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

DONALD RICHARDSON, on behalf of himself and his minor child K.R., et al.,	:	
Plaintiffs,	:	Case No. 3:12cv00342
vs.	:	District Judge Thomas M. Rose Chief Magistrate Judge Sharon L. Ovington
BOARD OF EDUCATION OF HUBER HEIGHTS CITY SCHOOLS, et al.,	:	
Defendants.	:	

ORDER

I.

The case is presently before the Court upon Defendant Huber Heights City School Board of Education's ("Defendant's") Notices of Submission of emails and student disciplinary files for in camera review (Doc. #s 44, 48-65), Defendant's Notices of Submissions of Suspension Hearing Files of RM and BC (Doc. #s 40, 41), and Defendant's Notice of Submission of Email Correspondences, Wherein Defendant R.M. is Referenced, for In Camera Review (Doc. #66). Defendant has submitted the pertinent documents for in camera review without filing them in the record of the case.

This Order incorporates by reference the background information and case law set forth in the Order issued previously in this case on March 11, 2014. (Doc. #42). As with

that previous Order, Defendant presently seeks an *in camera* review pursuant to paragraph 8 of the Protective Order, which states, in pertinent part:

> Upon request of an interested party, the Court shall conduct an in camera review of any documents contained in a 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.

(Doc. #24, PageID at 132-33).

For the reasons set forth in the prior Order (Doc. #42, PageID at 305-06), and in light of the terms of the Protective Order, the main issue becomes whether the documents submitted for in camera review are relevant and therefore discoverable under Fed. R. Civ. P. 26(b)(1). Rule 26(b)(1) allows parties to "obtain discovery regarding any matter, not privileged, that is relevant to any party's claim or defense ...." In addition, "For good cause, the court may order discovery of any matter relevant to the subject matters involved in the action. Relevant information need not be admissible at the trial if the discovery appears to be reasonably calculated to lead to the discovery of admissible evidence ...." Fed. R. Civ. P. 26(b)(1).

"The scope of discovery under the Federal Rules of Civil Procedure is traditionally quite broad." *Lewis v. ACB Bus. Serv., Inc.,* 135 F.3d 389, 402 (6th Cir. 1998). "Generally, [Rule] 26(b) enables parties to discover any unprivileged evidence or information relevant to their claim." *Surles ex rel. Johnson v. Greyhound Lines, Inc.,* 474 F.3d 288, 305 (6th Cir.

2007) (citation omitted). Yet, it is not an abuse of discretion to preclude "discovery when the discovery requested would be irrelevant to the underlying issue to be decided." *Green v. Nevers*, 196 F.3d 627, 632 (6th Cir. 1999).

II.

Students 1, 2, 3, and 4, or their parents, object to the disclosure of the documents in their respective disciplinary files. Students 5 through 19, or their parents, do not object or have not responded to the FERPA[1] notices sent to each of them.

The students' disciplinary files contain many of the same documents and therefore present the same issue(s) concerning the possible relevance and confidentiality of some information in those documents. Rather than repeating the identical issues and analysis applicable to each single disciplinary file, the following discussion identifies the particular document or information that may not be disclosed because it lacks Rule 26(b)(1) relevance and/or because it contain confidential information. The following discussion also identifies documents that may be disclosed with certain information redacted.

Soukup's November 30, 2010 email

On November 30, 2010, baseball coach Jon Soukup wrote an email describing what he saw and did during the baseball team's weightlifting session on November 22, 2010, the date the incident at issue ("the incident at issue") occurred during this team weightlifting session, as alleged in Plaintiffs' Complaint. Soukup's email describes what he observed and his interactions with specific students during the weightlifting session. His email is therefore

[1] Family and Educational Rights Privacy Act of 1974 (FERPA), 20 U.S.C. §1232g.

relevant to the issue of what he knew or did not know about the incident at issue on the date it occurred. Soukup's November 30, 2010 email is therefore discoverable under Rule 26(b)(1).

Soukup's email, however, also contains the names of students who are not parties in this case. When those students' names are read in the context of Soukup's email, there is no indication that any of them witnessed, participated in, or knew about the alleged incident on the date and at or near the time it occurred. As a result, these students are entitled to retain their confidentiality to the extent their names appear in Soukup's email.

Ruling: The names of all students set forth in Soukup's November 30, 2010 email must be redacted. This is so regardless of whether or not the student or parents objected to disclosure or responded to the FERPA notices.

Student 2 (Bernard)

Student 2's objections to the production of Soukup's November 30, 2010 email is well taken and requires additional redactions to Soukup's email.

The information in the email related to Student 2 has no Rule 26(b)(1) relevance and is not likely to lead to discovery of admissible evidence. Soukup's email reveals that Student 2 was neither a member of the baseball team nor present at the weightlifting session nor in school when the incident occurred. Additionally, the sentences mentioning Student 2 contain information that could reveal Student 2's identity, even after the redaction of the name. It is therefore necessary to redact the entire sentences containing Student 2's name.

