**COMPARISON BRIEF:**

**Morgan Hill Concerned Parents Association vs California Board of Education**

**MORGAN HILL PARENTS ASSOCIATION, an: unincorporated association, and : CONCERNED PARENTS : ASSOCIATION, an unincorporated : association, - Plaintiffs**

**V**

**CALIFORNIA DEPARTMENT OF EDUCATION, and DOES 1 through 5 - Defendants**

PDF of Court Order: <http://www.cde.ca.gov/re/di/ws/documents/order2016jan26.pdf>

**OVERVIEW**

**Information below is from an article in EdSource**

# “Ability to opt out uncertain in lawsuit requiring student data release”

<http://edsource.org/2016/ability-to-opt-out-uncertain-in-lawsuit-requiring-student-data-release/95043>

**From the Opponents in the article:**

The state is encouraging districts to inform parents of the lawsuit and to post the objection form on their websites. The [state PTA](http://capta.org/resource/your-childs-personal-information-is-being-released-voice-your-concerns-now/?platform=hootsuite) is also alerting its members to the judge’s order, which it characterizes as “an overexposure of children’s information.”

Sherry Skelly Griffith, executive director of the state PTA, said she believes there must be another way to determine whether the needs of students are being met, without turning over the records of 10 million children.

**“**That’s like taking a sledgehammer approach, which we don’t think is necessary,” shesaid. “Many will not even know that their information has been released.”

Public outcry over the data release prompted three state legislators to propose [AB 2097](http://asmdc.org/members/a80/news-room/press-releases/assemblymembers-propose-student-privacy-reforms-in-wake-of-data-dump-ruling)on Wednesday, which would “ensure that students’ personal information, like Social Security numbers, are appropriately protected at the school district level.”

“Assembly Bill 2097 would prohibit school districts from gathering Social Security numbers and other sensitive unnecessary information for students except where required by federal law,” according to a news release issued by Assembly members Melissa Melendez, R‐Lake Elsinore; Lorena Gonzalez, D‐San Diego; and Mike Gatto, D‐Los Angeles.

“As a mom, I’ve seen my kids’ schools over the years request Social Security numbers, medical information, and other private information that they don’t need or have a right to,” Gonzalez said in a prepared statement. “Rather than expecting parents to have the knowledge and capacity to fight to protect their children’s privacy, we should get schools out of the business of asking in the first place.”

Here is the link to “opt out” of the release of student private information http://www.cde.ca.gov/re/di/ws/documents/form2016jan26.pdf

**From the Supporters in the article:**

The order came as a result of a 2011 lawsuit by the Morgan Hill Concerned Parents Association against the California Department of Education alleging that the state is failing to ensure that students are getting the special education services they are legally entitled to receive. The California Department of Education denies the allegations.

The lawsuit was joined in 2012 by the [California Concerned Parents Association,](http://californiaconcernedparents.org/) which includes parents from 75 percent of the districts in the state, said Christine English, vice president of the group.

“We’re doing a statistical analysis of information that is reported to the California Department of Education,” she said. “We’re not getting any information from local school districts, nor do we want it.”

The judge has issued a protective order that prevents anyone involved in the lawsuit from disclosing confidential information, “including student records, to anyone other than the parties, their attorneys and consultants, and the court.” The records must be returned or destroyed when the lawsuit concludes and will not be disclosed to the public, according to the order.

English said a “special master” – an authority appointed by a judge to ensure that security measures are followed – will collect the data and a team of no more than 10 people will have access to it, including attorneys and experts. In addition, another judge will oversee the data transfer, she said.

The parents group initially asked for the data without personal details, but the state Department of Education said it would be impossible to separate the information, English said. However, the state Department of Education said it was not redacting the personal information because it must comply with the court order, which did not ask for that data to be removed.

“We did at one point offer the plaintiffs a database that had redacted information and they rejected that,” Oakes said.

**Information SUPPORTING the Release of Data by the CDE**

**The following is an FAQ/Information sheet provided by the Morgan Hill and California Concerned Parents Associations**

Here is the CCPA link where this was found: <http://californiaconcernedparents.org/?page_id=47>

Information regarding the Disclosure of Student Information in regards to the Morgan Hill Concerned Parents Association (MHCPA)/ California Concerned Parents Association (CCPA) litigation against the California Department of Education.

