LYONS & ROGERS, LLC
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Responding to Public Record Requests for Settlement Agreements

On Friday, October 23, 2015, the Massachusetts Supreme Judicial Court held that settlement agreements between parents and school districts regarding out-of-district placements are student records, but subject to disclosure under Massachusetts public records law nevertheless *so long as personally identifiable information has been removed.* Champa v. Town of Weston, SJC-11838, slip opinion (October 23, 2015). The inclusion of a confidentiality clause does not protect agreements from being subject to disclosure. Once agreements are "properly redacted, they must be disclosed." Id. at 5. The analysis to determine what redaction is necessary will be on a case-by-case determination that considers the request, the school and the community, and the availability to the requester of other information that indirectly identifies the student." Id. at 4. School districts must consider "not only [ ] the viewpoint of the public, but also from the vantage of those who are familiar with the individual." Id. at 5.

Upon receipt of such requests, districts must comply with FERPA's requirements, state student record law requirements, as well as privacy considerations inherent in the public records law. School districts should redact all names, addresses, personal identifiers such as students' SIMS numbers and dates of birth, information that alone or in combination is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, *as well as the knowledge of the requester, those familiar with the individual student, and the general public*.

Schools are well advised to err on the side of caution when making redactions. The decision essentially requires districts to anticipate that if an individual could be identified by the disclosure of any piece of information in the agreement, that information should be redacted. The quagmire, of course, is that requesters are likely to be unsatisfied with the district's response, but providing too much information opens the district up to complaints of FERPA violations. It should be noted that the court expressly stated that parents and school districts have no privacy interest in the financial terms of an agreement, and so it seems that at a minimum districts would be required to disclose the agreement's financial terms.

Districts should also be cautious of public records requests that stretch the boundaries of the Weston decision. The Weston decision is limited to settlement agreements between parents and school districts regarding out-of-district placements. While it is likely that the decision will have a chilling effect on the dispute resolution process, whether the decision ultimately changes the nature of settlement agreements remains to be seen.

Lyons & Rogers, LLC represents public school districts exclusively, concentrating in the areas of special education and related general education matters.

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