

# LYONS & ROGERS LLC

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October 24, 2016

Via electronic mail only to [infoshinesunlight@gmail.com](mailto:infoshinesunlight@gmail.com)

Mr. Jorge Manuel Teixeira

## Re: Public Record Request – Andover Public Schools

Dear Mr. Teixeira:

This letter is in response to your request for public records to the Andover Public Schools which was received on October 11, 2016. This correspondence is intended to address your specific request as well as provide you with a cost estimate for the redaction and production of the requested records subject to public disclosure under M.G.L. c. 66 §10.

In your request, you ask for:

*“Settlement agreements entered into by your School District with parents and guardians, from January 1, 2011 through today, relative to the provision of special education services and/or educational placement(s) for students with disabilities, redacted of all personally identifying information.”*

In accordance with the Massachusetts Supreme Judicial Court’s decision, Champa v. Town of Weston, 473 Mass. 86 (2015), the district will produce redacted copies of settlement agreements regarding the placement of students in out-of-district placements from January 2011 to the present upon receipt of payment for the cost associated with the redaction.

The requested agreements contain information which is exempt from public disclosure pursuant to federal and state student and family privacy laws.<sup>1</sup> In *Champa*, the SJC found that settlement agreements between parents and a public school regarding the placement of students in out-of-district private educational institutions constitute as educational records under the Family Educational Rights and Privacy Act (FERPA) and student records under Massachusetts student record laws and regulations, and are therefore

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<sup>1</sup> 20 U.S.C. §1232g, as amended, 34 C.F.R. Part 99, 20 U.S.C. §1232h, 34 C.F.R. Part 98; M.G.L. c 66, §10, M.G.L. c. 71, §34, and 603 C.M.R. 23.00, et seq.

exempt from the definition of “public records” pursuant to M.G.L c. 4, §7, Twenty-sixth exemption (a) and (c). The Court further concluded, however, that as it pertains to settlement agreements regarding the placement of students in out-of-district private educational institutions, these agreements may be redacted to remove the protected personally identifiable information (PII) they contain, after which they become subject to disclosure under the Massachusetts public record law.<sup>2</sup>

In *Champa*, the Court’s decision was limited to settlement agreements pertaining to the placement of students in out-of-district private educational institutions, whereas your request also seeks agreements “relative to the provision of special education services.” The SJC did not address agreements which do not pertain to the placement of students in out-of-district private educational institutions. Hence, your request seeks records beyond the SJC’s interpretation of permissible disclosure under the Massachusetts public record law.

As such, Andover cannot provide you with copies of agreements that do not specifically pertain to a student’s placement in an out-of-district private educational institution as they are outside the scope of the limited ruling in *Champa*, and remain exempt from disclosure under the Massachusetts public record law pursuant to federal and state student and family privacy laws for the reason that they are student records. M.G.L c. 4, §7, Twenty-sixth, (a) and (c).

The district has identified a total of 71 settlement agreements that are responsive to your request. Based on a timed trial, I estimate that it will take approximately 23.6 hours to redact the 71 agreements. Current law permits the district to charge a fee “based on the hourly rate of the lowest paid employee who is capable of performing the task” 950 CMR 32.06(1)(c).<sup>3</sup> The new public records law that goes into effect in January, however, limits the rate Andover may charge to twenty-five dollars (\$25.00) per hour after the first two hours. Although it is not obligated to comply with the new law until January, Andover is

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<sup>2</sup> Pursuant to 34 CFR 99.3, personally identifiable information includes, but is not limited to:

- The student's name;
- The name of the student's parents or other family member;
- The address of the student or student's family;
- A personal identifier, such as the student's social security number, student number, or biometric record;
- Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- Other 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; or
- Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

<sup>3</sup> A school administrator would be the lowest paid employee who is capable of performing the redaction task. Redaction requires knowledge the FERPA regulation, state regulations, PII, and application of that knowledge to the settlement agreements. An administrator’s hourly rate exceeds \$25.00.

reducing its fee estimate to \$540.00 in the spirit of the new law. This figure represents 21.6 hours of redaction time at twenty five dollars per hour. This does not reflect the actual cost to the District, but rather the district's willingness to absorb the anticipated actual cost.

Accordingly, the requested redacted agreements which are subject to public disclosure under the applicable law will be produced to you upon your remittance of \$540.00. Should you still seek the redacted agreements, kindly forward a check in this amount to Paul Szymanski, Assistant Superintendent of Finance and Administration for the Andover Public Schools, 36R Bartlet Street, Andover, MA 01810.

Thank you for your attention to this matter.

Very truly yours,

  
Amy M. Rogers

cc: Superintendent Sheldon Berman  
Assistant Superintendent Paul P. Szymanski