



EMIL SKOP AWARD

Congratulations to **Phil Collins** 2015 co-recipient of the Emil Skop Award.

“Phil is someone who has worked tirelessly to strengthen our profession in such a manner that benefits all of us. His sense of humor, incredible memory recall and determination to provide exceptional legal services are all attributes that have benefitted the members of this association.”

Emil S. Skop was a founding member of the MMPA and is remembered for his tireless efforts to promote our profession by sharing information and experiences with other human resources and labor relations professionals. Each year the MMPA bestows the Skop Award to an individual(s) who has made a positive impact on the association and its members.

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Special Education Settlement Agreements Are Education Records Subject To Public Disclosure Once Redacted

The Massachusetts Supreme Judicial Court (SJC) recently issued a decision in Champa v. Town of Weston Public Schools, which vacates a prior decision of the superior court and balances the public’s right of access to government records with a student’s right to individual privacy and the confidentiality of student records. 2015 WL 6394201 (Oct. 23, 2015). The issue in Champa was whether settlement agreements between a public school and the parents of a public school student requiring special education services are “public records” or exempt from disclosure. On cross motions for judgment on the pleadings, a superior court judge concluded that the agreements were “public records,” rather than “education records” and that they were **not exempt** from disclosure under the state’s public records law pursuant to either exemption (a) (statutory exemption) or exemption (c) (“unwarranted invasion of personal privacy”). Weston appealed and the SJC transferred the case from the Appeals Court on its own initiative.



The SJC concluded that the agreements between a public school and parents of students who require special education services, including

placements in out-of-district private educational institutions, **are exempt** from the definition of public records under both the statutory (a) and privacy (c) exemptions to the public records law. The Court further concluded that personally identifiable information in the agreements may be redacted, and that when properly redacted to remove personally identifiable information, they are subject to disclosure under G.L. c. 66, § 10 of the Massachusetts public records law. The inclusion of a confidentiality clause in the agreement does not prohibit its disclosure.

“Personally identifiable information” includes not only the student’s name and date of birth, but other information that read alone or in the context of the agreement can be linked to a specific student or used to identify that student. The Court advised that “[t]he analysis to determine what redaction is necessary will be a case-by-case determination that considers the request, the school, the community, and the availability to the requester of other information that indirectly identifies the student.” School Districts that receive public record requests for student settlement agreements are advised to consult counsel to confirm what information should be redacted prior to disclosure.

Win Some, Lose Some Before DLR On Scope of Bargaining Issues

Can a firefighter call in “sick” while on vacation, and thus preserve another vacation day? What if there is medical documentation? Veteran readers might wonder, what is the parties’ practice? And if the “practice” is that a grand total of two firefighters had done this – in 1992, but not before or since – that does not exactly support the notion of a binding past practice, does it? It did to one DLR hearing officer who apparently assumed no firefighter got sick enough to see a doctor while on vacation, over a period of 20 years. Town of Shrewsbury and Local 4613, (MUP-13-2954) (Sullivan).

If an employer chooses not to fill a police captain’s position, but instead assigns a police lieutenant to perform the captain’s duties, does it have a duty to bargain about the lieutenant’s pay and workload? This is a split decision: No duty to bargain about filling the position *per se*, but the assignment of captain’s duties to the lieutenant required impact bargaining. City of Everett and NEPBA, (MUP-13-3006) (Davis).

Is the decision to re-hire a retired employee a negotiable subject of bargaining because, without that hiring, unit members would have had more overtime and could have bid on the vacant position? No. At least not without evidence of how the hiring impacted terms and conditions of employment of unit members. Town of Winchester and S.E.I.U. Local 888, (MUP-13-3289) (See).