

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

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6 TAMMARA TIMS, et al.,
7 Plaintiffs,

2:18-cv-00021-JAD-VCF

8 vs.

9 CLARK COUNTY SCHOOL DISTRICT, et al.,
10 Defendants.

ORDER

MOTION TO MAINTAIN CONFIDENTIALITY
DESIGNATIONS [ECF Nos. 100, 102], MOTIONS TO
SEAL [ECF Nos. 101, 106]

11 Before the Court are the following motions:

- 12 1. Defendants Clark County School District and Mark Connors' (collectively "CCSD") Motion
13 to Maintain Confidentiality Designations and for Sanctions (ECF Nos. 100, 102),¹
14 2. CCSD's Motion to Seal Exhibits D, E, and I [ECF Nos. 100-4, 100-5, 100-9; ECF Nos. 102-
15 4, 102-5, 102-6, 102-11] in Support of its Motion to Maintain Confidentiality Designations
16 and for Sanctions (ECF No. 101), and
17 3. CCSD's Motion to Seal Exhibit A [ECF #103-1] to Their Response in Opposition to Plaintiffs'
18 Motion for Leave to File Second Amended Complaint (ECF No. 106).

19 For the reasons discussed below, CCSD's motions are granted.

20 **BACKGROUND**

21 In the complaint, Plaintiffs Tammara Tims and HH allege that HH, a special education student,
22 was subjected to physical and verbal abuse by his teacher, Kasey Glass. (ECF No. 44 at 3). Plaintiffs
23 also allege that CCSD has a "policy of deliberate indifference to abuse of special education students." (Id.
24 at 3). Plaintiffs bring § 1983, ADA, Rehabilitation Act, battery, criminal violations motivated by

25 ¹ ECF No. 102 is the sealed version of ECF No. 100.

1 characteristics of victim, IIED, and negligence claims against Glass, Mark Connors (the school principal),
2 and CCSD. (Id. at 15-25).

3 The parties entered into a Stipulated Confidentiality Agreement and Protective Order for the
4 purposes of discovery. (ECF No. 33). The Agreement states that material deemed confidential by a party
5 “shall be maintained in strict confidence by the Parties who receive such information.” (Id. at 4). The
6 Agreement lists the circumstances where the information may be disclosed, including to the Court “so
7 long as the party seeking to file a confidential document under seal complies with the Ninth Circuit’s
8 directives in *Kamakana v. City and County of Honolulu*,” attorneys, experts, and persons who created the
9 document. (Id. at 4-5). Should a party challenge a confidentiality designation, “it shall be the obligation
10 of the party designating the Information as confidential to file an appropriate motion requesting that the
11 Court determine whether the disputed Information should be subject to the terms of this Protective Order.”
12 (Id. at 6). The Agreement again states that the “Parties shall comply with the requirements of Local Rule
13 10-5(b), and the Ninth Circuit’s decision in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172,
14 1178 (9th Cir. 2006), with respect to any documents filed under seal in this matter.” (Id. at 8).

15 Plaintiffs have challenged the confidential designation of documents CCSD-TIMS 5938-6121 and
16 6911-7234 produced by CCSD, which consist of internal personnel records, CCSD police records, and
17 624 forms. (ECF No. 100 at 1-3). CCSD now moves to maintain the confidentiality designation of these
18 documents, arguing that they contain highly sensitive information that should not be open to third-party
19 disclosure. (Id. at 8-22). In response, Plaintiffs argue that, “[b]ecause Plaintiffs intend to file the
20 challenged documents in support of their motion for summary adjudication,” CCSD must demonstrate
21 compelling reasons to maintain the documents’ confidentiality designation. (ECF No. 115 at 2). Plaintiffs
22 assert that compelling reasons do not exist, as the documents have already been redacted to remove most
23 names and identifying information. (Id. at 3-6).

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2 CCSD also moves to seal certain exhibits to its other filings. (ECF Nos. 101, 106). These exhibits
3 will be discussed in more detail below.

