



KINGSLEYBOGARD

ATTORNEYS

CLIENT UPDATE

DISCLOSURE OF STUDENT RECORDS

*For further information, please contact Paul R. Gant at
(916) 932-2500 or pgant@kblegal.us.*

As you may be aware, there is a lawsuit pending in the federal courts which may cause concern for parents of students in your district. That case is *Morgan Hill Concerned Parents Association, et al. vs. California Department of Education, et al.*, United States District Court, Eastern District, Case No. 2:211-CV-03471-KJM-AC.

The lawsuit is against the California Department of Education (“CDE”) and does not directly involve any school district, only records that districts have supplied to the CDE.

As part of its lawsuit, the Plaintiff requested that the CDE disclose a large amount of personal information – including social security numbers, home addresses, and special education assessment information – for the following categories of students:

- children with disabilities;
- children who requested an assessment or who were assessed for special education eligibility; and
- children who are attending, or have attended, a California school at any time since January 1, 2008.

The Judge, Hon. Kimberly J. Mueller, recognized that federal laws (the Family Educational Rights and Privacy Act and the Individuals with Disabilities Education Act) protect the privacy of student records. She noted, however, that these laws permit disclosure pursuant to a court order and, on May 5, 2014, the Court ordered CDE to disclose the requested information subject to a Protective Order. 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. At the conclusion of the lawsuit, all parties are required to either return or destroy the confidential records.

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While school districts are not subject to the order to produce records, the significance of the disclosure is such that we recommend you advise parents in your district of the two options described by the order for those parents who wish to prevent CDE's disclosure of their child's information.

- (1) A parent can go to the CDE's website to print out the "Objection to Disclosure of Student Information and Records Case No. 2:211-CV-03471" form and mail their objection to the Court (<http://www.cde.ca.gov/re/di/ws/morganhillcase.asp>); or
- (2) A parent may write a confidential letter to Judge Mueller, including the following information:
 - a. The name of the student;
 - b. The letter writer's name and their relationship to the student;
 - c. The student's date of birth;
 - d. Their county;
 - e. Their school district;
 - f. Their school; and
 - g. If they wish, the basis of their objection.

This letter must have on the first page, in large and/or underlined type: "TO BE FILED UNDER SEAL" and "OBJECTION TO DISCLOSURE OF STUDENT INFORMATION AND RECORDS, CASE NO. 2:11-CV-03471."

The form (Option #1) and/or the letter (Option #2) must be mailed to:

The Honorable Kimberly J. Mueller
c/o Clerk of the Court
U.S. District Court for the Eastern District of California
501 I Street, Room 4-200
Sacramento, CA 95814
Attention: DOCUMENT FILED UNDER SEAL

THE FORM AND/OR THE LETTER MUST REACH THE COURT BY APRIL 1, 2016.

Please contact us if you have questions or would like assistance drafting a communication to your parents.

FILED UNDER SEAL

**OBJECTION TO DISCLOSURE OF STUDENT
INFORMATION AND RECORDS**

I, the undersigned, being a parent/guardian, or an adult student who is eighteen (18) years of age or older, object to the disclosure by the California Department of Education of protected personal information contained in records of my/my child's student records in the lawsuit entitled, *Morgan Hill Concerned Parents Association, et al. v. California Department of Education*, USDC-Eastern District of California, Case No. 2:11-cv-03471-KJM-AC:

Name of Parent/Guardian: _____

Name of Student: _____

Date of Birth: _____

County: _____

School District: _____

School: _____

Comments (optional)

Signature of Parent/Guardian or
Adult Student/Former Student

Date: _____

This form (or the information contained in this form) must be sent via regular mail to:

United States District Judge Kimberly J. Mueller
c/o Clerk of the Court
Robert T. Matsui United States Courthouse
501 I Street, Room 4-200
Sacramento, CA 95814
Attn: Document Filed Under Seal

This objection form must be submitted to the Court by April 1, 2016