

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

G.G., by his next friend and mother,
DEIRDRE GRIMM,

Plaintiff,

v.

Case No. 4:15-cv-00054-RGD-TEM

GLOUCESTER COUNTY SCHOOL
BOARD,

Defendant.

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the parties, by counsel, respectfully move this Court for entry of a Protective Order and state as follows:

1. The School Board has moved to stay this case pending disposition of its forthcoming petition for a writ of certiorari with the United States Supreme Court (ECF Doc. 80). That motion is unopposed by G.G. In the event that the School Board's motion to stay is granted, the parties wish to be in a position to proceed with discovery as soon as the stay is lifted.
2. The parties anticipate that they may produce information in this action that could result in "annoyance, embarrassment, oppression or undue burden or expense" if otherwise subject to public inspection. Fed. R. Civ. P. 26(c).
3. The parties seek entry of a Protective Order to expedite the litigation, minimize any disputes over confidentiality, and to adequately protect material the parties are willing to voluntarily produce but are entitled to keep confidential.

4. To facilitate these goals, the parties have attached as Exhibit A to this Joint Motion a Stipulation for Protective Order. The Stipulation has been endorsed by counsel for both G.G. and the Board.
5. The parties agree to comply with the requirements of Local Rule 5 with respect to either party's request to file documents under seal with the Court.
6. The parties agree to submit this Joint Motion to the Court without oral argument pursuant to Local Rule 7(E).

WHEREFORE, the parties respectfully request that this Court enter the Stipulation for Protective Order attached hereto as Exhibit A.

Respectfully submitted this 23rd day of August, 2016.

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA

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DEIRDRE GRIMM,)	
)	
Plaintiff,)	
)	Civil No. 4:15-cv-00054-RGD-TEM
v.)	
)	
GLOUCESTER COUNTY SCHOOL)	
BOARD,)	
)	
Defendant.)	

AGREED CONFIDENTIALITY PROTECTIVE ORDER

The parties to this action have entered into a Stipulation for Protective Order in order to safeguard information that is confidential, as defined below, in the course of discovery in and litigation of this action.

IT IS HEREBY ORDERED that the parties shall follow the procedures set forth below with respect to information, documents, or other things or otherwise disclosed in this litigation:

(1) Confidential Information: "Confidential Information" means information subject to federal or state privacy rights, including personally identifiable student information protected under the Family and Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(b)(2)(B), 34 C.F.R. §99.31(a)(9)(i-ii); medical and health information protected by the Health Insurance Portability and Accountability Act ("HIPAA"), personnel files, including all documents contained therein, of any employee of the School Board; documents designated as confidential by the agreement of counsel, and any other information which may create a reasonable risk of identity theft, invasion of privacy, or may otherwise cause substantial harm to the designating party's legitimate privacy interests if publicly disclosed, including without limitation, student names or

names of students' parents or guardians, social security numbers, addresses, telephone numbers, and personal health information.

(2) Exercise of Care in Designating Confidential Information: Each party or non-party that designates Confidential Information under this Order must take care to limit any such designation to specific material or parts of material that the party reasonably believes to qualify for protection.

(3) Manner and Timing of Designations: Designation in conformity with this Order requires that the producing party affix the legend "CONFIDENTIAL" at the top or bottom of each page that contains Confidential Information, or otherwise clearly designate the material and/or document as confidential. Material that qualifies for protection under this order should be clearly so designated before the material is disclosed or produced. Provided however, that in the event that information which, through inadvertence or otherwise, does not contain such "Confidential" legend is subsequently identified by the producing party as "Confidential Information," written notification thereof shall be given to the receiving party as quickly as reasonably possible, and such information shall be considered confidential under this Order.

(4) Depositions: Unless all parties agree on the record at the time the deposition testimony is taken, all deposition testimony taken in this case shall be treated as Confidential Information until twenty-one (21) days after the hard copy of the transcript is delivered to counsel. Within this time period, a party may serve a Notice of Designation as to specific portions of the testimony that are designated Confidential Information, and thereafter only those portions identified in the Notice of Designation shall be protected by the terms of this Order.

(5) Challenging Confidentiality Designations: Nothing in this Order shall prevent a receiving party from challenging a producing party's designation of specific material as Confidential Information and, if the producing party does not remove the designation on request, asking this Court

to remove the designation. All material a party designates as Confidential Information shall be treated as such and filed under seal until an Order is entered to remove the designation.

(6) Disclosure of Confidential Information: Confidential Information shall be used only for the purpose of this litigation and for no other purpose whatsoever, and shall not be published, given, shown, made available, or distributed in any way except:

(a) with the prior written consent of the producing party, or pursuant to further order of this Court, or on motion with notice to the producing party; or

(b) to “Qualified Persons,” who shall be defined to include:

(i) The parties' counsel in this action and their authorized secretarial and paralegal staff and other employees;

(ii) The Court and court personnel, deposition officers, court reporters, and videographers used in connection with this action;

(iii) Employees of outside copying, printing, binding, litigation, support, mediators, or computer input services used in connection with this action;

(iv) Outside experts and/or consultants retained by counsel for the purpose of assisting in the preparation of this case;

(v) Deposition witnesses, to the extent that the Confidential Information is directly relevant to the witness's testimony, with the consent of the party who produced the information, which shall not be unreasonably withheld; and

(v) Such other persons as the parties may agree or may be ordered by the Court.

(c) Any party who discloses Confidential Information to Qualified Person(s) must, prior to disclosure, inform the Qualified Person(s) that the material is confidential and obtain agreement from the Qualified Person(s) that the Qualified Person(s) will not disclose the Confidential Information.

(7) Filing Confidential Information: If any party wishes to use material designated as

Confidential Information as an exhibit to a motion or other attachment to a submission to this Court, that party must submit a written application for leave to file under seal the material designated as Confidential Information pursuant to Local Rule 5 of the Rules of the United States District Court for the Eastern District of Virginia.

(8) Use of Confidential Information at Trial: If this case goes to trial and any party intends to use, as trial exhibits or otherwise, material designated as Confidential Information, the parties will consult in advance of trial to make appropriate arrangements to safeguard the confidentiality of such material. Nothing in this Order shall be construed to affect in any way the admissibility of any documents, testimony, or other evidence at trial, nor constitute a waiver of any objection thereto.

(9) Duration: The confidentiality obligations imposed by this Order shall remain in effect through the duration of this litigation or until the party that produced the Confidential Information at issue agrees otherwise in writing or a court order otherwise directs.

(10) Final Disposition: At the conclusion of this action, including all appeals, each receiving party shall return all copies of any Confidential Information to the producing party. With permission in writing from the producing party, the receiving party may destroy some or all of the Confidential Information instead of returning it. Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney work product, even if such materials contain Confidential Information. Any such archival copies that contain Confidential Information remain subject to this Order.

The parties in the above-captioned matter have agreed to the terms of this Agreed Protective Order; accordingly, it is ORDERED:

Dated: _____

U.S. District Judge