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June 5, 2001

BY FAX (541 967-5936) & FIRST CLASS MAIL

Keith Collins
1815 Daemon Place NW
Albany, Or 97321

Re: Petition for Public Records Disclosure Order:
Oregon Department of Education

Dear Mr. Collins:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on May 24, 2001, asks the Attorney General to order the Oregon Department of Education (ODE) to release copies of "documents withheld during the November 2000 education records inspection and review."[1] You also request a copy of "privilege logs prepared by the Oregon Department of Education and the Attorney General's Office that were used to withhold records from my inspection and review." For the reasons provided below, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. ***Turner v. Reed***, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

Suzy Harris, a Legal Specialist at ODE, has identified 15 documents that ODE withheld from you last November. Ms. Harris states that ODE cannot confirm that those are all of the records withheld in November. She explained, however, that ODE has reviewed all of the records in its possession regarding your daughter and does not claim any exemption from release for any other records and that you may make a new request to ODE to review all of your

[1] We appreciate you extending the time within which the law would have otherwise required us to respond to the petition.

daughter's records. With regard to all but two of the 15 withheld documents, Ms. Harris tells us that ODE no longer claims any exemptions from disclosure and has agreed to provide copies of the documents to you. Therefore, with regard to those 13 documents that ODE will send to you, we deny your petition as moot.

The two remaining documents contain information about both your daughter and other students. One document, a facsimile cover sheet from Constance J. Bull to Suzy Harris, contains notations about your daughter, while the back side of the page contains notes about another child without any reference to your daughter. The other document is a copy of a 15-page excerpt from an appointment calendar maintained by a special education administrator in the Greater Albany Public School District, possibly DiAnne Fentress-Rowe. As Assistant Attorney General (AAG) Joe McKeever has discussed with you, the calendar contains information about both your daughter and other students.

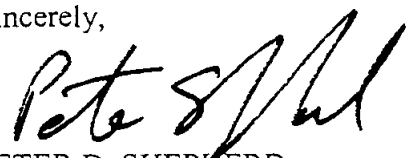
When a record directly related to a student and maintained by an educational institution, i.e., an "education record," contains information about more than one student, a parent's access to that record is restricted to only the information that is specific to that parent's child. *See* ORS 262.565 and OAR 581-021-0290. Therefore, under the Public Records Law, information about students other than the requesting parent's child is exempt from disclosure as a public record the disclosure of which is restricted under Oregon law. ORS 192.502(9).

As explained above, the back of the facsimile cover sheet contains information only about a child other than your daughter. Therefore, we deny your petition under ORS 192.502(9) with respect to the back page of the cover sheet. Ms. Harris tells us that ODE has agreed to release the front page of the facsimile cover sheet and will send that record to you. Therefore, with respect to the front page, we deny your petition as moot.

With regard to the appointment calendar, you have told AAG McKeever that the only information that interests you is that pertaining to your daughter and that ODE may redact the remainder of the calendar in its entirety. Ms. Harris tells us that ODE has agreed to release the calendar on this basis and will send a copy to you. Therefore, we deny your petition as moot with regard to the calendar.

Finally, you also petitioned for review of "privilege logs prepared by the Oregon Department of Education and the Attorney General's Office that were used to withhold records from my inspection and review." Ms. Harris tells us that ODE has already disclosed all privilege logs to you. Therefore, we deny your petition as moot with regard to the privilege logs.

Sincerely,



PETER D. SHEPHERD
Deputy Attorney General

AGS07881
c: Suzy Harris, ODE