

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DONALD RICHARDSON, <i>et al.</i> ,	:	
Plaintiffs,	:	Case No. 3:12cv00342
v.	:	District Judge Thomas M. Rose Chief Magistrate Judge Sharon L. Ovington
BOARD OF EDUCATION OF HUBER HEIGHTS CITY SCHOOLS, <i>et al.</i> ,	:	
Defendants.	:	

PROTECTIVE ORDER

Pursuant to Rules 26(c) and 5.2(e) of the Federal Rules of Civil Procedure, the Proposed Agreed Protective Order (Doc. #22), and the Order docketed on October 24, 2013 (Doc. #23), **IT IS HEREBY ORDERED** as follows:

1. Definitions:
 - a. “Confidential Information” includes the following:
 - i. Any and all personally identifiable information from an educational record of a student that is protected by the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g; 34 C.F.R. Part 99.
 - ii. Any and all information which is not a public record under Ohio Rev. Code § 149.43(A). Medical records under Ohio Rev. Code § 149.43(A)(1)(a) shall include those records which relate to any visit with any hospital, physician, psychologist, therapist, social

worker or other health care provider or counselor.

- iii. Any and all information that leads to identifying information about Minor Plaintiff and Individual Defendants, who were minors at the time of the Complaint allegations, that could lead to public revelation as to their identity, including without limitation their addresses, their parents' and/or siblings' names and addresses, any information that is designated pursuant to this Order as confidential, including documents or other materials provided by the parties and/or witnesses in depositions or in response to parties' interrogatories and requests for production.
- iv. Any and all testimony discussing subject matter which is confidential.

- b. “Confidential Document” refers to a document that is marked as “confidential” by the producing party and that contains any of the above kinds of information defined as “Confidential Information.”
- c. “Disclosure” or “disclose” means divulge, reveal, describe, summarize, paraphrase, quote, transmit, or otherwise communicate Confidential Information.
- d. Confidential Information shall be utilized only for the purpose of this litigation.

2. Disclosure of Confidential Information During Discovery: During the pendency of this litigation, Confidential Information shall be retained solely in the custody of the parties' counsel and their employees and shall not be placed in the possession of or disclosed to any other person, except under the following circumstances:

- a. In lieu of marking the original of documents, the parties may mark the copies that are produced.
- b. Confidential Information may be disclosed to a court reporter during the course of a deposition.
- c. Confidential Information may be disclosed to witnesses in preparation for trial or deposition.

- d. Outside consultants or experts retained by the Parties for purposes of this litigation. No outside consultant or expert may review such Confidential Information until he or she first signs a document in the form of Exhibit A. Counsel for the Parties shall maintain a sealed list of all consultants and experts who receive Confidential Information pursuant to this Confidentiality Stipulation and Agreed Protective Order, and the nature and extent of the Confidential Information disclosed to each, which list may not be reviewed during the course of this litigation, including any appeals, by any other person(s) without prior Court order for good cause shown.
 - e. Confidential Information may be disclosed as provided in this Protective Order or upon leave of Court.
 - f. Counsel will make any witnesses or individuals to whom Confidential Information is being disclosed aware of the existence of this order as well as its terms, and will further advise any such witness that the terms and conditions of the order are binding upon them. All such witnesses or individuals will execute the Acknowledgment and Consent to Agreed Protective Order form, attached as Exhibit A.
3. Disclosure of Confidential Information to the Court:
- a. All Confidential Documents, including transcripts, that are filed with the Court that contain any portion of any Confidential Information shall be filed in a sealed envelope or other appropriately sealed container on which shall be endorsed the title to the action to which it pertains, an indication of the nature of the contents of such sealed envelope or other container, the phrase "Subject to Protective Order," and a statement substantially in the following form:

This envelope is sealed and contains confidential information filed in this case by (name of party) and is not to be opened or the contents thereof displayed or revealed except by order of the court or pursuant to written stipulation of the parties to this action. This envelope or container shall not be opened without an order of the court, except by officers of the court, and counsel of record, who, after reviewing the contents shall return them in a sealed envelope or container.

- b. Upon the conclusion of this action, all Confidential Documents, all excerpts thereof, and all copies thereof provided to any person or entity shall be returned to the producing party. Any materials prepared for purposes of the

litigation that contains any Confidential Information that was derived from a Confidential Document shall be destroyed by the party that prepared the materials at the conclusion of the litigation, and said party shall upon request certify the destruction of such material.

4. If a nonproducing party contends that any material has been erroneously designated “confidential” that party shall, nevertheless, treat the material as “confidential” unless and until that party either (a) obtains the producing party's written permission to do otherwise, or (b) obtains an order of the court finding that the material is not “confidential.”
5. The obligation to maintain confidentiality, as described herein, shall remain in force at all times before and after the entry of the trial court's final judgment in this action.
6. Any information, documents or testimony produced or disclosed without a “Confidential” designation may be subsequently designated by the producing party as such, within ten (10) days of the producing party's knowledge that such material was subject to this Order and was entitled to, but inadvertently produced without the “Confidential” designation.
7. To the extent a document contains confidential information and/or personally identifiable information from an educational record of a student or former student that is protected by the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g; 34 C.F.R. Part 99, Defendant Huber Heights City Schools Board of Education will, before production of the document, make a reasonable effort to notify the parent or eligible student of this Protective Order so that the parent or eligible student may seek protective action, if desired. The notification to the parent or eligible student will indicate the date on which the document will be produced in the absence of the parent or eligible student obtaining protective relief.
8. Separately and in addition to provision 7 stated above, if the document to be produced is part of a school disciplinary file for any party or non-party student or former student, the following shall occur before production. Upon request of an interested party, the Court shall conduct an in camera review of any documents contained in any school disciplinary file. During such in camera inspection, the Court shall consider:
 - a. whether the records are necessary and relevant to the pending action;
 - b. whether good cause has been shown by the party seeking disclosure; and

- c. whether the discovery of the records outweighs confidentiality considerations.

The Court will then issue Orders on production of such documents on a case-by-case basis.

9. This Protective Order shall not prevent any of the parties or any third party from applying to the Court for relief therefrom, or from applying to the Court for further or additional Protective Orders, or from agreeing between themselves in writing to modification of this Protective Order, subject to the approval of the Court.

IT IS SO ORDERED.

October 24, 2013

s/Sharon L. Ovington
Sharon L. Ovington
Chief United States Magistrate Judge

EXHIBIT A

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ACKNOWLEDGEMENT AND PROTECTIVE ORDER

The undersigned hereby acknowledges that I have received and reviewed a copy of the PROTECTIVE ORDER, which has been entered in this action. I further agree to be bound by the terms of the PROTECTIVE ORDER to the same extent as if I was a party to this action.

[Print Name]

Date: _____, 2013