



ROD UNDERHILL, District Attorney for Multnomah County

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November 20, 2018

Bethany Barnes
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 Bethany Barnes, on behalf of The Oregonian, requesting a less redacted version of an email from Portland Public Schools

Dear Ms. Barnes and Ms. Kane:

In her public records appeal, dated November 8, 2018, petitioner Bethany Barnes asks this office to order Portland Public Schools (PPS) to release a less redacted version of a May 24, 2017 email with the subject line "Shocked."

Petitioner originally requested the email on October 4, 2018. On November 2, 2018 PPS provided a document to petitioner that, omitting header information, read:

Dear Grant Administration,

Today, [REDACTED] came in and told me that their science teacher, Ms. Allen, has separated them into groups on at least two times based on race to measure their bones and hair.

[REDACTED] Given the vast history of systemic measurement of Black bodies through the Institution of Slavery, testing in science experiments, eugenics, etc...I am sincerely about to be sick with shock just hearing this. I barely have words to convey this to you.

Please do everything in your power to stop this.

Susan Anglada Bartley, M. Ed.

PPS asserts that the two redacted portions could reasonably identify students and are therefore exempt from disclosure by operation of ORS 192.355(8) as it incorporates the federal Family Educational Rights and Privacy Act (FERPA).

Although we agree with PPS that both redacted areas contain information that could reasonably identify a student, the second redaction is more broad than necessary. Accordingly, the petition is denied in part and granted in part.

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 federal law that prohibits, among other things, “the release of education records (or personally identifiable information contained therein [...]) of students.” 20 U.S.C. § 1232g(b).

The redacted portions in this case are “educational records” within the meaning of FERPA because the information directly relates to student participation in a planned classroom activity.

“Personally identifiable information,” is defined by regulation to include a student’s name; the names of a student’s parents or other family members; the address of a student or student’s family; personal identifiers, such as the student’s social security number; and indirect identifiers, such as the student’s date of birth. 34 C.F.R. § 99.3. Petitioner does not dispute that any information in these categories may be redacted. However, also included within the definition of “personally identifiable information” is “[o]ther information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.”

As petitioner suspects, the first redaction obscures some number of student names. Such information is personally identifiable information and may be exempted from disclosure.

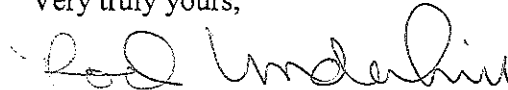
As to the second redaction, petitioner argues that it seems contextually likely that it obscures the objectionable treatment at issue and should be released. Petitioner is correct that this sentence relates to the treatment of a particular student, however that treatment is inextricably linked with a physical description of the student. Depending on information not available at present, the description could apply to as many as five students or as few as one out of a class of 25. We are satisfied that this constitutes personally identifiable information under the “other information” category in FERPA.

That said, the entire sentence need not be redacted to accomplish this end. Although it will not particularly illuminate the writer’s concern, the first 14 words of the second redaction, beginning with “One...” and ending with “...with” must be released.

ORDER

Accordingly, the petition is denied in part and granted in part. PPS is ordered to promptly provide petitioner with a copy of the email with the second redaction narrowed as described above. This production is subject to the payment of fees, if any, not to exceed PPS' actual costs in preparing the records.

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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