



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

February 4, 2016

**To:** Superintendents, Member School Districts (K-12)  
**From:** Frank Zotter Jr., Senior Associate General Counsel *FZ*  
Jennifer E. Nix, Schools Legal Counsel *JEN*  
**Subject:** Notice from the California Department of Education  
About Litigation and Access to Pupil Records  
Memo No. 05-2016

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Our office has received inquiries about a Notice from the California Department of Education (CDE) relating to “the Morgan Hill case,” an ongoing litigation in federal district court against the CDE. The CDE Notice requests that local educational agencies (LEAs) post their own notices about the litigation.

The e-mail from State Superintendent Tom Torlakson is headed “Official Message from the State Superintendent of Public Instruction” and explains that, in April 2012, two organizations, the Morgan Hill Concerned Parents Association and the Concerned Parent Association, filed a lawsuit against the CDE alleging systemic non-compliance by LEAs with regard to the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. The suit also alleges that the CDE fails to monitor, investigate, and correct such non-compliance in accordance with the law. CDE is actively defending the litigation.

The Family Educational Rights and Privacy Act (FERPA) sets out the requirements for protecting the privacy of parents and students, including student records. Pursuant to FERPA, student records generally cannot be disclosed without express written permission from each student’s parent or guardian. The plaintiffs in the litigation have requested numerous documents and student data collected and stored by CDE. Many of the requested documents in CDE’s possession contain personally identifiable information of students with disabilities, or students who have been assessed for special education eligibility, since January 1, 2008.

The federal judge ordered CDE to provide the requested documents to the plaintiffs’ legal counsel. CDE will have to turn over documents that may contain unredacted personally identifiable information about specific students. There is an



exceptions to FERPA permitting release of student records in compliance with a court order.

Although CDE will have to provide these documents, the court has also issued what is known as a “protective order.” The protective order prohibits the plaintiffs or their legal counsel from disclosing any confidential information acquired in the course of the lawsuit except to those involved directly in the litigation. Under the protective order, the plaintiffs in the lawsuit are allowed access to the confidential information. None of the information that CDE is obligated to produce may be used outside of this lawsuit, and no student’s identifying records will be disclosed to the general public.

As mentioned above, parents and/or adult students generally must provide written consent before an educational agency may disclose personally identifiable information. One of the exceptions to this rule, however, is that it can be provided when ordered by a court, which is what has happened here.

The Notice that CDE has distributed to LEAs is to notify them that it has been ordered to produce documents and data that include personally identifiable information. The court order permits parents or adult students, present or former, to object directly to the court regarding this disclosure. To that end, and to comply with FERPA, the CDE is requesting LEAs and SELPAs 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 provides a Notice and Objection Form required by FERPA that parents or adult former students can use to object to their own or their child’s information from being among the documents and data released within the lawsuit. Because not all LEAs may have noted this communication from CDE, we recommend that LEAs comply with CDE’s request by posting a brief announcement about the case on their websites and providing the link to the CDE website from now until April 1, 2016.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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