

July 16, 2025 Location: WebEx Sunshine Committee Members
Charlie Fisher, OSPIRG State Director / Co-chair Morgan Smith, Polk County Counsel / Co-chair Cameron Miles, Government Accountability Attorney, Governor's Office Mark Landauer, Lobbyist, Special Districts Association of Oregon Cherrill Crosby, Executive Editor, Statesman Journal and Register Guard Stephanie Clark, State Archivist Leslie Wu, Policy Advisor to Oregon Attorney General Alex Downing, City Recorder, City of Corvallis
Guests
Daivd Pitcher, Public Records Counsel, Department of Justice Spencer Lewis, Director of Policy Services, Oregon School Boards Association Stacy Michaelson, Government Affairs Administrator at Multnomah Education Service District Lori Woltring, Policy Analyst, DOJ Division of Child Support Mike Ritchey, Senior Assistant Attorney General, DOJ Division of Civil Enforcement
Agenda
AUDIO STREAM 0:00:00-0.10
<u>First Agenda Item: Review/Approve Minutes</u> Ms. Wu moved to approve the minutes from the last meeting. Ms. Crosby seconded. Motion passed unanimously 8-0.
<u>Second Agenda Item: Education records discussion and FERPA</u> Mr. Pitcher provided a high-level summary of FERPA and the records that it protects. Co-Chair Fisher introduced Mr. Lewis, a guest available to talk about public records from the perspective of the Oregon School Boards Association. Mr. Lewis said he advises school boards on what to disclose and what not to disclose, and he would love for it to be more clear because there is a lot of overlapping with federal law, specifically the privileged information issue. He supported everything that was shared at the last meeting. Mr. Lewis said FERPA defines education records very broadly. Basically, if the district has it and it relates to a student, it's probably going to be an education record. Those records are generally not disclosable unless they're listed in directory information, which is limited. He said ORS 329.471 refers to personally identifiable information that can only be disclosed with parental consent, with some exemptions. He said ORS 326.565 basically restates FERPA and there is no movement to change any of the definitions under FERPA. He said if a request comes into a district with anything that has student information in it then it is going to be denied and very rarely would they cite 326.565. They would cite FERPA. Referring to ORS 329.471, regarding personally identifiable information regarding performance based assessments, he said it is so we can pool the data and figure out which groups of students are performing, and which are not. If you break student report card data down enough then you might identify the student. For ORS 332.061, that allows the board to vote in executive session on an expulsion. He said there is also a section within 332.061 that talks about all of

those records shall not be made public, which is likely duplicative of FERPA. He talked about a provision around executive session minutes in ORS 192.640 or 650 that says the minutes of an executive session aren't disclosable generally. He said if he ever got a request for a student's expulsion record, he would cite ORS 332.061. Another exception provides personally identifiable information for third party vendors for software and there's probably some overlap with FERPA. He said ORS 341.290 deals with community college employees and there's a comparable statute for school district employees, ORS 342.850(8). ORS 342.850 seems to give school boards the authority over the personnel file but it gets confusing around discipline. There would be public interest if a public employee, especially one that works with students, has done something wrong, especially in front of minors or impacting minors. He said some clarity there would be helpful. There would have to be a public interest balancing test, for example a superintendent evaluation would have public interest.

Mr. Miles said he thought they had different understandings of how FERPA worked. His understanding is that FERPA does not prohibit the disclosure of any records, it only prohibits schools or institutions from receiving federal funds if they disclose records.

Mr. Lewis said he didn't know of any court cases in Oregon, but there was one in Ohio that evaluated that question, as to whether FERPA was like a condition on a grant.

Co-Chair Smith said that his understanding was somewhere in between, that it is a condition to receive federal funds, but in addition to the federal administrative rules within the Department of Education, FERPA allowed for states as well to create their own administrative rules to further flesh out details related to FERPA.

Mr. Lewis said that the state board did just that. Directory information cannot include birth, birthday, prior school and some other pieces. They can include more specificity than FERPA.

Mr. Pitcher said there is a very substantial overlap between FERPA protections and state law protections. He said the AG has opinions where they have said that FERPA creates a federal prohibition and have upheld a state level public body's decision to withhold records on that basis. It covers a broad array of student records.

