

# CLIENT NEWS BRIEF

## Morgan Hill Court Modifies Protocol Regarding Disclosure of Student Data

In July 2015, the Court in *Morgan Hill Concerned Parents Ass'n v. Cal. Dep't of Educ.* (E.D. Cal. January 26, 2016) Case No. 2:11-cv-3471, 2016 U.S. Dist. LEXIS 8952, issued an order that would require the California Department of Education (CDE) to release student data in its possession of as many as 10 million current and past public school students. This data would include sensitive information such as social security numbers. The Court also opened the door to objections by individual students and parents. In response to the overwhelming number of objections being received, the Court on March 1, 2016, modified its previous protocol for the release of student's data to the parties in the litigation. The Court's modified order still will allow for the release of student information, but through the CDE, rather than in direct disclosure to the plaintiffs in the case. This will likely protect items such as social security numbers. However, media reports regarding the limitations on what will now be released have been inconsistent and inaccurate. The purpose of this communication is to provide a summary of what the Court's modified order actually does.

Previously, the Court had provided the plaintiffs' attorneys two options for obtaining student's data from the California Longitudinal Pupil Achievement Data System (CALPADS) database maintained by the CDE. In Option 1, plaintiffs would receive a copy of the CALPADS database, whereas in Option 2, CDE would maintain custody of the CALPADS data but would facilitate the running of searches of the data to meet plaintiffs' discovery needs. In other words, in Option 1, the plaintiffs would directly receive all of the student data, including information such as social security numbers. In option 2, the CDE would mine or search the data and provide it to the plaintiffs, such that the CDE would not provide plaintiffs with the entire file or database.

In the new order issued on March 1, 2016, the Court removed Option 1. Instead, with respect to the CALPADS database, only Option 2 will be available. Therefore, the CALPADS database will remain solely with the CDE and the CDE will have to assist plaintiffs' attorneys seeking evidence from the CALPADS base.

Initial news reports stating that records of special education students will be disclosed to plaintiffs while other students' information will not, do not appear to be correct. The Court's March 1, 2016 order does not treat the records of special education and general education students differently.

Also, the Court's previously issued protective order remains in place. The protective order prevents any party from disclosing confidential information acquired in the course of the lawsuit, including student records, to anyone other than the parties, their attorneys and consultants, and the Court, and the information will be destroyed or returned to the CDE after the case is concluded. Additionally, the protective order provides that no student's identifying records will be disclosed to the public.

In addition, the order does not modify the Notice of Disclosure of Records

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under the Family Educational Rights and Privacy Act (FERPA) (available online [here](#)) and parents who object to the disclosure of their child's protected personal information and records may submit a written objection or letter to the Court. The deadline for submitting the objection is April 1, 2016.

The Court's March 1, 2016 order noted that the Court has received a significant number of objections from parents already, although the submittal deadline is not until April 1. The order intimates that the large volume of objections is at least part of the reason for the modification of its previous order. The Court's order states that given the volume of objections received, the Court cannot realistically review the objections individually. However, the order stops short of directing parents not to file an objection at this point in time. Instead, the order notes that all objections received in response to the previous FERPA Notice will be stored in sealed boxes in a secure room and will be noted in the Court's docket as 'Lodged Under Seal'.

We will provide further updates on relevant items related to this matter as this litigation progresses. If you have other questions in the meantime, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

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