

## **Index of Public Records Exemptions Relating to Education Information**

[ORS 40.245](#) – school employee-student privilege

[ORS 326.565](#) – student records

[ORS 329.471](#) – PII in relation to performance-based assessments

[ORS 332.061](#) – info considered in hearings to expel a student or examine confidential records

[ORS 336.184](#) – Oregon Student Information Protection Act

[ORS 341.290](#) – community college faculty records

**Exemption Statute and Title: [ORS 40.245](#) School Employee-Student Privilege**

**Summary:** Establishes a privilege in civil actions for conversations between school staff and a student relating to the personal affairs of the student or family of the student, if disclosure would tend to damage or incriminate the student or family. Also establishes a privilege for communications from a student to a school counselor in civil and criminal actions in which the student is a party concerning the past use, abuse or sale of drugs, controlled substances or alcoholic liquor.

**Relevant Text: [ORS 40.245](#)**

(1) A certificated staff member of an elementary or secondary school shall not be examined in any civil action or proceeding, as to any conversation between the certificated staff member and a student which relates to the personal affairs of the student or family of the student, and which if disclosed would tend to damage or incriminate the student or family. Any violation of the privilege provided by this subsection may result in the suspension of certification of the professional staff member as provided in [ORS 342.175](#), [342.177](#) and [342.180](#).

(2) A certificated school counselor regularly employed and designated in such capacity by a public school shall not, without the consent of the student, be examined as to any communication made by the student to the counselor in the official capacity of the counselor in any civil action or proceeding or a criminal action or proceeding in which such student is a party concerning the past use, abuse or sale of drugs, controlled substances or alcoholic liquor. Any violation of the privilege provided by this subsection may result in the suspension of certification of the professional school counselor as provided in [ORS 342.175](#), [342.177](#) and [342.180](#). However, in the event that the student's condition presents a clear and imminent danger to the student or to others, the counselor shall report this fact to an appropriate responsible authority or take such other emergency measures as the situation demands.

**Enumerated Exceptions or Public Interest Balancing Test? No.**

**Applied in Court Cases, AG Opinions and/or Public Records Orders? No.**

**Exemption Statute and Title: [ORS 326.565](#) Standards for Student Records**

**Summary:** Directs the State Board of Education to adopt rules governing student education records. Implementing rules generally make student records confidential and exempt from public disclosure. Note that access to student records is restricted by the federal government; i.e., Federal Education Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA).

**Relevant Text: [ORS 326.565](#)**

(1) The State Board of Education shall adopt by rule standards for the creation, use, custody and disclosure, including access, of student education records held by a school district or another public or private educational entity that provides educational services to students in any grade from kindergarten through grade 12. Consistent with the requirements of applicable state and federal law, the standards:

(a) Shall include requirements under which a school district or other educational entity will transfer student education records pursuant to [ORS 326.575](#).

(b) May be applied differently to persons 18 years of age or older.

**\*\*NOTE\*\*** The implementing rules are found in [OAR 581-021-0220 to 581-021-0440](#). In particular, OAR 581-021-0280, **Fees for Copies of Education Records**, states “(1) Student records are public records **\*\*\*** but are exempt from disclosure except as authorized by OAR 581-021-0220 through 581-021-0440.”

**Enumerated Exceptions or Public Interest Balancing Test?** The implementing rules contain a number of exceptions – particularly for access by parents, eligible students, and their representatives – but none that permit disclosure to the general public.

**Applied in Court Cases, AG Opinions and/or Public Records Orders?**

-[PRO Collins](#) (6/5/2001) (denying a parent’s petition in part for the disclosure of a record that contained information about another student)

**Exemption Statute and Title: [ORS 329.471](#) Availability of Personally Identifiable Information in Relation to Results of Performance-Based Assessment**

**Summary:** Prohibits the public disclosure of PII relating to the specific or comparative results of a performance-based assessment.

**Relevant Text:** [ORS 329.471](#)

(1) Except as provided by subsection (2) of this section, a school district employee or volunteer may not post, publish or otherwise make publicly available in a nonsecure setting any personally identifiable information in relation to the specific or comparative results of a performance-based assessment.

(2) A school district employee may post, publish or otherwise make publicly available in a nonsecure setting the information described in subsection (1) of this section if consent to post, publish or otherwise make publicly available the information as allowed by state and federal law is provided by:

- (a) The student who took the assessment, if the student is 18 years of age or older; or
- (b) The parent or guardian of the student who took the assessment, if the student is under 18 years of age.

**Enumerated Exceptions or Public Interest Balancing Test?** Disclosure permitted with consent.

**Applied in Court Cases, AG Opinions and/or Public Records Orders?** No.

**Exemption Statute and Title: [ORS 332.061](#) Hearing to Expel Minor Students or to Examine Confidential Records**

**Summary:** Prohibits the public disclosure of certain information considered by school boards during executive sessions that relates to the expulsion of a student or to the examination of a student's confidential records.

**Relevant Text:** [ORS 332.061](#)

Notwithstanding [ORS 192.610](#) to [192.690](#) governing public meetings:

(1) Any hearing held by a district school board or its hearings officer on any of the following matters shall be conducted in executive session of the board or privately by the hearings officer unless the student or the student's parent or guardian requests a public hearing:

- (a) Expulsion of a minor student from a public elementary or secondary school.
- (b) Matters pertaining to or examination of the confidential records of a student.

(2) If an executive session is held by a district school board or a private hearing is held by its hearings officer under this section, the following shall not be made public:

- (a) The name of the minor student.
- (b) The issue, including a student's confidential records.
- (c) The discussion.
- (d) The school board member's vote on the issue.

(3) The school board members may vote in an executive session conducted pursuant to this section.

**Enumerated Exceptions or Public Interest Balancing Test? No.**

**Applied in Court Cases, AG Opinions and/or Public Records Orders? No.**

**Exemption Statute and Title: [ORS 336.184](#) Oregon Student Information Protection Act**

**Summary:** Prohibits operators of internet websites, online services, online applications or mobile applications marketed for school programs from disclosing PII and other materials regarding students who use the services.

**Relevant Text:**

(3)(a) An operator may not knowingly engage in any of the following activities with respect to the operator's site, service or application:

\*\*\*

(E) Disclose covered information, unless the disclosure is made [for various required or business-related purposes, none of which would permit disclosure to the general public]

**Key Terms:**

ORS 336.184(2)(a) "Covered information" means personally identifiable information or materials that regard a student in this state and that are in any media or format that meet any of the following:

(A) Are created or provided by a student, or the student's parent or legal guardian, to an operator in the course of the student's, parent's or legal guardian's use of the operator's site, service or application for kindergarten through grade 12 purposes;

(B) Are created for an operator or provided to an operator by an employee or agent of the kindergarten through grade 12 school, school district or education service district for kindergarten through grade 12 purposes; or

(C) Are gathered by an operator and personally identify a student, or are linked to information that personally identifies a student, including, but not limited to:

(i) Information in the student's educational record or electronic mail;

(ii) The student's first and last name, home address, telephone number, electronic mail address or other information that allows physical or online contact; or

(iii) The student's discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, Social Security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photographs, voice recordings or geolocation information.

ORS 336.184(2)(c) “Operator” means the operator of an Internet website, online service, online application or mobile application with actual knowledge that the site, service or application:

(A) Is used primarily for kindergarten through grade 12 school purposes; and

(B) Was designed and marketed for kindergarten through grade 12 school purposes, to the extent that the site, service or application is operating in that capacity.

**Enumerated Exceptions or Public Interest Balancing Test? No.**

**Applied in Court Cases, AG Opinions and/or Public Records Orders? No.**

**Exemption Statute and Title: [ORS 341.290](#) General Powers**

**Summary:** Prohibits the disclosure community college faculty records relating to conduct, personal and academic evaluations, disciplinary actions, and personal matters without the consent of the faculty member.

**Relevant Text: [ORS 341.290](#)**

The board of education of a community college district shall be responsible for the general supervision and control of any and all community colleges operated by the district. Consistent with any applicable rules of the Higher Education Coordinating Commission, the board of education of a community college district may:

\*\*\*

(17) Prescribe rules for the use and access to public records of the district that are consistent with [ORS 192.314](#), and education records of students under applicable state and federal law and rules of the commission. Whenever a student has attained 18 years of age or is attending an institution of post-secondary education, the permission or consent required of and the rights accorded to a parent of the student regarding education records shall thereafter be required of and accorded to only the student. However, faculty records relating to matters such as conduct, personal and academic evaluations, disciplinary actions, if any, and other personal matters shall not be made available to public inspection for any purpose except with the consent of the person who is the subject of the record or upon order of a court of competent jurisdiction.

**Enumerated Exceptions or Public Interest Balancing Test? No.**

**Applied in Court Cases, AG Opinions and/or Public Records Orders? No.**