



ROD UNDERHILL, District Attorney for Multnomah County

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April 30, 2018

Bethany Barnes
The Oregonian
1500 S.W. First Avenue, Suite 400
Portland, Oregon 97201

Nancy Hungerford
The Hungerford Law Firm LLP
653 S. Center Street
P.O. Box 3010
Oregon City, Oregon 97045

Re: Petition of Bethany Barnes, on behalf of The Oregonian, seeking a copy of a student threat assessment

Dear Ms. Barnes and Ms. Hungerford:

In her public records appeal, dated April 19, 2018, petitioner Bethany Barnes, asks this office to order the Parkrose School District to disclose:

all records related to threat assessments of [Name Redacted].¹

Petitioner requested these records on March 23, 2018. Petitioner has also obtained the written permission of the student's parents to access the student's school records. Parkrose denied petitioner's request stating that documents relating to the threat assessment were not educational records and would not be released, even with parental permission.

Along with many other school districts in Oregon, Parkrose utilizes the "Salem-Keizer System" for evaluating potential threats posed by students. This process involves structured interviews with involved individuals, questions answered by administrators to identify risk factors, and collection of records about prior concerning behavior. This process informs a final decision by the school principal or superintendent as to what protective action, if any, is necessary to address a perceived threat.

Parkrose has submitted the records to this office for our review pursuant to ORS 192.422. Very broadly the records fall into three categories: 1) the initial report or reports of concern regarding the student; 2) process documents relating to the threat assessment; 3) other related records.

¹ The student at issue is known to Ms. Barnes and known to Parkrose. Ms. Barnes has not included the student's name in her submission to us and we likewise do not use it in this order.

Parkrose asserts that some of the records are confidential submissions under ORS 192.355(4) and the rest constitute internal advisory communications under ORS 192.355(1). For the reasons discussed below, we agree with Parkrose and deny the petition.

DISCUSSION

As an initial matter it is important to note what we are not deciding in this order. The parties dispute whether or not the Family Educational Rights and Privacy Act (FERPA) requires that Parkrose provide access to these materials to the student's parents. FERPA generally provides that parents shall have access to their child's educational records. FERPA can also provide a basis for a school to exempt educational records from public disclosure to individuals other than a student's parents.

In this case Parkrose disclaims any reliance on FERPA as a basis to withhold these records under Oregon's public records law. Parkrose asserts that records relating to this threat assessment are not "educational records" as that term is used in FERPA and are thus outside its scope. Our statutory authority to decide public records disputes begins and ends with the Oregon public records law. We may not, and do not, express any opinion on whether or not the parents, or their designee, have a right of access under FERPA. We turn then to the public records exemptions cited by Parkrose.

A. Confidential Submission – ORS 192.355(4)

ORS 192.355(4) exempts from disclosure,

Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

Little is of more public importance or interest than the physical safety of students in our schools. To that end, anything that would tend to deter an individual from reporting his or her perception of a threat or risk to a school is contrary to the public interest. A request for confidentiality by a person who raises safety concerns regarding a student to school administration should, as a matter of policy, be scrupulously honored. Contained within the records here is at least one express request for confidentiality, and the nature of the report strongly suggests an understanding by all involved that every effort would be made to keep the report confidential. The notifications that initiated this process are properly exempt from disclosure under this section.

B. Internal Advisory Communication – ORS 192.355(1)

ORS 192.355(1) exempts from disclosure,

Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the

public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

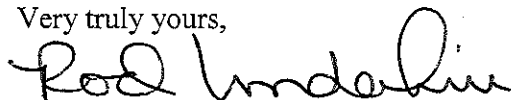
As above, a full and frank assessment of the potential threat posed by a student is critical to ensuring the safety of our schools. Administrators, teachers, or school psychologists cannot be second guessing what they reduce to writing because of concern that their words will later be publicized and analyzed with the full benefit of hindsight for any perception of fault. Every situation being assessed carries with it the small possibility of a catastrophic consequence if the involved professionals get it wrong. The interest in frank communication between school officials during this process cannot be overstated.

The balance of the documents at issue, that is those not qualifying as confidential submissions, are exempt from disclosure as internal advisory communications.

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon