

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**DEIDRA BYAS, Individually and
on Behalf of Her Minor Child, J.B.**

PLAINTIFF

V.

NO. 4:15-CV-65-DMB-JMV

CLEVELAND SCHOOL DISTRICT, et al.

DEFENDANTS

ORDER DENYING MOTION TO SEAL

On July 8, 2016, Cleveland School District, Cleveland School Board, and Margaret Green Junior High School filed a “Motion to Authorize Filing of Documents Under Seal,” joined by Deidra Byas.¹ Doc. #70. The motion seeks to seal five exhibits filed on May 27, 2016, in support of Defendants’ summary judgment motion, and three exhibits filed on June 20, 2016, in support of Byas’ opposition. *Id.*

Rule 79 of the Uniform Local Rules provides that no document may be filed under seal without a court order. L.U. Civ. R. 79(b). In this regard, Rule 79 instructs that “[n]o document may be sealed merely by stipulation of the parties. A confidentiality order or protective order entered by the court to govern discovery will not qualify as an order to seal documents for purposes of this rule.” *Id.* at 79(d).

In addition to these substantive requirements, Rule 79 sets forth the following procedural requirements for motions to file under seal:

Any motion to seal must be accompanied by a non-confidential supporting memorandum, a notice that identifies the motion as a sealing motion, and a proposed order. A party may also submit a confidential memorandum for in camera review. The non-confidential memorandum and the proposed order must include:

- (A) A non-confidential description of what is to be sealed;

¹ The motion states that it is “joined by Plaintiffs’, by Counsel,” and contains the signature of Deidra Byas’ counsel.

- (B) A statement of why sealing is necessary, and why another procedure will not suffice;
- (C) References to governing case law; and
- (D) Unless permanent sealing is sought, a statement of the period of time the party seeks to have the matter maintained under seal and how the matter is to be handled upon unsealing.
- (E) The proposed order must recite the findings required by governing case law to support the proposed sealing. Any confidential memoranda will be treated as sealed pending the outcome of the ruling on the motion.

Id. at 79(a), (e)(4).

In seeking to seal the exhibits, Defendants rely on a protective order issued by United States Magistrate Judge Jane M. Virden regarding discovery in this case, Doc. #51, and the purpose of FERPA, the Family Education Rights and Privacy Act of 1974,² “to protect the student’s right to privacy and disclosure of their educational records without their consent.” Doc. #71 at ¶ 4 (citing *Rios v. Read*, 73 F.R.D. 589, 587 [sic] (E.D.N.Y. 1977)).

As an initial matter, Rule 79 explicitly states that a protective order governing discovery will not justify sealing under the rule. L.U. Civ. R. 79(d).

Furthermore, while Rule 79 provides that “[a] statute mandating or permitting the non-disclosure of a class of documents provides sufficient authority to support an order sealing documents,” Defendants’ motion makes no effort to show how the identified exhibits fall within a class of documents for which non-disclosure is mandated or permitted under FERPA.

Finally, Defendants failed to submit a proposed order reciting findings required by governing case law, failed to state in their motion how long the exhibits at issue should be under seal, and failed to explain why an alternative to sealing cannot suffice. Their motion to seal is therefore insufficient to justify the relief sought.

Accordingly, Defendants’ motion to seal [70] is **DENIED**.

² Defendants’ memorandum brief references only “FERPA” with no elaboration about what the acronym means.

SO ORDERED, this 4th day of October, 2016.

/s/ Debra M. Brown
UNITED STATES DISTRICT JUDGE