4 **MOTION TO MAINTAIN CONFIDENTIALITY**

5 It is important for the Court to clarify the issues addressed in this Order. The Court is not
6 determining whether confidential documents attached to any future motion must remain sealed. The Court
7 is determining whether the documents at issue can be maintained as confidential under the Stipulated
8 Confidentiality Agreement and Protective Order. The Agreement covers disclosure of confidential
9 material in all settings, including to other parties, experts, or potentially the public as a whole. However,
10 the Agreement specifically states that the “Parties shall comply with the requirements of Local Rule 10-
11 5(b), and the Ninth Circuit’s decision in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178
12 (9th Cir. 2006), with respect to any documents filed under seal in this matter.” (ECF No. 33 at 8).

13 “If a party takes steps to release documents subject to a stipulated order, the party opposing
14 disclosure has the burden of establishing that there is good cause to continue the protection of the
15 discovery material.” *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th
16 Cir. 2011). “The party arguing for continued protection under Rule 26(c) unquestionably bears the burden
17 of demonstrating good cause or compelling reasons once an opposing party challenges the confidentiality
18 designation.” *Murnane v. Las Vegas Metro. Police Dep't*, No. 2:13-cv-01088-MMD-PAL, 2015 WL
19 5638224, at *3 (D. Nev. Sept. 24, 2015). “A court considering a motion for a continuation of the protective
20 order must...determine whether particularized harm will result from disclosure of information to the
21 public...then it must proceed to balance the public and private interests to decide whether maintaining a
22 protective order is necessary.” *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d at 424
23 (internal quotations omitted).

1 The Court finds good cause to maintain the confidentiality designation of CCSD-TIMS 5938-6121
2 and 6911-7234. Though the documents redact many names of students and alleged perpetrators² involved
3 in potential abuse incidents, there are many unredacted pieces of sensitive information in the documents
4 that could cause harm to individuals affected by these reports. For example, the documents in ECF No.
5 102-4 give the names of the individuals who used restraint or aversive intervention against a student and
6 detail the administrative response to the individual's actions. This information could be used against
7 individuals who are not named in this action and cannot protect their own interests. In addition, many of
8 the reports in 102-6 (see pages 41-63) and 102-11 (see pages 20-253) give the date of the incident, school
9 where it took place, details about the student's condition, and the alleged perpetrator's position in the
10 school. This information could be enough to discern the identity of the student and alleged perpetrator,
11 even though their names have been redacted. At this stage in the proceedings, the potential harm that
12 could result to individuals described in these reports outweighs any public interest in reviewing the
13 hundreds of pages of documents CCSD has designated as confidential. Therefore, CCSD's motion to
14 maintain confidentiality is granted. CCSD-TIMS 5938-6121 and 6911-7234 shall be treated as
15 confidential documents under the Stipulated Confidentiality Agreement and Protective Order.

16 Plaintiffs' opposition to CCSD's motion focusses almost exclusively on the compelling reasons
17 needed to seal documents attached to a potential future motion for summary judgment. (ECF No. 115).
18 As stated earlier, the motion for summary judgment and any potential attachments³ is not before the Court
19 at this point. However, the Court acknowledges the potential complications that can arise when a party
20 seeks to attach documents to a motion that another party deems confidential, but the submitting party does

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22 ² There are at least two pages where either the student's or teacher's name has not been redacted. (ECF No. 102-5 at 45, 63).

23 ³ Plaintiffs assert their future motion "will rely in part on evidence obtained through discovery, both by stipulation and court
24 order," including the documents at issue in CCSD's motion to maintain confidentiality. (ECF No. 115 at 1-2). However,
25 Plaintiffs do not state whether they intend to rely on (1) other documents that CCSD deemed confidential and Plaintiffs did not
object to and (2) all of the documents currently being reviewed by the Court. Without further details regarding what specific
documents Plaintiffs intend to use and how the documents will be used, it would be impossible for the Court to give any
advance ruling on a future motion to seal.

1 not believe needs to be filed under seal. Plaintiffs' apparent concern over this issue is understandable, and
2 is one reason the Court denies CCSD's request for sanctions.⁴

3 In the event of a future motion where a party seeks to attach documents that another party has
4 deemed confidential, the parties will follow a procedure used in other cases in this Court:

5 If the sole ground for a motion to seal is that the opposing party (or non-
6 party) has designated a document as subject to protection pursuant to a
7 stipulated protective order, the movant must notify the opposing party (or
8 non-party) at least seven days prior to filing the designated document. The
designating party must then make a good faith determination if the relevant
standard for sealing is met.

9 To the extent the designating party does not believe the relevant standard
10 for sealing can be met, it shall indicate that the document may be filed
11 publicly no later than four days after receiving notice of the intended filing.
12 To the extent the designating party believes the relevant standard for sealing
13 can be met, it shall provide a declaration supporting that assertion no later
14 than four days after receiving notice of the intended filing. The filing party
15 shall then attach that declaration to its motion to seal the designated
material. If the designating party fails to provide such a declaration in
support of the motion to seal, the filing party shall file a motion to seal so
indicating and the Court may order the document filed in the public record.

16 Marquis Aurbach Coffing, P.C. v. Dorfman, No. 2:15-cv-00701-JCM-NJK, 2016 WL 10843848, at *3-4
17 (D. Nev. Jan. 15, 2016); see also Murnane v. Las Vegas Metro. Police Dep't, No. 2:13-CV-01088-MD-
18 PAL, 2015 WL 5638224, at *3 (D. Nev. Sept. 24, 2015).

19 MOTIONS TO SEAL

20 CCSD moves to seal ECF No. 102. (ECF No. 101). Attached to ECF No. 102 is CCSD-TIMS
21 5938-6121 and 6911-7234. (ECF Nos. 102-4, 102-5, 102-6, 102-11). ECF No. 100 was not filed under
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25 ⁴ Both parties have asked for sanctions in their many discovery motions before the Court. The Court advises the parties to work together on resolving their disputes, as sanctions against both parties may be warranted in the future.

1 seal, and contains all the same documents as ECF No. 102 except for CCSD-TIMS 5938-6121 and 6911-
2 7234.

3 CCSD also moves to seal ECF No. 103-1, as it “contains the name of a minor child and was
4 inadvertently not redacted before filing the same with the Court.” (ECF No. 106). “[I]n an electronic or
5 paper filing with the court that contains...the name of an individual known to be a minor...a party or
6 nonparty making the filing may include only...the minor's initials.” Fed. R. Civ. P. 5.2(a).

7 Federal Rule of Civil Procedure 26(c) allows the Court to issue a protective order to govern
8 discovery, as necessary to protect a party from “annoyance, embarrassment, oppression, or undue burden
9 or expense.” “[A] ‘particularized showing’...under the ‘good cause’ standard of Rule 26(c) will ‘suffice[]
10 to warrant preserving the secrecy of sealed discovery material attached to non-dispositive motions.’”
11 *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm*
12 *Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135, 1138 (9th Cir. 2003); see also *Ctr. for Auto Safety v. Chrysler*
13 *Grp., LLC*, 809 F.3d 1092, 1099 (9th Cir. 2016) (holding that the compelling reasons standard would
14 apply to “technically nondispositive motions that “are strongly correlative to the merits of a case”).

15 For the reasons discussed above, the Court finds good cause to seal ECF No. 102, as it contains
16 confidential and sensitive personal information. In addition, the Court finds good cause to seal ECF No.
17 103-1, as it contains the unredacted name of a minor. Therefore, CCSD’s motions to seal are granted.


18 ACCORDINGLY, and for good cause shown,

19 IT IS HEREBY ORDERED that CCSD’s Motion to Maintain Confidentiality Designations and
20 for Sanctions (ECF Nos. 100, 102) is GRANTED IN PART. CCSD-TIMS 5938-6121 and 6911-7234
21 shall be treated as confidential documents under the Stipulated Confidentiality Agreement and Protective
22 Order, but no sanctions will be imposed.

1 IT IS FURTHER ORDERED THAT CCSD's Motion to Seal Exhibits D, E, and I in Support of
2 its Motion to Maintain Confidentiality Designations and for Sanctions (ECF No. 101) is GRANTED. ECF
3 No. 102 will remain under seal.

4 IT IS FURTHER ORDERED THAT CCSD's Motion to Seal Exhibit A [ECF #103-1] to Their
5 Response in Opposition to Plaintiffs' Motion for Leave to File Second Amended Complaint (ECF No.
6 106) is GRANTED. ECF No. 103-1 will remain under seal.

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8 DATED this 27th day of February, 2019.

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12 CAM FERENBACH
13 UNITED STATES MAGISTRATE JUDGE
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