

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

A., BY HIS PARENT & NEXT FRIEND,
MR. A., AND MR. A.,

Plaintiffs,

v.

HARTFORD BOARD OF EDUCATION and
NEW BRITAIN BOARD OF EDUCATION,

Defendants.

3:11-CV-01381 (CSH)

NEW BRITAIN BOARD OF EDUCATION,

Plaintiff,

v.

J.A., A STUDENT, AND MR. A., PARENT
AND NEXT FRIEND OF J.A.,

Defendants.

3:11-CV-01431 (CSH)

RULING AND ORDER ON PLAINTIFF'S MOTION TO COMPEL DISCOVERY

HAIGHT, Senior District Judge:

As this case enters the phase of motions for summary disposition, a collateral dispute has arisen between Plaintiff and Defendant New Britain Board of Education ("NBOE"). That dispute relates to Plaintiff's demands for discovery from NBOE. The most recent written submissions of counsel include the following: Plaintiff's motion to compel discovery from NBOE [Doc. 105]; NBOE's opposition to that motion [Doc. 112]; Plaintiff's reply to that opposition [Doc. 113];

Plaintiff's motion for expedited determination of that prior motion [Doc. 137]; and NBOE's response to *that* motion to expedite [Doc. 138].

These briefs of counsel sometimes generate more heat than light, but it does appear that counsel for NBOE were prepared to abandon or compromise some of their original objections to Plaintiff's discovery demands and produce a substantial amount of material by January 8, 2014. That positive development was derailed, counsel for NBOE say, when on December 16, 2013 counsel for Plaintiff filed what NBOE regards as an unnecessary and disruptive motion to compel discovery [Doc. 105]. Since that filing by Plaintiff, NBOE has made no discovery. Counsel for these parties have devoted themselves to exchanging broadsides in their briefs on Plaintiff's motion to compel. In addition, on March 4, 2014 NBOE filed a motion for summary judgment with supporting documents. [Docs . 129-131]. The time for Plaintiff to respond to that motion has not yet elapsed.

I conclude without difficulty that the sensible way to advance this case is to require NBOE to produce at this time the documents counsel for NBOE represent they were prepared to produce on or by January 8, 2014. The Court directs that such production be made **not later than Wednesday, March 26, 2014**. If counsel for Plaintiff consider that production to be inadequate under the discovery rules, counsel can make a further application to the Court.

NBOE's motion for summary judgment under Fed.R.Civ.P. 56 is now pending. If, following the production required by the preceding paragraph of this Ruling, counsel for Plaintiff conclude that NBOE is withholding facts or evidence necessary to justify Plaintiff's opposition to that summary judgment motion, counsel may apply for relief under Rule 56(d).

The most recent briefs of counsel make passing reference to the attorney-client privilege,

which NBOE suggests it may wish to assert. The Court discerns nothing in the record which would constitute a waiver of NBOE's right to assert the privilege or Plaintiff's right to oppose it. If NBOE wishes at this stage of the proceeding to assert the attorney-client privilege, it must comply with the requirements of Fed. R. Civ. P. 26(b)(5)(A), failing which no claim of privilege will be considered by the Court.

With respect to NBOE's motion for summary judgment, Plaintiff's time within which to file opposing papers is adjourned *sine die*. Those opposition papers will be due thirty (30) calendar days after counsel for NBOE produces to counsel for Plaintiff all material as directed by this Ruling and Order or any subsequent Order.

In these circumstances, Plaintiff's motion to compel discovery [Doc. 105] is GRANTED. Production will be made in compliance with this Ruling and Order, or any subsequent Order addressing the same subject.

Plaintiff's motion to expedite decision [Doc. 137] is DENIED AS MOOT, this Ruling having decided the underlying motion in question.

The foregoing is SO ORDERED.

Dated: New Haven, Connecticut
March 13, 2014

/s/Charles S. Haight, Jr.
Charles S. Haight, Jr.
Senior United States District Judge