Mr. Lewis said public records requests depend on context; for example they won't just give out any student's report card. But they can release information if student information is redacted and not easily identifiable.

Mr. Pitcher said there are quite a few exceptions to FERPA but generally for other educators.

Mr. Lewis said health and safety is an exception.

Co-Chair Fisher asked about the school employees student privilege. If it was the subject of a civil action committee wouldn't a public record be created?

Mr. Lewis said that any records created that fall under the school employee privilege would be protected from a public records request. It works a little differently than attorney-client privilege because it's different than testifying in a court proceeding. There is an exception for the security or safety office.

Co-Chair Fisher noted a provision that protected students and families from anything that would damage or incriminate them. He could see some oversight being useful on that issue.

Mr. Lewis said that looks different in Portland and Dufur. Some of those districts have 15 kids. Also, all school employees are mandatory reporters and there are requirements for that. A public records request could come in after the fact. FERPA and/or state records laws would apply.

Co-Chair Fisher asked about ORS 341.290 relating to faculty records. The committee has previously recommended there should be a public interest balancing test for disciplinary records for educators.

Mr. Lewis said clarity is the most important piece there. He said he didn't know of any reason why it should be any different from other public employees. He also didn't know why there were different standards for community college employees.

Ms. Crosby asked if there was an investigation at the school conducted by the school or school board related to the conduct of faculty toward students and an investigative report was produced, who decides whether that is exempt.

Mr. Lewis said it depends on the level of detail of how much student information is actually in there. In that type of situation you probably could redact student identities since the primary purpose of the investigation was looking at the conduct of the employee.

Co-Chair Smith asked why community college records are different from personnel records.

Mr. Lewis said it's written as extra protections, but he's looked at the legislative history and doesn't know what the original purpose was.

Co-Chair Fisher said this could be referred to the subcommittee or the committee could talk about any recommendations they wish to make. He said he feels as if most of these exemptions are reasonable because the law treats minors differently. He said he thought the committee should recommend that exemptions for community college faculty align with recommendations for other educators.

Ms. Wu suggested that all faculty exemptions align.

Co-Chair Smith said that the bulk of educational records is largely duplicative of federal law and it seems like a fool's errand to create nuanced recommendations, with the exception of ORS 341.290 relating to community colleges and having it fall in line with other records of public employees.

Mr. Landauer made a motion to adopt the recommendations the committee made for other educator records for community college faculty. **Co-Chair Smith** seconded.

Mr. Landauer asked if they needed to ask community colleges why they are treated differently.

Ms. Wu said the phrasing of "aligning" was helpful because then they're not trying to separate out community college employees.

All were in favor. Motion passed unanimously 8-0.

Third Agenda Item – Judicial Fitness Special Projects Subcommittee Report Back

Co-Chair Smith said the subcommittee did not have time to meet yet so didn't have a report. They made plans for their next meeting.

Fourth Agenda Item – Agenda for September in-person meeting

Co-Chair Fisher asked after meeting location. **Ms. Wu** said the DOJ Salem Justice building has conference rooms for use. **Co-Chair Smith** and **Mr. Miles** both wanted to meet in Salem. **Co-Chair Fisher** said there would likely be 15 attendees and any other guests from the public. **Co-Chair Fisher** said he thought they should choose an especially meaty topic and have lots of things to go through. They could also talk about how to better coordinate with the legislature. They could also have a retrospective of everything they have accomplished to date. He hoped to invite some of the legislative members to attend.

Mr. Landauer said he thought it would be helpful as a relatively new person to the committee to see a compilation of the committee's previous reports. He said policy makers still need to be reminded that this committee still exists and has put in seven full years of work.

Mr. Miles said he thinks the work of the committee has informed testimony before the legislature on other bills.

Co-Chair Fisher agreed that they should start preparing a compilation.

The meeting will last from 1:30-4:30. There will also be a report from the judicial fitness special projects subcommittee. **Co-Chair Fisher** said he and **Co-Chair Smith** would go over the next set of exemptions to decide which ones to look at so that they can have a robust conversation.

Adjournment