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January 20, 2010

Mr. Matthew Heller
Courthouse News Service

Re: Savana Redding v. Safford Unified School District, et al

Dear Mr. Heller:

You requested access to and a copy of the District's settlement agreement with Savana Redding, a former student. Unfortunately, state and federal law compel the District to deny your request.

A.R.S. § 15-141(A) confirms that the release of or access to educational records is governed by federal law, i.e. the Family Educational Rights and Privacy Act (FERPA). And FERPA prohibits the District from releasing a student's education records without proper consent or authority. 20 U.S.C. § 1232g(b). By definition, the term education records includes any records related to an individual's attendance as a student even if created after the individual is no longer enrolled. 34 C.F.R. § 99.3. Moreover, the U.S. Department of Education has specifically determined that a settlement agreement is an education record under FERPA, and thus, not subject to disclosure under an open records law:

Some schools, however, have mistakenly interpreted this provision to mean that any record created or received by the institution after a student is no longer enrolled, regardless of the subject matter, is not an "education record" under FERPA. For example, under this [mis]interpretation a settlement agreement maintained by a school district related to a discrimination, wrongful death, or other lawsuit brought by a parent after the student is no longer enrolled is not an "education record" under FERPA and, therefore, could be subject to mandatory disclosure under an open records law or otherwise released without consent to anyone. *The final regulations clarify that records that pertain to an individual's previous attendance as a student are "education records" under FERPA regardless of when they were created or*

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received by the institution. Section-by-Section Analysis of
Regulations (Dec. 2008).

Existing case law is also in agreement on this point. *Wittenberg v. Winston-Salem/Forsyth County Bd. of Educ.*, No. 1:05cv00818, Memorandum Opinion (M.D.N.C. 6-16-2009) (concluding that public release of settlement agreement resolving student's claim would violate FERPA); *Sotee v. Cowles Publ'g Co.*, 174 P.3d 60, n.3 (Wash. 2007) (U.S. Department of Education warned that settlement agreement was protected by FERPA and could not be released to the public).

Feel free to call me if you have any other questions or concerns.

Very truly yours,

HOLM WRIGHT HYDE & HAYS PLC



By
David K. Paule

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6927-0437