

**Special Education Client Alert
OCTOBER 2015**

**MASSACHUSETTS SUPREME JUDICIAL COURT VACATES
JUDGMENT FINDING THAT SETTLEMENT AGREEMENTS PLACING
STUDENTS IN PRIVATE SPECIAL EDUCATION PLACEMENTS ARE
PUBLIC RECORDS**

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In a decision in favor of the Weston Public Schools, the Supreme Judicial Court found that settlement agreements between a public school and parents of students who require special education services are exempt from the definition of public records under both the statutory and privacy exemptions to the public records law. This decision vacates a prior decision from the Superior Court.

The SJC held that the agreements are exempt as education records under the Family Educational Rights and Privacy Act (FERPA). Since they contain information that relates to specifically-named individuals, if this were to be disclosed, this disclosure would also amount to an unwarranted invasion of personal privacy.

The SJC went on to conclude, however, that settlement agreements may be disclosed once personally-identifiable information is removed. Under FERPA, personally identifiable information includes, but is not limited to the student's name, parents' or other family members' names, their address, social security numbers, date of birth as well as "[o]ther 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, to identify the student with reasonable certainty" and "[i]nformation requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education relates." **Determining what to redact will require a case by case determination in light of the request, the school and community, and the availability of other information that would indirectly identify the student to the person requesting the information.**

Finally, the SJC noted that although the IDEA and Massachusetts laws protect the confidentiality of educational records of students with disabilities who receive special education services, redacting confidential information *may* render the document a public record that must be disclosed under the public records law.

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In discussing the privacy exemption, the SJC explained that the agreements may contain information that, if released, could amount to an unwarranted invasion of the student's personal privacy. Information which "may link the name of the individual student (and his or her family) to information about the services and programming the child will receive and information about the child's disability, progress, and needs...and (the) identity of the out-of-district school, which may indirectly identify the child's disability" is the "type of information [which] is highly personal, and disclosure may result in embarrassment and potentially lead to stigma, bringing it within the scope of [the privacy] exemption." When assessing what is identifying information for the purpose of redaction, schools must take into consideration the view point of those familiar with the individual student, as well as that of the public. The SJC did note that disclosing the financial terms of the agreements is not an unwarranted invasion of person privacy once personally-identifiable information is redacted, because those terms reflect the use of public monies.

Schools are advised to contact their counsel when and if they receive public records requests for settlement agreements.

This Alert was prepared by Doris Ehrens, an attorney in the law firm of Murphy, Hesse, Toomey & Lehane, LLP. If you have any questions or concerns with regard to this alert, please contact Attorney Ehrens, the attorney assigned to your account, or your own special education counsel.

Murphy, Hesse, Toomey & Lehane, LLP, is a multi-service law firm with offices in Quincy, Boston, and Springfield, Massachusetts. The firm emphasizes education law, special education law, municipal law, labor & employment law, employee benefits law, municipal law, public sector labor law, and related litigation.

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