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August 30, 2023

VIA E-MAIL ONLY: jeff@saveoregonschools.org and emily.nazarov@ode.oregon.gov

Jeff Myers
8755 SW 165th Ave
Beaverton, OR 97007

Emily Nazarov
Oregon Department of Education
255 Capitol Street NE
Salem, OR 97310

Re: Petition for Public Records Disclosure Order
Oregon Department of Education
DOJ File No.: 581001-GA0130-23

Dear Mr. Myers and Ms. Nazarov:

This letter is the Attorney General's response to Mr. Myer's petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. His petition asks the Attorney General to order the Oregon Department of Education (ODE) to disclose various records that he requested in mid-June 2023 and for which he paid in mid-July 2023. His petition asserts that ODE has failed to respond within the time period prescribed by ORS 192.329.

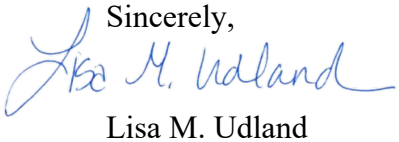
In response to Mr. Myers' petition, ODE informed us that it will be furnishing the records to him today. Because ODE will complete its response to Mr. Myers today, we respectfully dismiss his petition as moot.

Although we dismiss Mr. Myers' current petition as moot, we observe that this is at least the fourth occasion in the last two years in which ODE appears to have failed to provide Mr. Myers with one of the responses required by ORS 192.329. *See, e.g.,* Public Records Order, Nov 4, 2022, Myers and Oden; Public Records Order, Jul 1, 2022, Myers; and Public Records Order, Dec 6, 2021, Myers. We therefore remind ODE that when an agency fails to provide one of the responses required by ORS 192.329 within the prescribed time frame, the Attorney General is required to treat that failure as a denial of the request unless the agency can demonstrate that compliance was not required under ORS 192.329. ORS 192.407(1)(a). If we grant a petition based upon such a failure and order the agency to disclose nonexempt material, we also have discretion to order the agency to pay a $200 penalty and to waive or reduce its

processing fees if the agency responded to the request with undue delay or failed to respond to the request. *Id*.

Because our authority to impose these penalties is contingent upon granting a petition and ordering the disclosure of records, we have no basis for imposing them in this instance. However, we are prepared to impose those penalties in a future petition if ODE continues to fail to comply with ORS 192.329.

Sincerely,



Lisa M. Udland
Deputy Attorney General

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