



MICHAEL D. SCHRUNK, District Attorney for Multnomah County  
600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162

---

May 5, 1998

BRUCE L. CAMPBELL  
MILLER, NASH, WEINER,  
HAGER & CARLSEN LLP  
111 S.W. FIFTH AVENUE  
PORTLAND OR 97204-3699

BETSY HAMMOND  
THE OREGONIAN  
1320 SW BROADWAY  
PORTLAND OR 97201-3499

Re: Petition of Betsy Hammond, on behalf of The Oregonian, April 24, 1998, to disclose certain records of the Portland Public School District

Dear Mr. Campbell and Ms. Hammond:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Betsy Hammond, for The Oregonian, requests the District Attorney to order the Portland Public School District to produce a copy of the following records:

1. The decision dated March 18, 1998 in the Portland School Association vs. Woodstock school grievance.
2. The decision dated March 11, 1998 in the Portland School Association vs. Mike Jordan grievance.

Petitioner made her request to the School District in an April 9 letter to Interim Superintendent Diana Snowden and Board Chairman Ron Saxton. The School District declined to disclose the records through Bruce Campbell, attorney for the School District, in a letter dated April 16. The School District claimed absolute exemption pursuant to ORS 192.502(9) and ORS 342.850(8), teacher personal records.<sup>1</sup>

---

<sup>1</sup> The School District also claimed the conditional exemption under ORS 192.502(2), information of a personal nature. Mr. Campbell argued that public disclosure of a teacher's internal

Page 2  
May 5, 1998  
RE: Petition of Betsy Hammond

In her petition letter, Ms. Hammond describes the records as "decisions recommended by the superintendent and adopted by the Portland school board during its regular business meeting on April 9, 1998, as 'the decision of this board.'" Petitioner points out that the public interest in disclosure of these documents is "difficult to discern because no information about the cases has been made public." Superintendent Snowden told petitioner it would be inaccurate to characterize the cases as personnel disciplinary matters.

The School District has provided this office with the records of the two grievances, the labor contract language governing grievance procedures (attached), together with a more lengthy explanation for its denial of petitioner's request.

#### DISCUSSION

ORS 192.502(9) is a "catchall" exemption that exempts from disclosure all public records or information "the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon Law." ORS 342.850 deals with teacher evaluation and the content of their personnel file. ORS 342.850(8) provides:

The personnel file shall be open for inspection by the teacher, the teacher's designees and the district school board and its designees. District school boards shall adopt rules governing access to personnel files, including rules specifying whom school officials may designate to inspect personnel files.

The Oregon Court of Appeals has limited this absolute exemption in two respects. First, the information placed in the teacher's personnel must be of the appropriate kind such as evaluations and reprimands.

A public body cannot make otherwise public information confidential by placing it in a personnel file. ORS 192.502(8) does not exempt the names of replacement coaches from disclosure. Guard Publishing Co. v. Lane Co. School Dist., 96 Or App 463, 468, 774 p2d 494 (1989) rev'd on other grounds 310 Or 32, 791 P2d 854 (1990).

---

grievance procedure would "constitute an unreasonable invasion of privacy and would dissuade teachers from filing grievance petitions in the future." The claimed exemption does not appear to be applicable as an unreasonable invasion of privacy. See Jordan v. MVD, 308 Or 433, 781 P2d 1203 (1989).

Page 3  
May 5, 1998  
RE: Petition of Betsy Hammond

Second, the School District or the employee cannot have waived the exemption by public distribution of the information.

By distributing the report to people outside the district for purposes other than internal discipline, the report lost its character as a confidential personnel record, assuming that it otherwise had that character. Oregonian Publishing v. Portland School District No IJ, 144 Or App 180, 187, 925 P2d 591 (1996).

The School District points out that the collective bargaining agreement between the School District and the Portland Association of Teachers provides that:

All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file which shall constitute a "personnel file" within the meaning of the confidentiality provisions of ORS 342.850.

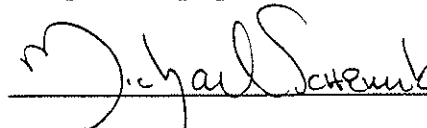
We are satisfied upon a review of the two grievances that the reports properly belong in the personnel file of the respective teachers. There is nothing of public interest in the documents; the grievances concern staff assignments and appear to be within the routine process of the School District grievance procedure.

The School Board, the Superintendent, the teachers in question, and other representatives of the School District have been circumspect in their references to the two grievances. Again, we are satisfied that the reports have not been distributed to the public and retain their character as confidential personnel records under ORS 192.502(9) and ORS 342.850(8).

ORDER

Accordingly, it is ordered that the petition of Betsy Hammond, on behalf of The Oregonian, to disclose certain records of the Portland Public School District is denied, ORS 192.502 (9) and 342.850 (8).

Very truly yours,



MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County