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December 13, 2024

via email only

Joanna Hou
jhou@wweek.com

Andrea Scheirs
Senior Legal Counsel
aschiers@pps.net

Re: Petition of Joanna Hou, on behalf of Willamette Week, challenging
Portland Public Schools' denial of request for complaints about a coach

Dear Ms. Hou and Ms. Scheirs:

Petitioner, Joanna Hou, a reporter for Willamette Week, has submitted a public records petition in which she asks this office to order Portland Public Schools (PPS) to release the following records:

Any complaints filed by parents, students, or any member of the community in relation to Lincoln High School boys basketball program coach Heather Seely-Roberts since she started coaching at Lincoln High School in fall 2021.

Petitioner's request for these records was submitted on October 7, 2024. Petitioner initially filed an undue delay petition with this office pursuant to ORS 192.407 on December 2, 2024. However, PPS completed its response to the request that same day by asserting that the responsive records were exempt pursuant to ORS 342.850(8) and ORS 192.345(12). This petition, submitted December 4, 2024, challenges those claims of exemption.

Coach Seely-Roberts is the head coach of the Lincoln High School boys basketball program. In recent weeks she has been the subject of multiple news articles written by petitioner and other reporters surrounding allegations by families of students of retaliation and making homophobic or racist remarks and counter-allegations from Coach Seely-Roberts that PPS has failed to adequately protect her from a "smear campaign" directed at her by the involved families and created a hostile work environment as a result of its investigation of her.¹ As reported in the

¹ "Lincoln AD: Investigation found no evidence that basketball coach made homophobic or racist remarks," Nik Streng, The Oregonian/OregonLive (Dec. 7, 2024) (<https://www.oregonlive.com/highschoolsports/2024/12/lincoln-ad-investigation-found-no-evidence-that-basketball-coach-made-homophobic-or-racist-remarks.html>), "Lincoln Basketball Coach Accused School District of Failing to Protect Her From Disgruntled Parents," Joanna Hou, Willamette Week (Dec. 6, 2024) (<https://www.wweek.com/news/schools/2024/12/06/lincoln-basketball-coach-accused-school-district-of-failing-to-protect-her-from-disgruntled-parents/>), "Four Lincoln High Basketball Players File a Legal Notice Accusing Their Coach of Retaliation," Joanna Hou, Willamette Week (Dec. 5, 2024)

local media, both Coach Seely-Roberts and parents for multiple involved students have filed tort claim notices with PPS relating to the underlying dispute.

There are two batches of records at issue here: one involving complaints that ultimately led to discipline; another involving complaints for which the PPS has not issued a final decision on discipline.

DISCUSSION

A. Teacher Personnel Files - ORS 342.850(8)

As to teacher personnel files ORS 342.850(8) provides,

The personnel file shall be open for inspection by the teacher, the teacher's designees and the district school board and its designees. District school boards shall adopt rules governing access to personnel files, including rules specifying whom school officials may designate to inspect personnel files.

The Oregon Supreme Court has stated that this section absolutely exempts documents in teacher personnel files from disclosure under the public records law, provided a district has enacted policies under this section making the files confidential. *Oregonian Publishing Co. v. Portland School Dist.* 1J, 329 Or 393, 400 (1999). PPS has adopted such a policy. See PPS Administrative Directive 5.20.110-P.

Article 25.5 of the collective bargaining agreement between PPS and the Portland Association of Teachers further provides:

The unit member will have an opportunity to respond fully to the complaint. If, however, the complaint is used in any manner to support actual or recommended discipline, administrative transfer, nonrenewal or dismissal, such record shall be placed in the personnel file and the complainant's name shall be disclosed if the unit member so requests.

PPS provided this office, as a confidential submission under ORS 192.355(4), with copies of the responsive records, and has informed us that discipline was imposed on Coach Roberts as a result of one set of complaints. As to those complaints that initiated the disciplinary process and resulted in discipline, the union contract contemplates that PPS place them in Coach Seely-Roberts' personnel file where, PPS has informed us, they are in fact located. Coach Seely-Roberts holds a valid teacher's license. Given these facts, ORS 342.850(8), as construed by the Oregon Supreme Court, unconditionally exempts those records from disclosure and precludes this office from weighing the public's interest in accessing them.

B. Personnel Discipline Action – ORS 192.345(12)

ORS 192.345(12) conditionally exempts from disclosure,

A personnel discipline action, or materials or documents supporting that action.

PPS is correct that we have generally considered ORS 192.345(12) presumptively applicable to pending disciplinary investigations or proceedings. This is because 1) it is usually not possible to determine if discipline will or will not be imposed and 2) many of the factors that relate to assessing the public's interest in disclosure relate to the ultimate resolution of the disciplinary action, which cannot be assessed until the final imposition of discipline. See, e.g., *Petition of Mayne*, MCDA PRO 18-52 (2018). That is not an immutable rule, however. *Petition of Slovic*, MCDA PRO 17-61 (2017) (ordering public interest disclosure where employee had been on leave for two years pending investigation).

In this case PPS has informed us that its disciplinary process relating to those complaints involving allegations of inappropriate race-based comments remains ongoing and cites our precedent of applying this exemption to ongoing investigations.

On the facts of this case, we find that the public interest requires release of these particular complaints. This is due to the confluence of the following factors:

- 1) According to recent reporting, the Lincoln High School athletic director has already announced to its basketball community that its investigation of Coach Seely-Roberts “did not find any evidence of any homophobic or racially discriminatory behavior within the LHS basketball program.”²
- 2) Given these statements from the Lincoln High School athletic director, it is much less likely (though of course not impossible) that the ultimate outcome will be the imposition of discipline.
- 3) The records sought are the complaints that originated the investigation, not materials generated during the investigation itself.

Much of the email thread that was provided to this office for this category of documents is not responsive to the request; that is, most emails contained therein are not a “complaint” made about Coach Seely-Roberts. The non-responsive emails in the thread also contain student-specific material that might be considered an educational record for purposes of FERPA. I need not resolve that question today because, as previously stated, they are not responsive to the request and need not be disclosed. Of the 15 pages of emails regarding the race-based complaints, the email on page 5 sent at 6:11 PM on June 5, 2024 and the email spanning pages 12–14 sent at 10:18 AM on August 26, 2024 must be disclosed. The other emails that partially appear on those pages do not need to be released.

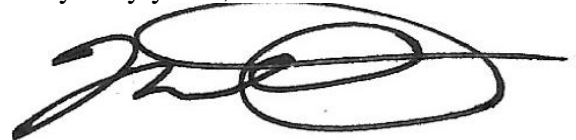
² See, Streng Oregonian/OregonLive article above.

Within the emails ordered disclosed here, PPS may redact pursuant to ORS 192.355(2) and/or FERPA: the name and contact information for the third-party referenced in the emails as the source of one of the complaints; on p. 12, the paragraphs starting “Mr. Wiles: You...” and ending “...my instructions,” on p. 12 the sentences starting “Please email me...” and ending “...has harmed;” on p. 12 in the paragraph starting “If you’re...” the comma-delimited clause starting “since...;” the paragraph on p.14 that begins with a student’s name and ends with “Lincoln.”

ORDER

Accordingly, the petition is granted in part. PPS shall promptly provide petitioner with copies of the complaints that have not resulted in imposition of discipline consistent with the discussion above. This release is subject to the payment of fees, if any, not to exceed those authorized by ORS 192.324(4). The petition is otherwise denied.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mike Schmidt', with a large, stylized loop at the end.

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

Notice to Public Agency

Pursuant to ORS 192.411(2), 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.