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Champa v. Weston Public Schools, 473 Mass. 86 (2015)

I. INTRODUCTION

Schools frequently face a tug-of-war between the protection of confidential student record information and the right of the public to obtain information from public entities. That conflict came to a head in the 2015 Supreme Judicial Court case, *Champa v. Weston Public Schools.* 473 Mass. 86 (2015). In that case, the Supreme Judicial Court held that settlement agreements between public schools and parents regarding the provision of special education are "education records" protected by the Family Educational Rights and Privacy Act ("FERPA"), the Massachusetts student records laws and regulations, and state and federal special education laws. The Court further held, however, that once the protected personally-identifying information is removed, the agreements would no longer be exempt from the Massachusetts public records law and, therefore, would be subject to disclosure, even if the agreements contain confidentiality provisions. *Id.*

Although the *Champa* Court provided some general guidance as to the types of information that should be redacted from a settlement agreement before releasing it to the public, given the highly sensitive nature of these documents, we strongly urge school districts to work closely with local counsel when responding to public records requests seeking settlement agreements or other confidential student record information.

II. FACTUAL AND PROCEDURAL BACKGROUND

The factual and procedural background of this case is straight-forward. On January 17, 2012, Michael Champa, the parent of a special education student and resident of Weston, sent a public record request to the Weston Public Schools ("Weston" or "District") seeking, in part, "copies of all agreements entered into by the school district with parents and guardians, as part of the individualized education program (IEP) process, in which the school district limited its

contribution to education funding or attached conditions for it for out of district placements for school years 2007-2012." *Id.* at 88 (internal punctuation omitted).

The school district responded by letter dated January 30, 2012 denying the request on the grounds that (1) the settlement agreements were not public records and (2) disclosing the settlement agreements would violate FERPA.

Champa sought the Supervisor of Public Records' review of the school district's decision. The Supervisor ruled that the settlement agreements were exempt from disclosure.

Champa then brought suit in the Superior Court, seeking declaratory judgment that the agreements were public records and a permanent injunction ordering Weston to disclose them. The parties filed cross motions on the pleadings pursuant to Rule 12(c) of the Massachusetts Rules of Civil Procedure. The Superior Court granted the parent's motion and denied the school district's motion. "The final judgment [of the Superior Court] declared that the agreements were public records, were not 'student records' under the Massachusetts student record regulations or 'education records' under FERPA, and were not exempt from disclosure pursuant to exemption (*a*) or exemption (*c*)" of G.L. c. 4, § 7 (the statutory provision that defines "public record"). *Id.* at 89-90. As a result of those conclusions, the Superior Court ordered Weston to provide Champa with copies of the requested settlement agreements with student names and disabilities redacted. The Court also stated that the District could apply for clarification on other "unanticipated" personal information that might disclose the identity of the student who is the subject of the settlement agreement. *Id.* at 90.

Weston appealed. The Superior Court stayed its decision pending the appeal "'[d]ue to the unique nature of this case and the significance of such disclosure.'" *Id.*

III. INTERSECTION OF PUBLIC RECORDS AND STUDENT PRIVACY LAWS

The Massachusetts Supreme Judicial Court transferred the appeal to that Court on its own motion. The Supreme Judicial Court reviewed the Superior Court's ruling *de novo.* Since motions for judgment on the pleadings "test[] the legal sufficiency of the complaint," "all of the well-pleaded factual allegations of the nonmoving party are assumed to be true." *Id.*

A. Massachusetts Public Records Law

The Massachusetts public records law, G.L. c. 66, § 10, "requires access to public records in the possession of public officials." *Id., citing* G.L. c. 66, § 10. The public records law is broad in scope. G.L. c. 4, § 7 defines "public records" to "include all 'documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the [C]ommonwealth, or of any political subdivision thereof.'" *Id.*, *quoting* G.L. c. 4, § 7, Twenty-sixth. Although there are exemptions to the general rule that the records of public entities be made public, public entities' documents are presumed to be public records and the custodian of the records bears the burden of proving "with specificity" that one or more of those exemptions applies. *Id.*

In the present case, there was no dispute that Weston's records qualified as public records. The dispute centered on whether the settlement agreements at issue were exempt from

disclosure under exemption (a) or exemption (c) of the public records law. Exemption (a) concerns statutory exemptions. Exemption (c) is a general privacy exemption. They are discussed in turn below.

