

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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TRISHA PRESTON and MICHAEL PRESTON,  
Individually and As Parents and Natural Guardians  
of AP, an Infant,

Plaintiffs,

ORDER

11-CV-6420L

v.

HILTON CENTRAL SCHOOL DISTRICT, BRIAN  
BARTALO, DANA BOSHACK, BRAD HELMER,  
TAIT LOE, ANN FREY, ANN MARIE MADCONALD  
and EILEEN COWEY,

Defendants.

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The plaintiffs' motion to seal all pleadings and records in this action (Dkt. #2) is denied.

The well-established presumption of accessibility to court documents is reflected in Local Rule 5.3(a) which states that "there is a presumption that Court documents are accessible to the public and that a substantial showing is necessary to restrict access." *See also Video Software Dealers Ass'n v. Orion Pictures*, 21 F.3d 24, 26 (2d Cir. 1994) ("[C]ourts have recognized a strong presumption of public access to court records. This preference for public access is rooted in the public's first amendment right to know about the administration of justice") (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978)).

While this presumption of access can be overcome by a number of countervailing interests, such as preserving a defendant's right to a fair trial or a third party's privacy interests, *see, e.g., Stephanski v. Goord*, No. 02-CV-562F, 2005 WL 711628, at \*1-\*2 (W.D.N.Y. Mar. 29, 2005), the Second Circuit has emphasized that a district court "must carefully and skeptically review sealing requests to insure that there really is an extraordinary circumstance or compelling need" to seal court records. *Orion Pictures*, 21 F.3d at 27.

Although I do recognize that the action involves a minor as the alleged victim, nevertheless, since the victim has been removed from the defendant school district, I believe that there are countervailing reasons why total sealing of the entire file is not warranted. I do not believe plaintiffs have presented sufficient facts to overcome the presumption of openness and public access to judicial proceedings, especially since the defendant is not a private party but is a school district that allegedly allowed employees to engage in impermissible conduct. The public, then, has some interest in having access to such a proceeding concerning the claims alleged and the Court's handling of such a matter.

Plaintiffs may, however, elect to proceed anonymously using pseudonyms or initials to protect the privacy of themselves and the infant plaintiff.

#### CONCLUSION

Plaintiffs' motion to seal the entire file and records (Dkt. #2) is denied, but plaintiffs are granted leave to proceed anonymously using pseudonyms or initials.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
September 12, 2011.