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December 23, 2020

VIA E-MAIL ONLY: cvaughn@pamplinmedia.com

Courtney Vaughn
6605 SE Lake Rd
Portland, OR 97222

Re: Petition for Public Records Disclosure Order
Oregon Department of Education
DOJ File No.: 581090-GA0122-20

Dear Ms. Vaughn:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition, which we received December 18, 2020, asks the Attorney General to order the Oregon Department of Education (ODE) to disclose student attendance data for certain school districts for the first quarter of the 2020-2021 school year. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). A public body shall complete its response to a properly submitted records request "as soon as practicable and without unreasonable delay." ORS 192.329(1). A public body's failure to timely respond to a request shall, in most instances, be treated as a denial of the request. ORS 192.407(1)(a). Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain its actions. ORS 192.411(1). An agency may also establish fees reasonably calculated to recover its actual costs for making public records available, and its obligation to process a request is suspended until the fee has been paid or waived. *See* ORS 192.324(4) and 192.329(3)(a).

According to the available records, you requested the attendance data from ODE on November 24, 2020. On November 30, 2020, Jeremy Wartz, ODE Rules Coordinator, informed you that the data you requested has not yet been validated by the school districts and will not be available to the public until early February 2021. He suggested you resubmit your request at that time. You replied that you would like to get copies of any available attendance data, even if it

was not yet validated. You also explained your belief that the unvalidated data is still subject to disclosure under the public records law. Mr. Wartz responded on December 3, 2020, indicating that ODE agreed to process your request. Thereafter, on December 9, 2020, he informed you that he was still working on a cost estimate. As of December 18, 2020, ODE had not completed its response to you or provided you with a fee estimate to furnish the unvalidated data. Your petition followed and generally asserts that ODE has failed to timely respond to your request.

We contacted Mr. Wartz regarding your petition. He informed us that, as of December 21, 2020, ODE has provided you with a fee estimate to furnish you with the unvalidated data. He also explained that ODE expects to be able to complete its response to you within one week of receiving payment. By statute, ODE may, but is not required to, seek payment of the fee prior to completing its response to you. *See* ORS 192.329(3)(a). And because ODE has not otherwise denied your records request, we respectfully deny your petition. *See* ORS 192.411(1) (the Attorney General's authority is general limited to evaluating whether a state agency properly withheld requested records).

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via e-mail only: Jeremy Wartz (ODE)