



ROD UNDERHILL, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643
www.mcda.us

June 13, 2017

Carli Brosseau
The Oregonian
1500 S.W. First Avenue, Suite 400
Portland, Oregon 97201

Stephanie Harper
Portland Public Schools
General Counsel's Office
501 N. Dixon Street
Portland, Oregon 97227

Re: Petition of Carli Brosseau, for The Oregonian, seeking records from Portland Public Schools

Dear Ms. Brosseau and Ms. Harper:

Ms. Brosseau filed a public records petition with this office on June 2, 2017, appealing Portland Public Schools' (PPS) denial of her request for, "disclosable information about Jeremy Christian...confirm[ing] that Jeremy Christian, DOB 5-1-82, attended Portland Public Schools." Petitioner also requested, "Any other disclosable details from his school attendance - - any awards, activities, etc." Petitioner made this request to PPS on June 1, 2017. Dave Northfield, of PPS, denied the request on June 1, 2017, on the basis of the Federal Education Rights and Privacy Act (FERPA), stating, "FERPA forbids releasing student records, even for people who are now adults, without consent."

DISCUSSION

A. Federal Law Exemption - ORS 192.502(8)

ORS 192.502(8) exempts from disclosure, "[a]ny public records or information the disclosure of which is prohibited by federal law or regulations." The Family Education and Rights Act, also known as FERPA, located at 20 U.S.C. § 1232g (1974), protects parents' rights to inspect the educational records of their children.¹ FERPA is also designed to protect the educational records of students from the general public:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to,

¹ 20 U.S.C. § 1232g-(a)(1)(a), provides: No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children.

any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless-

- (A) There is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or
- (B) Except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency, except when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required.

20 U.S.C. § 1232g-(b)(2).

Personally identifiable information shall not be released, unless it falls into an exception. One exception is directory information:

For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

20 U.S.C. § 1232g-(a)(5)(A).

Records that are designated as directory information may be released, but there are safeguards even for the release of that information:

Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.²

² **Students' rather than parents' permission or consent.** For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student. 20 U.S.C. § 1232g-(d).

20 U.S.C. § 1232g-(a)(5)(B).

It is clear from these provisions of FERPA³ that even directory information is important to safeguard, since schools are required to give advanced notice to parents and students that the directory information can be released, with the opportunity to object. In response to FERPA, there are a number of Oregon Administrative Rules.⁴ Based upon those administrative rules, PPS has adopted a policy with regards to directory information:

- (A) Directory Information is defined by the Family Educational Rights and Privacy Act (FERPA) as information that would not be generally considered harmful or an invasion of privacy if disclosed. Under this Act, the District may disclose designated directory information without parental or eligible student consent. The District is not required to release directory information.
- (B) The District has designated the following as Directory Information: student name, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received and the most recent previous school attended.
- (C) Before disclosure of Directory Information, the parents will be given notice of the categories of information to be released under this provision and be advised of their or the eligible student's right to prohibit, in writing, the release of such information until the student reaches the age of 21. Notice may be included on the Student Registration Form, the Annual Verification Form, or the Handbook on Student Responsibilities, Rights and Discipline.

PPS Education Records Management, 2.50.021-AD, section VII.

This section has been interpreted by PPS to mean that directory information does not require the consent of a parent or student for PPS to release it, as long as there has been advanced notice of the categories of Directory Information. This permits a parent or student to object to the release of the information, before PPS can release the information.

Regardless, PPS has also interpreted this section to mean that PPS is not required to release Directory Information, even if the student or parent has not objected to the release of information.

A public body may not have a blanket policy of nondisclosure. *Guard Publishing Co. v. Lane County School Dist.*, 310 Or 32, at 40 (1990)⁵. But in this case, PPS' policy is rooted in state law, as an Oregon Administrative Rule:

³ **Informing parents or students of rights under this section.** No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section. 20 U.S.C. § 1232g-(e).

⁴ Oregon Administrative Rules 581-021-0250 to 581-021-0430 govern Student Records in the State of Oregon.

⁵ The school district in *Guard Publishing Co.* had a 1984 policy that the names of replacement teachers would not be disclosed during a teachers' strike. This policy was not based upon a state law. The court ordered release of the information.

- (1) An educational agency or institution may disclose directory information if it has given annual public notice to parents of students in attendance and eligible students in attendance at the educational agency or institution of:
 - (a) The types of personally identifiable information that the educational agency or institution has designated as directory information;
 - (b) A parent or eligible student's right to refuse to let the educational agency or institution designate any or all of those types of information about the student as directory information; and
 - (c) The period of time within which a parent or eligible student has to notify the educational agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

- (2) An educational agency or institution may disclose directory information about former students without meeting the conditions in section (1) of this rule.

Oregon Administrative Rule 58-1021-0390.

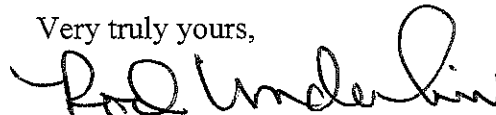
The PPS policy is materially different from the policy in *Guard Publishing Co.*, in that the PPS policy of non-disclosure of directory information is based on state law, which was created to comply with federal law. ORS 192.502(9)(a) also exempts from disclosure, "Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon Law."

Oregon law provides that, "Every person has a right to inspect any public record of a public body in the state, except as otherwise expressly provided." ORS 192.420(1). However, Oregon Public Records law exempts any public record or information from disclosure which is prohibited by federal law or by a separate provision in state law. Given that a federal law applies, in tandem with an Oregon Administrative Rule, ORS 192.502(8) therefore exempts the information which is requested by petitioner.

ORDER

Accordingly, your petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney