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## *PERMISSION TO POST PUBLICLY*

**Re: Morgan Hill Concerned Parents Association v. California Department of Education,  
Case No. 11-3471**

**From: Roberta S. Savage and Maureen Graves, CAPCA Co-Chairs**

CAPCA is a volunteer-run, statewide organization of parents, advocates, professionals and attorneys that monitors and sponsors policy and legislation affecting the education and life-long prospects of children with disabilities.

CAPCA has prepared this memorandum to ensure that all potentially impacted individuals have access to all information about this litigation and the release of information ordered by the United States District Court for the Eastern District of California.

The Eastern District of California is also providing guidance on this case:

<http://www.caed.uscourts.gov/caednew/index.cfm/news-updates/morgan-hill-case/>

### **Disclosure of Student Records through the Morgan Hill Litigation**

The Morgan Hill Concerned Parents litigation concerns whether or not the California Department of Education has properly monitored the provision of special education services to students with disabilities in the State of California. This could include students who have not been but should have been identified as needing special education services.

The California Department of Education has posted the required notice on its website. Here is that link: <http://www.cde.ca.gov/re/di/ws/morganhillcase.asp>

Local school districts have been posting similar information and some have encouraged parents to object to disclosure. It is our understanding that some districts are saying parents can “opt out” of disclosure; the judge has not made clear whether objections will result in information being withheld. The notices that have been reviewed by the authors of this Memorandum do not include sufficient information for a parent to make an informed decision about whether you should object or not. <http://edsources.org/2016/ability-to-opt-out-uncertain-in-lawsuit-requiring-student-data-release/95043>

The purpose of these disclosures is an important one—to allow counsel seeking to improve special education services in California on behalf of children to get information they need to prove their claims. It is not surprising that school districts and CDE are urging parents to resist letting their children’s information be used in this process. It is unfortunate that CDE was not more cooperative in redacting student documents to avoid disclosure of confidential information. Parents are in a position in which they must weigh privacy risks on one hand vs. accountability

and quality concerns on the other. The Court has taken steps to protect private information and to ensure that information is used properly. While parents have a right to object to disclosure, we hope they will consider the benefits of having information analyzed and will consider the level of risk involved in this lawsuit in connection with the other risks to privacy that we face as consumers, citizens, Internet users, and the like.

## **Morgan Hill Concerned Parents Litigation Documents**

This link will take you to an unofficial copy of the docket for this case:

[https://www.gpo.gov/fdsys/granule/USCOURTS-caed-2\\_11-cv-03471/USCOURTS-caed-2\\_11-cv-03471-0](https://www.gpo.gov/fdsys/granule/USCOURTS-caed-2_11-cv-03471/USCOURTS-caed-2_11-cv-03471-0)

Specific relevant documents in the Docket related to the current issue of the release of information are as follows:

- May 5, 2014 Stipulated Protective Order – outlining the Protective Order in place for any release of information between the parties in the litigation;
- July 2, 2015 Order appointing Winston Krone as the Special Master in this case. Specifically, the Order states “**the court hereby APPOINTS Mr. Krone of Kivu Consulting, Inc. as the special master in this case for the limited purpose of facilitating the parties’ development of an electronic discovery protocol.**” (Order pg. 2, lines 6-9);
- November 3, 2015 Order requiring Plaintiffs to have security measures in place before any release of information from CDE;
- January 26, 2016 Order (13 pages) to CDE’s objections to discovery;
- January 26, 2016 Order concerning the Notice CDE must publish.

## **Security Measures**

In numerous orders, including those listed above, the Court details its concern with maintaining the security of any information released to Plaintiff’s counsel in this litigation. The Court took the extraordinary measure of appointing Winston Krone as a Special Master for the purpose of “facilitating the parties’ development of an electronic discovery protocol.” (July 2, 2015 Order, pg. 2). Winston Krone is the Managing Director of KIVU Consulting. For more information about their expertise in data security, their website is: <http://kivuconsulting.com/>

## **California Concerned Parents**

California Concerned Parents who are the joint plaintiffs with Morgan Hill Concerned Parents have been updating their website to keep people informed. Please view their Frequently Asked Questions for some additional information about the litigation and their interest in it.

[http://californiaconcernedparents.org/?page\\_id=47](http://californiaconcernedparents.org/?page_id=47)

CAPCA is not taking a position as to whether any particular parent or adult student should object to having information available to plaintiffs’ counsel as part of this litigation. However, given the flurry of information disseminated this week, CAPCA wants to ensure that all families in California have accurate information about this matter when making their individual decision and that they are aware of the purpose of the court’s order and the lawsuit of which it is a part.