

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRENDA SHOEMAKER, MARTY
SHOEMAKER, individually, and in
their capacity as parents of ABIGAIL
SHOEMAKER,

Plaintiffs,

v.

THE MARYSVILLE SCHOOL
DISTRICT NO. 25., a Municipal
Corporation, PETER APPLE, TWILA
HAMMONTREE, and NICOLE
MARCUS,

Defendants.

CASE NO. 2:23-cv-779 MJP

ORDER GRANTING STIPULATED
PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Local Rule W.D. Wash. 26(c). It does not confer blanket protection on all disclosures or

1 responses to discovery, the protection it affords from public disclosure and use extends only to
2 the limited information or items that are entitled to confidential treatment under the applicable
3 legal principles, and it does not presumptively entitle parties to file confidential information
4 under seal.

5 2. "CONFIDENTIAL" MATERIAL

6 "Confidential" material shall include the following documents and tangible things
7 produced or otherwise exchanged:

- 8 • Student education records protected by the Family Educational Rights and Privacy
9 Act (FERPA); and
- 10 • Student directory information protected by FERPA.
- 11 • Any and all medical healthcare or mental healthcare records.

12 For any records requested by Plaintiffs' counsel that are for any students other than
13 Plaintiff A.S., the District shall have 21 days to provide sufficient third-party notice to those
14 students' parents or guardians before providing any student records.

15 3. SCOPE

16 The protections conferred by this agreement cover not only confidential material (as
17 defined above), but also (1) any information copied or extracted from confidential material; (2)
18 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
19 conversations, or presentations by parties or their counsel that might reveal confidential material.

20 However, the protections conferred by this agreement do not cover information that is in
21 the public domain or becomes part of the public domain through trial or otherwise.

22 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

23 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
24 produced by another party or by a non-party in connection with this case only for prosecuting,

1 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
2 the categories of persons and under the conditions described in this agreement. Confidential
3 material must be stored and maintained by a receiving party at a location and in a secure manner
4 that ensures that access is limited to the persons authorized under this agreement.

5 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
6 the court or permitted in writing by the designating party, a receiving party may disclose any
7 confidential material only to:

8 (a) the receiving party’s counsel of record in this action, as well as employees of
9 counsel to whom it is reasonably necessary to disclose the information for this litigation;

10 (b) the officers, directors, and employees (including in house counsel) of the
11 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
12 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
13 designated;

14 (c) experts and consultants to whom disclosure is reasonably necessary for this
15 litigation,

16 (d) the court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the duplication of
18 confidential material, provided that counsel for the party retaining the copy or imaging service
19 instructs the service not to disclose any confidential material to third parties and to immediately
20 return all originals and copies of any confidential material;

21 (g) the author or recipient of a document containing the information or a custodian or
22 other person who otherwise possessed or knew the information.

1 4.3 Filing Confidential Material. Before filing confidential material or discussing or
2 referencing such material in court filings, the filing party shall confer with the designating party,
3 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
4 remove the confidential designation, whether the document can be redacted, or whether a motion
5 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
6 designating party must identify the basis for sealing the specific confidential information at issue,
7 and the filing party shall include this basis in its motion to seal, along with any objection to
8 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
9 followed and the standards that will be applied when a party seeks permission from the court to
10 file material under seal. A party who seeks to maintain the confidentiality of its information must
11 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
12 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
13 in accordance with the strong presumption of public access to the Court's files.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or
16 non-party that designates information or items for protection under this agreement must take care
17 to limit any such designation to specific material that qualifies under the appropriate standards.
18 The designating party must designate for protection only those parts of material, documents,
19 items, or oral or written communications that qualify, so that other portions of the material,
20 documents, items, or communications for which protection is not warranted are not swept
21 unjustifiably within the ambit of this agreement.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
23 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
24

1 unnecessarily encumber or delay the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the designating party to sanctions.

3 If it comes to a designating party's attention that information or items that it designated
4 for protection do not qualify for protection, the designating party must promptly notify all other
5 parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
7 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
8 disclosure or discovery material that qualifies for protection under this agreement must be clearly
9 so designated before or when the material is disclosed or produced.