The CCPA supports that you exercise your judgment after you get the true facts in this matter.

1. The CCP Association of parents will not receive any records from the state, only the legal team and their experts who are monitored by a special master and under protective orders (less than 10).

2. Had CDE not resisted the legal teams three year request for discovery (documents needed to prove the allegations), and failed to provide anonymized information in a useful format, CLEARLY, the judge would not have made this decision.

3. The legal team never asked for Social Security Numbers (SSN’s). No parent was ever required to provide that SSN to their district and may want to request that their Child's SSN be redacted from the school's database.

4. Should you desire more information refer to the link provided by 2 special education attorneys: [https://drive.google.com/…/0BzAs1C0wknPySEg4VVdheU5maE0/view](https://www.facebook.com/l.php?u=https%3A%2F%2Fdrive.google.com%2Ffile%2Fd%2F0BzAs1C0wknPySEg4VVdheU5maE0%2Fview&h=0AQFsLzXaAQGDCfTp1Ev9moaS3IEevnQ4L3_FCdjhdPcV5A&enc=AZNKMkP7jYiapZq3JEwnZEh3NvvJ5tHK1bSm9-UiqP3e42cjqu1XGskU-vcQAWJFrT81jTn8C3QOnQ4vGc84MePUTA3DFs7CfRV6pZmNIPes7HYIwKTR7GTqVSfdwYjd1Ff-S4VZn7ZxLOoJ8H_fAMBh4jsAzLduS_l5QoKq6hnrZCMwKVcCPUE0vm4xaJ9l0Vo&s=1)

5. More at: [http://www.capcaonline.com/2010/07/in-news.html?m=1](http://l.facebook.com/l.php?u=http%3A%2F%2Fwww.capcaonline.com%2F2010%2F07%2Fin-news.html%3Fm%3D1&h=7AQEuDy4eAQGsNMz4eVvR9FOBN5Z1TcIQtsT2DPKkxRJimQ&enc=AZMh_RN158lcyQf9RBbJWRyToWjlSFCV0nN6Pd9s1uVCI03eXcS3mTzNTpBpHbY0ia_VHITcIft18-ZUuiR0O2kb_btgUkVKnerbxyJjAUkY7ZmxJoo15hGqiXnsL6Ps0RrsMTnsFU1-XLOt-XLeZPYRbitWV-pKYu-MQB51f0WfxameBJDKzoEgNw1cW0-ETAs&s=1)

6. Make an informed decision about whether you should object or not.[http://edsource.org/…/ability-to-opt-out-uncertain-in…/95043](http://l.facebook.com/l.php?u=http%3A%2F%2Fedsource.org%2F2016%2Fability-to-opt-out-uncertain-in-lawsuit-requiring-student-data-release%2F95043&h=OAQHldbwaAQFzVRgsh8xNFKOvak1CbQ3gpQBvKmV65fDK-g&enc=AZPiB96N1q0VDk6ofNo1omWrjjqghKW5Br9qNxOlxwBddtCWaWQ9dT76DcPXVeVCupe-WeZDfHMSbRP3eRT5OYHFsbX4JVArtUxPxru44FnTRz0_iaVs8T3FNU5jeZm0oT83nYyzm_0Kg5U0witfhUYC-ZUvvZdS_GbZhJJ1i2yk5hpcTJyVg7GCl75b9rfLMGQ&s=1) 

Questions can be directed to caconcernedparents@gmail.com

**Frequently Asked Questions**

**Who is Concerned Parents Association?**

Concerned Parents Association, also known as California Concerned Parents Association or CPA, is a 501(c)(3) organization that serves to advance the status of students with disabilities. We believe that by helping children with disabilities receive an appropriate education, we improve education for all students. The CPA is a nonprofit organization run entirely by unpaid parents and advocates. We all work in a volunteer capacity and this is not a full-time job for any of us.

**What is this case about?**

In 2012, CPA joined with the Morgan Hill Concerned Parents Association (MHCPA) to bring suit against the California Department of Education (CDE) alleging that the CDE was not providing California’s children with disabilities with a free and appropriate public education as mandated by federal law.

