

Special Education Law

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AALRR Alert



Judge Changes Course on Student Data Discovery Protocol

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On March 1, federal District Court Judge Kimberly Mueller modified an earlier order and determined that records containing the information of some 10 million California students will *not* be provided outright to the attorneys involved in a statewide special education lawsuit (*Morgan Hill Concerned Parents Association v. California Department of Education*). Instead, the database containing the records will remain in the sole custody of the California Department of Education (CDE). CDE must assist the plaintiffs' attorneys in searching the database for information. The judge also reiterated that no personally identifiable information of any student may be released to the plaintiffs' attorneys unless they demonstrate to the satisfaction of the court that a secure method will be used to store the data.

While the parties continue to litigate the extent of the disclosure of student data, Judge Mueller's decision responds to concerns from the public about the release of the information. Previously, the judge had ordered that individually identifiable student data could be

disclosed to the plaintiffs' attorneys within a "secure environment" in which to run "targeted searches." Pursuant to the Family Educational Rights and Privacy Act (FERPA), parents and adult students were notified of the order, and the court ordered a limited period in which to "object" to the disclosures by submitting forms or letters to CDE (see our February 18 Alert).

An overwhelming outcry ensued, spurred in part by various misunderstandings of the order as "releasing" student data to the plaintiffs or even to the public. As the new order clarifies, no individually identifiable student data has been turned over to the plaintiffs' attorneys or anyone else in connection with the lawsuit. Additionally, all of the student data remains subject to a 2015 protective order that shields any further disclosure of data obtained through discovery.

The court received written objections "too numerous to review individually," which prompted further review of the protocol for discovery of the student data. On March 1, Judge

Mueller ordered the parties to use a different e-discovery protocol for access to the state's comprehensive database on students and teachers, known as CALPADS (California Longitudinal Pupil Achievement Data System), which she described as "the most sensitive because it contains the largest quantity of personal identifying information." Under the new protocol, CDE will maintain custody of the data, but will be responsible for facilitating searches of the data to meet the plaintiffs' discovery needs.

Multiple categories of records are at issue, of which CALPADS is only one. The March 1 order appears to leave open the possibility that such disclosures could still occur with respect to data other than CALPADS, if the court is convinced that the disclosure of such data is warranted in the context of the

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litigated claims, and that adequate security measures are in place. Any disclosure to the attorneys would be subject to a protective order, prohibiting further release of the data. The March 1 order also clarifies that the objection forms filed by parents do *not* serve to “opt out” of the disclosures. In that respect, an objection filed with the court does not result in any student record being withheld from the plaintiffs’ attorneys. **However, because objection forms are still being solicited and received by the District Court until April 1, 2016, local educational agencies may still post the CDE’s FERPA notice on their websites.** According to the March 1 order, the court clerk will maintain the objection forms in sealed boxes in a secure location.

The lawsuit, filed in 2011, alleges the state is violating the Individuals with Disabilities Education Act through a “systemic failure to provide a free appropriate education” to children with disabilities. CDE has disputed the plaintiffs’ claims.