



AL. MUJARES, Ph.D.
County Superintendent of Schools

200 Kalmus Drive · P.O. Box 9050
Costa Mesa, CA 92628-9050

(714) 966-4220
(714) 434-4945 FAX

SCHOOLS LEGAL SERVICE

RONALD D. WENKART
General Counsel

CLAIRE Y. MOREY
LYSA M. SALTZMAN
KELLY R. BARNES
Counsel

NORMA GARCIA
Paralegal

February 5, 2016

OPAD 16-03

To: District Superintendents
Regional Occupational Program Superintendents
Assistant Superintendents of Business
Assistant Superintendents of Human Resources
Assistant Superintendents of Instruction
SELPA Directors
Special Education Directors

From: Ronald D. Wenkart
General Counsel

Re: Notice of Disclosure of Student Records

Attached is a copy of a Notice of Disclosure of Students Records issued by the United States District Court for the Eastern District of California, Sacramento Division, on February 1, 2016 in the case if Morgan Hill Concerned Parents Association v. California Department of Education.¹

The litigation in Morgan Hill Concerned Parents Association began in April 2012, when the plaintiffs filed a lawsuit against the California Department of Education (CDE), alleging systemic non-compliance by local educational agencies with the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act. The lawsuit further alleges that CDE failed to monitor, investigate and correct such non-compliance. CDE has denied these allegations, and is in the process of litigating the matter.

As part of the discovery process in the litigation, the plaintiffs have requested numerous documents as well as student data collected and stored by CDE. Many of the requested documents in the CDE database contain personally identifiable information of children with disabilities. Specifically, children who requested an assessment or who were assessed for special education eligibility, and children who are attending or who have attended a California school at any time since January 1, 2008, will be affected. Although the CDE objected to the production

¹ Case No. 2:211-CV-03471-KJM-AC.

of such documents, the Court ordered CDE to produce the documents and included a protective order prohibiting the plaintiffs and their legal counsel from disclosing confidential information required in the course of the lawsuit, including personally identifiable information to third parties. None of the information may be used outside of the lawsuit, and no student's personal identifiable information will be disclosed to the public.

The Family Educational Rights and Privacy Act (FERPA) requires school districts and county offices of education to protect the privacy of parents and students, including the privacy of their student records. FERPA requires, in most cases, that parents and/or students provide written consent before a school district or county office of education may disclose personally identifiable information. One of the exceptions to this general requirement is the issuance of a court order, as in the present case. The CDE is obligated to inform the parents or student that the U.S. District Court has ordered it to produce documents and/or data that includes the student's personally identifiable information and that the parents or student may object directly to the Court regarding this disclosure.

To comply with the court order, the CDE is requesting school districts, SELPAs and county offices of education to post the following link to CDE's Web site, <http://www.cde.ca.gov/morganhillcase>, from February 1, 2016 through April 1, 2016. The link includes a copy of the Court's order and an objection form that parents may send by U.S. Mail to the United States District Court in Sacramento. It is our recommendation that each District posts the link to the CDE Web site on their Web site as soon as possible.

This memo is intended as general information and does not constitute legal advice. If you have any questions, please do not hesitate to contact our office.

RDW:bjf
Attachment