**Why didn’t you notify me directly? Why are you trying to keep this quiet?**

The Judge in this case ruled that it is the CDE’s responsibility to notify all affected parents, guardians and students of this disclosure of information by publication. Following extensive briefings, the Court determined that the most appropriate way to do this was for CDE to post the FERPA notice and objection form on its website and request that districts and SELPAs do the same. This procedure was found to be appropriate in other states as well. Although we were not required to do so, we have also posted a link to the CDE’s website containing the notice and objection form on our website and Facebook page. We understand that not all school districts have posted the notice and objection form on their websites; however, we unfortunately have no control over the content posted on their websites.

**What information will you be collecting?**

In order to vindicate the rights of these children, Plaintiffs’ legal team and experts require access to information about students in the state of California. Specifically, they seek information that school districts and SELPAs report to CDE and information that CDE reports to the federal government. This information takes the form of several large databases. CDE has represented that these databases may include information such as student demographic information, school district, and special education accommodations.

**Why do you want my child’s social security number?**

We do not want your child’s social security number. CDE has represented that social security numbers may be included in some databases, which they will be producing in their entirety.

**Why do you need my child’s data? My child is not a student with disabilities—why do you need his or her information?**

We need data about every student in California so that our statistician can perform meaningful statistical sampling. We need all of these data points so that we can pull a representative sample of the whole population. Otherwise, our sample will not accurately represent all students. Our statisticians will pull a random, statistically significant sample of student data and perform statistical analysis on that sample only, so that we can look at metrics such as whether a disproportionate number of certain ethnicities receive certain services.

We need this information in order to verify or refute CDE’s contention that its educational programs are compliant with state and federal law and need no further oversight or correction. CDE maintains that California’s educational services do not need to be looked at and need no improvement. Based upon our members’ personal knowledge and experience, we disagree.

**Isn’t this just about Morgan Hill? Why do you need information about all students?**

Although this case originated in Morgan Hill, it is about the CDE’s systematic failure to provide children with disabilities in the entire state of California with their statutory entitlement to a free appropriate public education. We have received countless calls from parents all over the state detailing similar problems in their own districts.

**Why do you need information about all children since 2008 instead of just current students?**

The CPA needs information from this entire range because it is relevant to the claims in its 2012 complaint (a summary of the complaint can be found here). If only current data were offered, CDE would persist in its statement that any findings of non-compliance are random.

**Who will be accessing my child’s data?**

Fewer than ten people will have access to your child’s information. Access will be limited to Plaintiffs’ attorneys and their staff, as well as select consultants including a data security expert and a statistician. Members of the association will under no circumstances have unfettered access to this data. Those with access to the data will be subject to the provisions of a strict protective order and the e-discovery protocol under file in this case.

**How are you going to keep my child’s information safe?**

CPA takes the children’s privacy rights very seriously. Every possibly precaution is already underway to safeguard the data at issue. The Court has issued a Protective Order that prevents any party from disclosing confidential data acquired in the course of the lawsuit to anyone other than the parties, their attorneys and consultants, and the Court. None of the information may be used outside the context of this lawsuit, and the parties are required to either return or destroy the confidential data at the conclusion of the lawsuit. No student’s identifying records will be disclosed to the public. The court has also appointed a digital data expert, a “Special Master,” who crafted a protocol approved by the Court for safeguarding the security of student information. This protocol includes a number of measures including a third-party risk assessment; the implementation of recommended safeguards; a record of all computer devices used to store or access the data; and transmitting all data only on fully encrypted external hard drives. No data transmission from CDE will occur without the approval and supervision of the Special Master. Again, after the conclusion of this litigation, all data will be either returned to CDE or destroyed at the end of this litigation.

**What will you do with this information?**

The CPA will use this information for statistical sampling that will verify or rebut the CDE’s statement that all children are getting the services they are legally entitled to receive.

**Has something like this ever happened before?**

Yes, student information has been released following a similar procedure in other states. The Court relied on these precedents when making its decision to release student information to the CPA.

**What are you getting out of this?**

The only thing the CPA stands to gain in this lawsuit is for children with disabilities in the state of California to be given the free appropriate public education they are guaranteed by the law. The CPA wants to improve education, as well as ensure that the CDE be held accountable to all of the students it serves.

**How can I opt out of having my child’s information disclosed?**

If you still have concerns about the use of your child’s information in connection with this litigation, you are welcome to complete and submit the objection form posted on the CDE’s website.

