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February 25, 2008

Richard Ellmyer
9124 N. McKenna
Portland, OR 97203

Jollee Patterson
General Counsel
Portland Public Schools
501 North Dixon Street
Portland, OR 97227

Re: Public Records Petition 08-05

Dear Mr. Ellmyer and Ms. Patterson,

On January 7, 2008, petitioner emailed the Portland School District Superintendent regarding a PPS emailing to "a selected list of voters" of a newsletter entitled PPS Pulse. He requested the email addresses used in this mailing. Mr. Ellmyer asked for a "tab delineated text file with these records via email."

PPS General Counsel Jollee Paterson responded to the request in a January 11, 2008 email. She noted that the PPS Pulse "was sent to several different groups maintained by PPS" such as PPS parents and media groups. Ms. Paterson claimed the email list was "protected from disclosure under 20 USC § 1232g of the Family Educational Rights and Privacy Act ("FERPA"). She argued that the email addresses qualified as both "personally identifiable information" and "educational records," both protected under FERPA.

Petitioner attempted to submit his petition on January 16, 2008 by email. It was not actually received in this office until February 14, 2008. Petitioner argued that FERPA allows schools to disclose without consent directory information such as the student's name, address, telephone listing, and electronic address. Petitioner also contended that the records are not student education records, that the email records are those of citizens, not students, and that PPS is a new "marketing campaign" with no connection to FERPA.

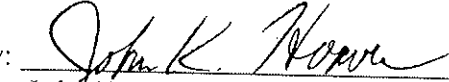
20 USC § 1232g is 23 pages long and quite complicated. Petitioner is correct that subsection (b)(1) appears to limit the loss of federal funds to the disclosure of education records other than directory information. General Counsel Patterson was able to shed some light on the School District's interpretation of this provision in a February 21, 2008 letter. She noted that it is the policy of the particular school district (with public notice) that determines the degree of confidentiality. 20 USC § 1232g(a)(5)(B). PPS has by policy elected to define "directory information" as limited to "student name, 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 previous educational agency or institution." Addresses and phone numbers are not part of the designated directory information and are, therefore, personally identifiable information not subject to disclosure. We agree with this analysis.

The email records of parents of PPS students are clearly educational records. It is irrelevant that the School District may be using PPS Pulse as a marketing tool. That is between the School District and the parents. Petitioner has limited the argument in his petition to the email addresses of parents of students or "citizens." To that extent, his petition is denied.

There are apparently email addresses contained in the PPS email list other than students or their parents (several different groups including the media). Ms. Patterson has not contended that those addresses are exempt from disclosure. If petitioner wants those addresses, a concise request should be made to Ms. Patterson. There may be certain appropriate costs associated with identifying and double checking the email address list to insure the confidentiality of parent and student information under FERPA.

Very truly yours,

MICHAEL D. SCHRUNK
District Attorney
Multnomah County, Oregon

By: 
John K. Hoover
Deputy District Attorney