



ROD UNDERHILL, District Attorney for Multnomah County

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April 19, 2018

Brad Schmidt
The Oregonian
1500 S.W. First Avenue, Suite 400
Portland, Oregon 97201

Mary Kane
Portland Public Schools
501 N. Dixon Street
Portland, Oregon 97227

Re: Petition of Brad Schmidt, on behalf of The Oregonian, seeking directory information for a student

Dear Mr. Schmidt and Ms. Kane:

In his public records appeal, dated April 10, 2018, petitioner Brad Schmidt, asks this office to order Portland Public Schools (PPS) to disclose:

a record containing all “directory information” for [a PPS student].

Petitioner requested this record on April 2, 2018 and, on April 6, 2018, PPS denied his request, citing the Family Educational Rights and Privacy Act (FERPA) as incorporated into the public records law by ORS 192.355(8). The context and background of petitioner’s request is irrelevant to the legal analysis in this case, so we do not address it further.

For the reasons discussed below, we conclude that FERPA does not prohibit the disclosure of this information and, accordingly, grant the petition.

DISCUSSION

A. Federal Law – ORS 192.355(8)

ORS 192.355(8) exempts from disclosure,

Any public records or information the disclosure of which is prohibited by federal law or regulations.

FERPA is a body of federal regulations governing the privacy of student information. See, 34 CFR Part 99. If FERPA applies in this case, then the relevant record is exempt from disclosure under Oregon’s public records law without consideration of the public’s interest in access to the record.

FERPA generally mandates strict confidentiality of identifiable information about students. One exception to this general rule is that, under certain circumstances, a school may

publish, or provide to third parties, “directory information” about students. PPS has designated the following data about each student as directory information:

- Student’s name
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Degrees, honors, and awards received
- Major field of study
- Dates of attendance
- The most recent school attended¹

This definition is consistent with, and indeed narrower than, what is suggested by FERPA. See, 34 CFR § 99.3.

A school may release directory information only if it has given public notice to parents of students of the types of information it has designated as directory information, the right to opt out of release, and the process for opting out. The student in question in this appeal has not opted out of release, and PPS agrees that it has procedurally complied with the steps necessary to authorize it to release directory information in general.

Rather, PPS argues that it may only release directory information for the purposes about which it has notified parents. It rests its argument on the text of its public notice to parents, reproduced in relevant part below, with emphasis added:

The primary purpose of directory information is to allow Portland Public Schools to include this type of information from your child’s education records in certain school publications. Examples include: a playbill, showing your student’s role in a drama production; honor roll or other recognition lists; graduation programs; and sports activity sheets, such as for wrestling, showing weight and height of team members.

[...]

Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent’s prior written consent. *Outside organizations include, but are not limited to*, companies that manufacture class rings or publish yearbooks.

34 CFR § 99.37(d) does provide that “in its public notice to parents [...] an educational agency or institution may specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both.” The problem here is that, as the emphasized passages above show, PPS has not done this.

This does not appear to be an error on PPS’ part, to the contrary PPS appears to have adopted precisely the form FERPA notice recommended by the United States Department of

¹ See, “Required Annual Notices for Families” (<https://www.pps.net/Page/2614>) (accessed Apr. 18, 2018)

Education.² However, the words in this notice have meaning. PPS has notified parents that, unless they opt out, it can disclose their students' directory information "to outside organizations" and that outside organizations "include, *but are not limited to*, companies that manufacture class rings or publish yearbooks." To be sure parents are not specifically notified that student directory information could be disclosed to a newspaper reporter, but the words of the notice provide that it could be *any* outside organization.

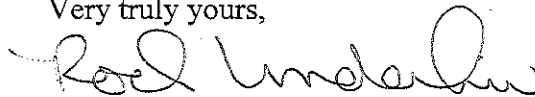
In sum, FERPA provides that directory information may be released to any requestor provided 1) the school has procedurally complied with the parental notification requirements; 2) the parent has not opted out, and 3) the school has not otherwise publicly notified parents that it intends to limit release of directory information to specific parties. In this case, PPS has complied with the notice requirements, the student's parents have not opted out, and PPS has not provided general notice of its intent to limit release to specific parties.

In this case, PPS has not established that FERPA requires withholding the requested directory information from petitioner.

ORDER

Accordingly, the petition is granted. PPS is ordered to promptly disclose to petitioner any record it possesses responsive to his request. This release is subject to the payment of fees, if any, not to exceed PPS' actual costs in producing the record.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon

Notice to Public Agency

Pursuant to ORS 192.411, 192.415, and 192.431(3) your agency may become liable to pay petitioner's attorney's fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.

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² FERPA Model Notice for Directory Information, (<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/mndirectoryinfo.html>)