**How can I contact you with my story or to ask more questions?**

We would be happy to speak with you and to address your concerns. Please contact [caconcernedparents@gmail.com](mailto:caconcernedparents@gmail.com)

OTHER LINKS:

# The Morgan Hill Times (Newspaper location where the lawsuit started): “Special ed court case causing stir among parents”

<http://www.morganhilltimes.com/news/schools/special-ed-court-case-causing-stir-among-parents/article_88a98fe6-d5db-11e5-83bc-43ba96bc1f58.html>

**“Why I’m Letting My Sons School Records Be Shared With California Concerned Parents”**

<http://joashline.com/2016/02/why-im-letting-my-sons-school-records-be-shared-with-california-concerned-parents.html>

# Mercury News: Special education: California parents' lawsuit could force expansion of programs

<http://www.mercurynews.com/ci_23161202/special-education-california-parents-lawsuit-could-force-expansion>

**Informative Flyer:**

<https://drive.google.com/file/d/0BzAs1C0wknPySEg4VVdheU5maE0/view>

**Information OPPOSING the Release of Data by the CDE**

**COURT SHOULD PROTECT PRIVACY OF CALIFORNIA’S STUDENTS**

By California State PTA Executive Director Sherry Griffith, CSBA Executive Director Vernon M. Billy and ACSA Executive Director Wesley Smith  
Special to [The Sacramento Bee](http://www.sacbee.com/opinion/op-ed/soapbox/article62270967.html)

February 25, 2016

When parents entrust a child to public schools, the system accepts a special responsibility to protect and enrich the student. That responsibility includes safeguarding personal information – a right guaranteed by state and federal law.

Yet, a recent federal court order threatens student privacy rights by forcing the California Department of Education to release as many as 10 million student records containing names, addresses, phone numbers and Social Security numbers, as well as sensitive information on behavior, academic performance and health.

If you attended a California public school since 2008, have a child who did, or have a student currently in California schools, your private records could be shared with attorneys suing the Department of Education over whether school districts are providing appropriate special education services.

To be clear, we recognize the importance of collecting data that could potentially improve special education services. We regularly advocate for students with special needs to receive appropriate support and services. But we believe the action taken by U.S. District Judge Kimberly J. Mueller exceeds what is necessary to satisfy the plaintiffs. A hearing is scheduled Friday to further discuss the court order.

Immediate action is required. We call on the Department of Education to seek an order protecting against the release of confidential information while a more appropriate solution is identified. Our organizations represent parents, families, school board trustees and education administrators across the state, and our members are raising questions and fielding complaints about the potential security breach. This matter is critically important to us, and it’s important to our communities, our families and our students.

The release of this massive trove of personal information would be unprecedented, unwarranted and fraught with risk. We’re confident that the courts, the plaintiffs and the Department of Education can provide the desired information without potentially compromising the privacy of every student educated in California public schools since 2008. For example, redacting sensitive personal information from the disclosure request seems reasonable.

If you care, as we do, about personal privacy, we ask that you contact the education department and your legislators and express your opposition to the excessive release of personal information. If you or your child are affected by the court ruling, we strongly suggest that you consider voicing your objection using the form that can be found on our websites. Whenever student data is involved, the strongest precautions must be taken to ensure that privacy is respected and protected. Let’s find a sensible way to balance the need for information with respect for a student’s right to privacy.

Here is the link to “opt out” of the release of student private information http://www.cde.ca.gov/re/di/ws/documents/form2016jan26.pdf

OTHER LINKS:

The Davis Enterprise: “Bob Dunning: This order is outrageous, disturbing, unbelievable” <http://www.davisenterprise.com/local-news/dunning/bob-dunning-this-order-is-outrageous-disturbing-unbelievable/>

Superintendent Torlakson Voices Strong Support for Protecting Student Privacy and Explains Ways to Object to Disclosure of Student Data: <http://www.cde.ca.gov/nr/ne/yr16/yr16rel15.asp>

LA Times Editorial:  “Keep student data private in special-ed lawsuit”: <http://www.latimes.com/opinion/editorials/la-ed-student-records-20160224-story.html>

San Diego UT: “San Diego County Schools Warn Student Data Could Be Accessed”: <http://www.techwire.net/news/san-diego-county-schools-warn-student-data-could-be-accessed.html>