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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MORGAN HILL CONCERNED
PARENTS ASSOCIATION, et al.,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION, et al.,

Defendants.

No. 2:11-cv-3471 KJM AC

ORDER

Defendant California Department of Education (“CDE”) has complied with the undersigned’s order (ECF No. 182) to file a letter stating (a) the date they will complete the email searches using their own seven terms, (b) when the emails will be produced to plaintiffs, and (c) the timetable for the initial CALPADS searches and production. ECF No. 187. Plaintiffs have filed a letter in response. ECF No. 188. The undersigned has reviewed both letters.

I. EMAILS

CDE states that it expects to begin the production of emails on June 17, 2016, by producing from the set of 5,000 documents it has thus far identified “from the fourteen (14) priority custodians email boxes,” using its own seven (7) search terms. ECF No. 187 at 1. It further states that it will “continue with a rolling production every four weeks,” completing on November 4, 2016. Id. CDE explains that it must conduct reviews “for duplicates, PII

1 [personally identifying information], and privilege.” Id. It further explains that its “IT
2 [information technology] department needs a minimum of 1.5 weeks to process data for
3 production.” Id.

4 The court understands CDE’s assertion to mean that it will complete the production of the
5 non-privileged portion of the 5,000 documents by June 17, 2016, and that the November 4, 2016
6 date refers to other, not-yet-found emails still subject to search (for example, those resident in the
7 remaining priority email boxes). This timetable appears to comport with the section of the E-
8 Discovery Protocol timetable that addresses the production of these emails, and which is still in
9 full force and effect:

10 Upon completion of the searching of any particular data set, CDE
11 shall have 45 days to review all search results and, if appropriate,
12 claim that certain data is privileged or otherwise should not be
13 produced to Plaintiffs. Following the completion of the 45 day
14 review process, CDE shall produce to Plaintiffs all data deemed
15 non-privileged (or otherwise not to be withheld data) on a
16 reasonable rolling basis.

17 ECF No. 127-1 at 9 ¶ II(7).¹

18 Plaintiffs object that CDE’s letter is ambiguous, that it does not address the “network”
19 searches, that CDE is only using its own 7 search terms rather than plaintiffs’ 300, that only 14
20 priority email boxes are being searched, and that CDE is delaying production while it processes
21 for privilege and personally identifying information.

22 II. CALPADS

23 CDE asserts that it will be prepared to make a production of materials resulting from its
24 initial CALPADS search on July 29, 2016. ECF No. 187 at 2. It asserts that this time is needed
25 because of its obligations in meeting is “federal reporting obligations.” Id. & n.3.

26 Plaintiffs object to the timing, asserting that the required searches should take “no more
27 than one work day.” ECF No. 188 at 2. They also object to CDE’s assertion that it will redact
28 personal identifying information before producing documents. Id.

¹ If CDE means that it will process the 5,000 already-identified emails until November 4, 2016, it is advised that this would be in direct violation of the E-Discovery Protocol.

1 III. CONCLUSION

2 Good cause appearing, IT IS HEREBY ORDERED that:

3 1. CDE shall produce, no later than June 17, 2016, the non-privileged portion of the 5,000
4 emails it described in its May 27, 2016 letter to the court.

5 2. CDE's production shall be accompanied by a cover letter which generally describes
6 what is being produced, together with a Privilege Log of the emails it is not producing. The
7 Privilege Log shall comply with Fed. R. Civ. P. 26(a)(5)(A). For these purposes, the Privilege
8 Log need not necessarily be an email-by-email listing, so long as the descriptions offered comply
9 with Rule 26(a)(6)(A), that is, the listing and/or descriptions will enable plaintiffs to assess the
10 claim of privilege for all the withheld emails. CDE shall simultaneously email a copy of the
11 cover letter and the Privilege Log (but not any of the underlying documents) to the undersigned's
12 Chambers at acorders@caed.uscourts.gov. The email's subject line shall make reference to this
13 order.

14 3. CDE shall produce, no later than July 29, 2016, the non-privileged portion of the
15 materials responsive to the initial CALPADS search, together with a Privilege Log describing the
16 materials it is not producing, in conformity with Rule 26(a)(5)(A).

17 4. At the hearing on the parties' cross-motions for protective order and to compel (see
18 ECF Nos. 185, 186), currently scheduled for June 22, 2016, the parties shall be prepared to
19 discuss:

20 a. Why CDE needs to redact PII in light of the Stipulated Protective Order. See
21 ECF No. 60;

22 b. Why CDE needs to redact PII even if the receiving environment is certified, or
23 alternatively, why the receiving environment needs to be certified if CDE is redacting the PII;

24 c. Whether the November 4, 2016 date for completing the rest of the email
25 searches and completing the entire email production is a reasonable date or not;

26 d. Whether CDE's own seven email search terms are sufficient to obtain the
27 materials plaintiffs are seeking;

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1 e. When CDE should commence and complete searches and production of the
2 emails resident with the remaining priority custodians;


3 f. Whether the July 29, 2016 date for the CALPADS production is reasonable or
4 not; and

5 g. Any other matter raised by the parties' letters to the court (ECF Nos. 187, 188).

6 5. On August 1, 2016, the parties shall each file a separate Discovery Status Report, not
7 to exceed three (3) pages in length, describing the status of discovery efforts. No party shall file a
8 response to any other party's report. The parties shall thereafter file a Discovery Status Report
9 every two months, commencing October 1, 2016, describing the status of discovery efforts since
10 the last report.

11 6. Every discovery production, by every party, shall be accompanied by a cover letter
12 and, where applicable, a Privilege Log that complies with Rule 26(a)(5)(A). The cover letter and
13 Privilege Log (but not any of the underlying documents) shall simultaneously be emailed to the
14 undersigned's Chambers at acorders@caed.uscourts.gov. The email's subject line shall make
15 reference to this order.

16 DATED: June 3, 2016

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18 ALLISON CLAIRE
19 UNITED STATES MAGISTRATE JUDGE
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