee Personnel Records" provides that "personnel files" of LEA employees, former employees, and applicants for employment "shall not be subject to inspection and examination as authorized by G S. 132-6." G.S § 115C-319 Thus, if an employee's

licensure status is part of his or her personnel file it is exempt from the public inspection provisions of Chapter 132.

G.S. § 115C-319 defines "personnel file" to be "any information gathered by" the LEA in connection with an individual's employment or application for employment when that information "relates to the individual's application, selection or nonselection, promotion, demotion, transfer, leave, salary, suspension, performance evaluation, disciplinary action, or termination of employment wherever located or in whatever form." An employee's licensure status obviously "relates" to one or more of the events specified in G.S. § 115C-319. For example, LEAs routinely gather such information in conjunction with review of an individual's application for employment and the information usually plays a role in the applicant's selection or nonselection. Moreover, once a teacher has been hired, the LEA must know the teacher's licensure status in order to determine his or her salary in accordance with the state and local salary schedules. Therefore, it is our opinion that a teacher's licensure status is part of his or her LEA "personnel file" under G.S. § 115C-319.

Having determined that a teacher's licensure status is part of his or her local personnel file, the next question is whether the LEA can release the information. G.S. § 115C-320 lists the information in a teacher's personnel file which the LEA must maintain for public inspection. Teacher licensure status is not included in that list of public information. Consequently, an employee's licensure status should not be included in the personnel information that is open to public inspection under G.S. § 115C-320.

G.S. § 115C-321 identifies certain individuals to whom confidential information in teacher personnel files may be disclosed. None of the enumerated exceptions to confidentiality of LEA personnel files set out in § 115C-321 are applicable to the request described in your letter. G.S. § 115C-321 also contains a provision which allows an LEA to disclose personnel information to maintain the integrity of the local board of education or to maintain the level of quality of services provided by the board. The decision to release personnel information under that provision, however, must be made on a case-by-case basis. The circumstances that might justify exercise of that discretion is, therefore, beyond the scope of this opinion.

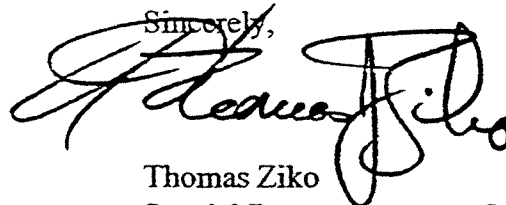
In summary, the licensure status of an LEA employee is part of that employee's confidential personnel file. Thus, it is our opinion that Article 21A of Chapter 115C prohibits an LEA from routinely releasing licensure information contained in the personnel files of its employees, former employees, or applicants for employment.

(2) *Public Inspection of Licensure Information in Custody of DPI or the State Board of Education*

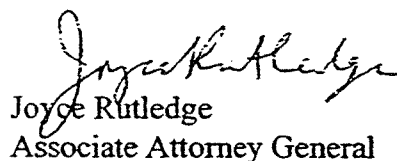
Pursuant to G S. § 115C-325, teachers are employees of LEAs, not the State Board of Education or DPI. Therefore, Article 21A of Chapter 115C is inapplicable to teacher records in custody of the State Board of Education or DPI. Under G.S. § 115C-13, it is unlawful for the State Board of Education or DPI to disclose any confidential personnel information that LEAs may "provide" to the State Board of Education or DPI. However, that provision does not extend to the licensure status of teachers because LEAs do not "provide" licensure information to the State Board of Education or DPI. The licensure status of teachers is public information that the State Board of Education and DPI create pursuant to the State Board of Education's constitutional and statutory authority to license or certify public school employees. *Guthrie v Taylor*, 279 N C 703, 185 S E 2d 193 (1971), *cert denied*, 406 U S. 920, 92 S Ct 1774, 32 L. Ed. 2d 119 (1972); G S §§ 115C-271, 115C-284 and 115C-296. Therefore, it is not subject to the protections of G S § 115C-13. We are not aware of any other statute that would exempt this information in the files of the State Board of Education or DPI from public inspection pursuant to the Public Records Act.

Therefore, in our opinion documents reflecting a teacher's licensure status are public records in the hands of the State Board of Education and DPI and they must permit those documents to be inspected and examined by third parties pursuant to G S §§ 132-1(b) and 132-6.

Sincerely,



Thomas Ziko
Special Deputy Attorney General



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cc: Mardie Meany
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