B. State and Federal Student Record Laws and the Statutory Exemption to the Public Records Law

The Supreme Judicial Court first addressed the statutory exemption to the public records law. Exemption (a) excludes from the definition of public records "materials or data that are 'specifically or by necessary implication exempted from disclosure by statute.'" *Id.* at 91, *quoting* G.L. c. 4, § 7, Twenty-sixth (a). Student record information in Massachusetts is protected by at least two state and two federal laws. Specifically, FERPA and the Massachusetts student record law and implementing regulations largely protect student record information from disclosure. Further, since the documents at issue were related to special education, the provisions of the federal IDEA and Massachusetts special education law protecting the confidentiality of educational records of students with disabilities were also in play.

As discussed below, the Court held that certain identifying information about the particular students who were the subjects of the settlement agreements were confidential and exempt from public disclosure. The laws protecting that information and the public records laws allow for redaction, however, and once that confidential information is redacted, the document becomes subject to disclosure in response to a public records request.

1. FERPA

FERPA protects the confidentiality of students' "education records." "Education records" is defined broadly "as materials that '(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution.'" *Id.*, *quoting* 20 U.S.C. § 1232g(a)(4)(A). Since the special education settlement agreements satisfy both of those elements, they qualify as "education records" protected by FERPA.

With respect to the first prong, whether the agreements "contain information directly related to a student," the Court noted that the agreements contain the name of the student and parents. They may also identify the student's educational placement and programming, "two matters that fall directly within the ambit of academic matters and status as a student." *Id.* at 92. As for the second prong, the District maintained the settlement agreements, typically in the student's special education file. *Id.*

Although the Court concluded that the settlement agreements qualify as "education records" and, therefore, are subject to FERPA's protections, that did not end the discussion. Rather, the Court noted that "[t]he public records law specifically contemplates redaction of material that would be exempt, to enable to release of the remaining portions of a record." *Id.*, *citing* G.L. c. 66, § 10(a). Likewise, FERPA's implementing regulations allow school districts to disclose education records after the removal of personally identifiable information. "Personally identifying information" for the purposes of FERPA "includes, but is not limited to, the student's name; the names of the student's parents or other family members; the address of the student or student's family; personal identifiers, such as the student's social security number; and indirect identifiers, such as the student's date of birth." *Id.* at 93, *citing* 34 C.F.R. § 99.3 (2012).

The actual redactions must be made on a "case-by-case determination that considers the request, the school and the community, and the availability to the requestor of other information that indirectly identifies the student." *Id.*, *citing* 34 C.F.R. §§ 99.3, 99.31(b)(1). Before releasing education records, the educational agency must make "'a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information.'" *Id.*, *quoting* 34 C.F.R. § 99.31(b)(1) (2012).

2. Massachusetts Student Records Laws

In addition to the federal protections under FERPA, Massachusetts student records enjoy protections under state law. Pursuant to the authority granted by G.L. c. 71, § 34D, the Massachusetts Department of Elementary and Secondary Education has promulgated student records regulations. *Id.* at 93-94, *citing* G.L. c. 71, § 34D, 603 CMR § 23.00. Those regulations "direct[] that no third party shall have access to information in or from a student record without the consent of the eligible student or the parent." *Id.* at 94, *citing* 603 CMR §23.07(4).