Ruling: Student 2's name and the complete sentences where it appears – in the first full paragraph on page two of Soukup's November 30, 2010 email – must be redacted.

Confidential Information

A previously issued Order concerning in camera review of other documents in this case identified personal identifiers that must be redacted. (Doc. #42, PageID at 307). The same personal identifiers must be redacted from the documents wherever they appear in each document in each student's (1 through 19) disciplinary file. Further, the student disciplinary files presently under review include additional personal identifiers that must be redacted before disclosure.

Ruling: The personal identifiers that must be redacted from the documents in disciplinary files of Students 1 through 19 are dates of birth, student identification numbers, addresses, photographs, student academic grades, and telephone numbers, and parents' names, email addresses, and cell phone or other telephone numbers.

Counsel need not redact school telephone, fax numbers, and addresses.

Baseball Team Rosters

Some student disciplinary files contain redacted versions of school baseball team rosters. Each roster contains confidential information that described above with no additional information that is relevant and discoverable under Rule 26(b)(1).

Ruling: Defendant shall not produce the baseball team rosters from the Student disciplinary files that contain them.

Emails and Disciplinary Files of Students 3, 4, and 19

Student 3's parents object to disclosure of Student 3's name in this case, and they seek to protect Student 3's privacy and his rights under FERPA. They explain that they do not want anything to effect Student 3's career, and that Student 3 has nothing to do with this matter and does not want to be involved.

Student 3 is not a party in this case. The two documents in Student 3's school disciplinary file do not indicate that he participated in or witnessed the incident at issue. The first document in Student 3's file is also found in substantially the same form in other student disciplinary files. Consequently, its production would be duplicative. The other document in Student 3's file is a baseball team roster, which does not need to be disclosed for the reasons stated above. And, due to the nature of Student 3's chosen career (as indicated in his parents' objections), Student 3's need to maintain confidentiality remains a higher priority than disclosure of Student 3's disciplinary file.

Student 4's parents object to disclosure of Student 4's disciplinary file. Their objection is well taken because it only contains a one-page document that reveals no information about the incident at issue. This disciplinary file also concerns an unrelated separate incident that occurred in May 2012, well after the incident at issue. Student 4's disciplinary file therefore contains no information relevant and discoverable under Rule 26(b)(1).

Student 19's disciplinary file contains a single document: a copy of a baseball team roster that contains confidential information and does not contain any information about the incident at issue. The document, therefore, is not relevant and discoverable under Rule 26(b)(1) and is also not subject to production during discovery due to the confidential information it contains.

Ruling: Defendant shall not produce the emails and disciplinary files of Students 3, 4, and 19.

Suspension-Hearing Files

Defendant Board of Education has submitted the CD recordings and the transcripts of two suspension hearings: one concerning Defendant BC, the other concerning Defendant RM. Each suspension hearing contains information about the incident at issue. As a result, the CD and transcript of each hearing is relevant and discoverable under Rule 26(b)(1).

Email Correspondences

Defendant Macklin, through counsel, object to the disclosure of specific email correspondences designated Macklin 12, 13, and 14 and Macklin 26, 27, 28.

Two documents contain information about an alleged incident that occurred in school on or near December 5, 2011, and school officials' response to it. Because the alleged incident is related to the incident at issue, information about it contained in Macklin 12 and 13 is relevant and discoverable under Rule 26(b)(1). The next email correspondence, although dated February 15, 2013, contains information relevant to what occurred during Defendant RM's suspension hearing. Consequently, this email, Macklin 14, is relevant and discoverable under Rule 26(b)(1).

Lastly, Macklin 26, 27, and 28 need not be produced because they are duplicative of Macklin 12, 13, and 14.

III.

In sum, Defendant may provide copies of the emails, disciplinary files, and one CD related to Students 1, 2, 5-18, and Defendant RM (Doc. #s 44, 48, 51-64, 66), and the CDs and transcripts (Doc. #s 40, 41), to Plaintiffs and other Defendants during discovery in this

case with certain information redacted and with certain documents removed as required by this Order. All materials submitted for this in camera review shall remain under seal.

IT IS THEREFORE ORDERED THAT:

1. Subject to the restrictions and redactions mandated by this Order, Defendant Board of Education may provide copies of the presently sealed documents and CDs referred to in Defendant's Notices of Submission (Doc. #s 40, 41, 44, 48, 51-64, 66) to Plaintiffs and other Defendants during discovery; and

2. Defendant Board of Education's counsel is directed to provide a copy of this Order to the individuals or parents who objected to the FERPA Notices.

June 17, 2014

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