

Date: February 2, 2016

Subject: Official Message from the State Superintendent of Public Instruction

In April 2012, two organizations, the Morgan Hill Concerned Parents Association and the Concerned Parent Association (the plaintiffs), filed a lawsuit against the California Department of Education (CDE) alleging widespread, systemic non-compliance by local educational agencies with the Individuals with Disabilities Education Act (IDEA) and Section 504. The suit also alleges that the CDE fails to monitor, investigate, and correct such non-compliance in accordance with the law. The CDE denies these allegations and is actively defending the litigation.

As part of the litigation discovery process, the plaintiffs have requested numerous documents as well as student data collected and stored by the CDE. Many of the requested documents and data stored in the CDE databases contain personally identifiable information (PII) of 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. Although the CDE has contested the production of such information, the court at this juncture has ordered the CDE to produce to plaintiffs' legal counsel documents and data that contain student PII. Included in the court's order to produce documents and data is a Protective Order prohibiting the plaintiffs and their legal counsel from disclosing confidential information acquired in the course of the lawsuit, including PII, to anyone other than the parties, their attorneys and consultants, and the court. None of this information may be used outside the context of this lawsuit; no student's identifying records will be disclosed to the public.

As you know, the Family Educational Rights and Privacy Act (FERPA) sets out the requirements for the protection of privacy of parents and students, including privacy of student records. Generally, parents and/or students must provide written consent before an educational agency may disclose PII. However, there are exceptions to this general rule. Specifically, an educational agency must provide PII when ordered by a court, which the CDE has been ordered to do in this litigation. The CDE is obligated to inform the parent or student that the court has ordered it to produce documents and/or data that includes those individuals' PII and that such persons may 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 the Notice and Objection Form required by FERPA.