Pursuant to those regulations, the "student record" is defined as "the [t]ranscript and the [t]emporary [r]ecord, including all information ... regardless of physical form or characteristics concerning a student that is organized on the basis of the student's name or in a way that such student may be individually identified, and that is kept by the public schools of the Commonwealth. *Id.*, *citing* 603 CMR 23.02 (2002). The Court agreed with the Superior Court that the settlement agreements did not fall within the definition of "transcript." The Court concluded, however, that settlement agreements are a part of a student's temporary record. As part of the temporary record, the settlement agreements qualified as "student records" under the Massachusetts student records laws. *Id.* at 94-95.

The Court continued, however, that "like FERPA, the Massachusetts student records law and regulations protect student records only as they pertain to certain information – not entire documents." *Id.* at 95. "Accordingly, under the public records law, any 'segregable portion' of the record must be disclosed, if with the redaction it independently is a public record." *Id.*, *citing* G.L. c. 66, § 10(a).

3. Special Education Laws

Federal and state special education laws provide another layer of protection to student records concerning the provision of special education. Since the documents at issue were special education settlement agreements, the Court considered those laws, as well. *Id.* at 95-96, *discussing* IDEA and G.L. c. 71B. The Court reached the same conclusion about the protections of those laws as it reached concerning the general student record laws. Specifically, the Court concluded that "[n]othing in these [special education] statutes suggests that records relating to students are confidential once all personally identifiable information is removed."
Since those laws render certain information confidential, once that information is redacted, the document must be disclosed in accordance with the public record laws. *Id.* at 96.

4. The Privacy Exemption to the Public Records Law

The Court also considered exemption (c) to the public records law. That exemption protects from disclosure "materials or data that are 'personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwanted inflation of personal privacy.'" *Id.* at 96, *quoting* G.L. c. 4, § 7, Twenty-sixth (c). That exemption "'requires that the seriousness of any invasion of privacy be balanced against the public right to know.'" *Id., quoting Attorney Gen. v. Assistant Comm'r of the Real Prop. Dep't of Boston,* 380 Mass. 623, 625 (1980). If the public's "right to know" "substantially outweighs" the "seriousness of any invasion of privacy" then the information must be disclosed. *Id.*

In considering the student's privacy interests, the Court looks at whether the disclosure would cause "personal embarrassment to an individual of normal sensibilities, whether the materials sought contain intimate details of a highly personal nature, and whether the same information is available from other sources." *Id.* In the case of the settlement agreements, the agreements may identify individual students and information about his or her disability or needs, which is highly personal and may result in embarrassment and possibly stigma. *Id.* at 97. As a result, that personal information would be covered under exemption (c).

Consistent with the Court's analysis of exemption (a), the Court nonetheless concluded that the personally-identifying information covered under exemption (c) could be redacted so that the remainder of the document could be disclosed as a public record.

IV. GUIDANCE ON REDACTIONS

Having held that special education settlement agreements are not exempt from public records requests once personally identifying information is redacted, the Court then gave some guidance on the standards for determining the information to redact. As noted above, FERPA requires the redaction of the student's name, family members' names, the student's address, and personal identifiers such as social security numbers and dates of birth. *Id.* at 93. Those may not be the only pieces of information that need to be redacted, however. The Court explained that when determining what constitutes personally-identifying information to be redacted, "the inquiry must be considered 'not only from the viewpoint of the public, but also from the vantage of those who [are familiar with the individual.]'" *Id.* at 97, *quoting Department of the Air Force v. Rose,* 425 U.S. 352, 380 (1976).

The Court further explained that "once personally identifiable information is redacted, the financial terms of such agreements, which necessarily reflect the use of public monies, partially or fully, to pay for out-of-district placements, do not constitute an unwarranted invasion of personal privacy; indeed, the public has a right to know the financial terms of these agreements." *Id.*

Finally, the Court explained that confidentiality clauses in the settlement agreements to not exempt those agreements from the public records law. *Id.* at 98-99.

V. CONCLUSION

Special education settlement agreements by their very nature contain some of the most highly sensitive and confidential student record information. In the wake of the *Champa* decision, there has been an influx of public records requests for settlement agreements. We urge school districts to work closely with local counsel to determine what personally-identifying information should be redacted before making public any special education settlement agreements.

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