10 (a) Information in documentary form: (e.g., paper or electronic documents and
11 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
12 the designating party must affix the word "CONFIDENTIAL" to each page that contains
13 confidential material. If only a portion or portions of the material on a page qualifies for
14 protection, the producing party also must clearly identify the protected portion(s) (e.g., by
15 making appropriate markings in the margins).

16 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties
17 and any participating non-parties must identify on the record, during the deposition or other
18 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
19 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
20 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
21 transcript, or exhibits thereto, as confidential. If a party or non-party sires to protect confidential
22 information at trial, the issue should be addressed during the pre trial conference.

1 (c) Other tangible items: the producing party must affix in a prominent place on the
2 exterior of the container or containers in which the information or item is stored the word
3 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
4 the producing party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items does not, standing alone, waive the designating party’s
7 right to secure protection under this agreement for such material. Upon timely correction of a
8 designation, the receiving party must make reasonable efforts to ensure that the material is
9 treated in accordance with the provisions of this agreement.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
12 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
14 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the
16 original designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
18 regarding confidential designations without court involvement. Any motion regarding
19 confidential designations or for a protective order must include a certification, in the motion or in
20 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
21 conference with other affected parties in an effort to resolve the dispute without court action. The
22 certification must list the date, manner, and participants to the conference. A good faith effort to
23 confer requires a face-to-face meeting or a telephone conference.

1 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
2 intervention, the designating party may file and serve a motion to retain confidentiality under
3 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
4 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
5 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
6 other parties) may expose the challenging party to sanctions. All parties shall continue to
7 maintain the material in question as confidential until the court rules on the challenge.

8 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
9 OTHER LITIGATION

10 If a party is served with a subpoena or a court order issued in other litigation that compels
11 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
12 party must:

13 (a) promptly notify the designating party in writing and include a copy of the
14 subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order to issue in
16 the other litigation that some or all of the material covered by the subpoena or order is subject to
17 this agreement. Such notification shall include a copy of this agreement; and,

18 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
19 designating party whose confidential material may be affected.

20 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
22 material to any person or in any circumstance not authorized under this agreement, the receiving
23 party must immediately (a) notify in writing the designating party of the unauthorized
24 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,

1 (c) and inform the person or persons to whom unauthorized disclosures were made of all the
2 terms of this agreement.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently
6 produced material is subject to a claim of privilege or other protection, the obligations of the
7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
8 provision is not intended to modify whatever procedure may be established in an e-discovery
9 order or agreement that provides for production without prior privilege review. The parties agree
10 to the entry of a non-waiver order under Fed. R. Evid. 502 as set forth herein.

11 10. NON-TERMINATION AND RETURN OF DOCUMENTS

12 Within 60 days after the termination of this action, including all appeals, each receiving
13 party must return all confidential material to the producing party, including all copies, extracts
14 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
15 destruction.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
17 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
19 work product, even if such materials contain confidential material.

20 The confidentiality obligations imposed by this agreement shall remain in effect until
21 a designating party agrees otherwise in writing or a court orders otherwise.

22 //

23 //

24 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED July 19th 2023

By: /s/ G. (Gus) Benjamin Lindsey, III
G. (Gus) Benjamin Lindsey, III
Attorney for Plaintiffs
2012 Grade Rd. Suite 202
Lake Stevens, WA 98258
(425) 263-9585
guslindseyiii@gl3law.com

DATED July 19th 2023

By: /s/ Haley E. Moore
Patricia K. Buchanan, WSBA 19892
Haley E. Moore, WSBA 48076
Attorney for Defendants
1000 Second Ave., 30th Floor
Seattle, WA 98104
(206) 462-6700
pkb@pattersonbuchanan.com

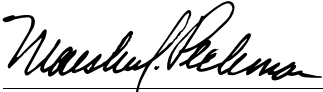
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party.

The clerk is ordered to provide copies of this order to all counsel.

Dated July 20, 2023.



Marsha J. Pechman
United States Senior District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on July 20,
 2023, in the case of Shoemaker et al. v. The Marysville School District No. 25, et. al, C23-779. I
 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to this Stipulated Protective Order to any person or entity
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western
 District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order,
 even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24