

Special Education Law

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# AALRR Alert



## Districts May, But are Not Required to, Provide Notice to Parents Regarding *The Morgan Hill Concerned Parents Association v. California Department of Education* “Opt-Out” for Production of Their Children’s Personal Information

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Many questions and concerns are circulating among parents and school administrators across the state this week about a federal court order in *The Morgan Hill Concerned Parents Association and Concerned Parents Association v. California Department of Education* case, requiring the California Department of Education (“CDE”) to turn over confidential and sensitive student records held by CDE containing individually identifiable student information, including but not limited to name, social security number, assessment results, IEPs, health, mental health and other medical information, for any student who attended school in California since 2008.

In brief, the plaintiffs in the lawsuit, the parents associations, allege that CDE has violated the Individuals with Disabilities Education Act (“IDEA”), among other related laws, by failing to monitor, investigate, provide services to, and enforce the rights of children with disabilities consistent with its obligations under the law. The defendant, CDE, denies these allegations. In order to attempt to prove their claims,

the plaintiffs have sought records held by CDE concerning children, including children with disabilities, 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.

According to CDE, it has requested school districts to post on their websites a link to the CDE website, in order to comply with its obligations under the court order to notify affected parents and students. The link connects to a notice from the federal court containing information concerning the nature of the lawsuit, the records that have been ordered to be disclosed, and the procedure established by the federal court for parents and students aged 18 and over who object to disclosure to file their objection with the court using an available form. (Notice of Disclosure of Student Records). Any objections must be submitted to the court in writing by **April 1, 2016**.

*School districts are not a party to the lawsuit, and are not required by the federal court order to release*

*any records.* However, the breadth of the disclosure that has been ordered has generated a firestorm of criticism from some quarters prompted by student privacy concerns.

School districts are not required to post the CDE link. However, many parents have heard about this issue from the press and through other channels, and are seeking information. Some districts are taking a more active approach, not only posting the link, but also sending notification to parents via email or through other means. Others have decided to post only the link, concerned that they are not well positioned to provide more information, and not wanting to

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give parents an expectation that the district will be able to provide answers to questions or concerns regarding litigation in which the district is not involved. AALRR does not advise a uniform approach to this issue, and different districts will approach these issues differently. We do caution that any information that is disseminated should be done in an equitable manner, and in communities where parent information is disseminated in languages other than English, information concerning the *Morgan Hill* case should be as well. (See Education Code § 48985 requiring all notices, reports, statements, or records sent to parents/guardians be written in English as well as in the primary language if 15% or more students enrolled in a public school speak a primary language other than English.)