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July 7, 1999

Donna Collins
1815 Daemon Pl. NW
Albany, OR 97321

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

Dear Ms. Collins:

In your letter to the Attorney General dated June 28, 1999, you asked for the assistance from this office in obtaining records from the Oregon Department of Education's Office of Special Education. We are treating that letter, which we received on July 2, 1999, as a petition under the Oregon Public Records Law, ORS 192.410 to 192.505, asking the Attorney General to direct the Oregon Department of Education (ODE) to make available educational and public records concerning your family that ODE received from the Greater Albany Public School District, as well as other documents concerning your family that were exchanged between the school district and ODE. This letter is the Attorney General's order on that 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 information, the public body must separate the information and make the nonexempt information available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt information. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975). The Attorney General may order a state agency to disclose public records only when the agency has denied a request for the records. ORS 192.450(1); *Morse Bros. v. ODED*, 103 Or App 619, 622, 798 P2d 719 (1990) ("The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records and to act on the request before the Attorney General or the courts can review the matter.").

Suzy Harris, Legal Specialist for ODE, informs us that you have filed several complaints with ODE over the last three years concerning the Greater Albany School District, but that ODE has no record of you requesting records from ODE prior to your letter to State Superintendent Bunn dated June 3, 1999. On June 17, 1999, Ms. Harris wrote to you and asked you to clarify the scope of your June 3rd request. Specifically, Ms. Harris asked whether you wanted records concerning all or only some of the complaints you filed, whether you wanted only the school district's responses to a particular complaint or all documents related to a complaint and whether you wanted any other correspondence that is not related to a formal complaint. Ms. Harris informs us that ODE has not denied your request for records and is willing to disclose any nonexempt documents once you have clarified the scope of your request.

When an agency postpones action on a public records request to seek clarification from the requestor as to the records sought or to consult with its legal counsel,[1/] the agency does not thereby actually or constructively deny the request. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1997) at 16. Because ODE has not denied your records request, we respectfully deny your petition as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS02452
c: Suzy Harris, Oregon Department of Education

[1/] You expressed concern in your letter about paying the Attorney General's office to advice ODOE concerning a public records matter. The Public Records Law permits a state agency to charge for its actual costs in making public records available to a requestor. ORS 190.440(3). These charges may include the costs of locating requested records, reviewing the records to separate exempt materials from those that are not exempt from disclosure and supervising a person's review of original records in order to protect the records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1997) at 11. If an attorney assists an agency in reviewing and segregating the exempt and nonexempt records in order to comply with a records request, the agency may charge the requestor for those costs, although any costs incurred by an agency for legal assistance in determining the parameters of the Public Records Law or the agency's general responsibilities under the law are not recoverable costs. *Id.*