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June 1, 2018

Morgan Emrich
morganemrich@gmail.com (via email only)

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

Re: Petition of Morgan Emrich seeking review of redactions made to documents regarding the reasons for a Portland Public Schools employee's resignation

Dear Mr. Emrich and Ms. Kane:

In his public records appeal, dated May 22, 2018, petitioner Morgan Emrich, asks this office to order Portland Public Schools (PPS) to disclose the contents of redactions made to two letters sent from Arleta School Principal Seth Jones to a former PPS employee, Natalie Bloodgood.

The specific letters with contested redactions, both from Arleta Principal Seth Jones, are dated March 1, 2017 and March 19, 2018.¹ The 2017 letter documents an incident where Ms. Bloodgood physically restrained a student in what was determined to be an inappropriate manner. The 2018 letter documents another incident of physical restraint and recommends that her employment be terminated.

PPS released these letters to petitioner along with other documents relating to Ms. Bloodgood's separation from employment with PPS, but redacted the factual details of the two underlying incidents that led to her departure. The released records show that, on March 14, 2018 Ms. Bloodgood was placed on administrative leave; on March 19, 2018 Ms. Bloodgood's principal, Seth Jones, recommended that her employment be terminated; and on March 21, 2018 Ms. Bloodgood resigned "in lieu of termination."

To justify the redactions in these two letters PPS cites the Family Educational Rights and Privacy Act (FERPA) as incorporated into the public records law by ORS 192.355(8). 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,

¹ A third letter, dated March 14, 2018 was released with only Ms. Bloodgood's home address redacted. This redaction is appropriate under ORS 192.355(3) and is not addressed further here.

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.

The question in this case is, simply put, are school employee disciplinary materials exempt under FERPA where they reference specific students or student-involved incidents in justifying the action taken against the teacher.

We have previously found that an interview of a student for the purpose of investigating employee wrongdoing is not an "educational record" within the meaning of FERPA because "its purpose is to identify and rectify wrongdoing by school employees not to further the education of the student." *Petition of Barnes*, MCDA PRO 17-08 (2017).

In canvassing judicial opinions on this question from across the country, we have found broad agreement that school employee disciplinary records are not educational records even where they contain information about the student interactions that led to the discipline. One, *Ellis v. Cleveland Municipal School District*, 309 F. Supp. 2d 1019 (N.D. Ohio 2004), addresses a scenario quite similar to that presented here. In *Ellis*, the issue was whether or not FERPA covered incident reports related to physical altercations between substitute teachers and students, student and employee witness statements related to these incidents, and information related to subsequent discipline, if any, imposed on the teachers. The court found that, "while these records clearly involve students as alleged victims and witnesses, the records themselves are directly related to the activities and behaviors of the teachers themselves and are therefore not governed by FERPA." *Id.* at 1023.

Other courts to consider the question on related facts have reached similar conclusions. See, *Wallace v. Cranbrook Educational Community*, 2006 U.S. Dist. LEXIS 71251 (E.D. Mich. 2006) (unredacted student witness statements concerning a maintenance employee's alleged inappropriate sexual behavior toward students were not "education records" under FERPA); *Matter of Hampton Bays Union Free School Dist. v. Public Empl. Relations Bd.*, 62 A.D.3d 1066 (Sup. Ct. N.Y., App. Div. 2009) ("teacher disciplinary records and/or records pertaining to allegations of teacher misconduct cannot be equated with student disciplinary records and do not contain 'information directly related to a student'"); *Bauer v. Kincaid*, 759 F. Supp. 575, 591 (W.D. Mo. 1991) (noting that the function of FERPA is "to protect educationally related information.") *Brouillet v. Cowles Pub. Co.*, 114 Wn.2d 788, 800 (Wash. 1990) (FERPA does not prevent disclosure of records specifying the reason for teacher license revocations in cases involving teacher-student sexual misconduct); *Board of Education v. Colonial Education Association*, 1996 Del. Ch. LEXIS 27 (Del. Ch. 1996) ("The names of the victim in and witnesses to an alleged incident of sexual harassment by a teacher does not relate closely enough with the educational process to warrant the statutory protection of 'educational records' in FERPA").

In this case the redacted information does not contain the names of any involved student or PPS employee. The redacted passages collectively contain:

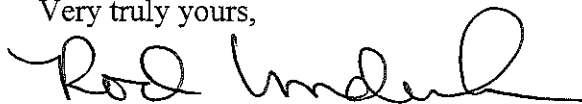
- the date of each incident,
- the location of each incident,
- the grade level of the involved student,
- gendered pronouns referring to each student, and
- a sparse factual account of each incident (one sentence as to one, a short paragraph as to the other).

It is not immediately apparent that the identity of the involved students could be determined were the redacted passages released. Based on the sparse factual description given the students could probably be identified by an individual who observed either incident, or was told of it, but in that case that individual would already have the information so would learn nothing new by this disclosure. In any event, even assuming that redacted information is “personally identifying,” an exemption under FERPA requires a showing both that the involved record is an “educational record” *and* that it contain “personally identifying information.” We agree with the opinions of the above cited courts that these documents are not “educational records” within the meaning of FERPA and are, thus, not exempted from disclosure by ORS 192.355(8).

ORDER

Accordingly, the petition is granted except as to the redaction of Ms. Bloodgood’s address on page four. PPS is ordered to promptly disclose to petitioner unredacted copies of pages two and three. 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.