

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DREW ADAMS, a minor, by and through
his next friend and mother, ERICA
ADAMS KASPER,

Plaintiff,

Case No.: 3:17-cv-00739-TJC-JBT

v.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA; TIM FORSON, in his
official capacity as Superintendent of
Schools for the St. Johns County School
District; and LISA KUNZE, in her official
capacity as Principal of Allen D. Nease High
School,

Defendants.

**DEFENDANTS' UNOPPOSED MOTION TO SEAL EDUCATION RECORDS AND
CONFIDENTIAL BUILDING SCHEMATICS TO BE FILED IN SUPPORT OF
DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION**

Defendants, through their undersigned counsel and pursuant to *Fed. R. Civ. P.* 5.2 and *M.D. Fla. Loc. R.* 1.09, jointly move this Court for leave to file under seal education records of Plaintiff and confidential building schematics of Allen D. Nease High School ("Nease") in support of their response to Plaintiff's Motion for Preliminary Injunction. (Doc. 22). In support hereof, Defendants state as follows:

1. On July 19, 2017, Plaintiff filed a Motion for Preliminary Injunction raising claims under Title IX of the Educational Amendments of 1972 and the

Fourteenth Amendment's Equal Protection Clause. Defendants must respond by August 4, 2017.

2. Defendants anticipate needing to file education records related to Plaintiff in support of their response, which includes personal information of a confidential nature about the Plaintiff. Although Defendants have not yet determined all records they will file, it is anticipated that the records will include educationally and medically-related information about Plaintiff. "Education records" are governed by the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 20 U.S.C. §1232g; 34 C.F.R. Part 99. FERPA protects the privacy of student educational records. "Education records" are records, files, documents and other materials that contain information directly related to a student and are maintained by an educational agency or institution. 20 U.S.C. §1232g(4)(A).

3. Defendants anticipate that the records will inform the Court about Plaintiff's attendance and academic performance during his time in the St. Johns County School District.

4. Defendants submit that filing education records under seal will maintain the confidentiality of the records. If the records are not filed under seal, they will become part of the court record and the public will have access to them.

5. Defendants request that the education records filed in support of their response to Plaintiff's Motion for Preliminary Injunction remain under seal for the duration of the litigation of this matter and destroyed once the litigation concludes.

6. Additionally, Defendants anticipate filing a detailed schematic of the

internal layout of Nease High School's campus. The schematic contains information about points of entry and exit to individual buildings as well as classroom and office locations within school buildings. The schematics will provide the Court with the locations of the gender-neutral restrooms located on campus.

7. The sealing of the campus schematics is necessary and critical to protect the safety and security interests of the students and employees who attend and work at Nease High School, particularly considering recent events at various public schools across the United States. See Fla. Stat. 119.071(3). Should these records be filed unsealed, the public would have access to them, which poses a danger to the safety and security of students and employees.

8. Defendants request that the schematic records remain under seal for the duration of the litigation and destroyed once litigation concludes.

CERTIFICATE OF M. D. FLA. LOC. R. 3.01 (g) CONFERENCE

Pursuant to M.D. Fla. Loc. R. 3.01(g), the undersigned certifies Plaintiff's counsel was contacted regarding the relief requested herein. Plaintiff counsel does not oppose the relief sought.

MEMORANDUM OF LAW

While the public possesses a common-law right to inspect and copy judicial records and public documents, a party's privacy interest in information may overcome the interest of the public in accessing the information. Romero v. Drummond Co., 480 F.3d 1234 (11th Cir. 2007). Rule 5.2 of the Federal Rules of

Civil Procedure governs the privacy concerns of certain documents filed with the court. Local Rule 1.09 also provides guidance on this issue.

In the present case, Plaintiff, a minor, has a privacy interest which overcomes the minimal interest of the public to access his education records governed by FERPA. This privacy interest governs the records referenced because those records are treated as confidential under FERPA. Defendants submit that filing the exhibits under seal will guard the privacy interests of the Plaintiff and, at the same time, allow the Court to review the exhibits. Defendant would request these items be placed under seal through the duration of this matter, and destroyed at the conclusion of the litigation of this matter.

With respect to the building schematics, the Florida Legislature recognizes the need to exempt certain records from disclosure for security purposes. See Fla. Stat. 119.071(3). These include building “building plans, blueprints, schematic drawings and diagrams ... which depict the internal layout and structural elements of a building ... owned or operated by an agency.” Fla. Stat. 119.071(3)(b). In light of the national events involving school security, these risks are even more prevalent. Safety concerns can be overriding interests that outweigh the presumption of public access to judicial records. See United States v. McCraney, 99 F. Supp. 3d 651, 654 (E.D. Tex. 2015).

WHEREFORE, Defendants respectfully request an Order permitting Defendants to file under seal Plaintiff’s education records governed by FERPA and

any campus blueprints and/or schematics in their response to Plaintiff's Motion for Protective Order.

Dated this 3rd day of August, 2017.

Respectfully submitted,

/s/ Kevin Kostelnik

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Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that on this 3rd day of August, 2017, a true and correct copy of the foregoing was electronically filed in the United States District Court, Middle District of Florida, using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Kevin Kostelnik

KEVIN KOSTELNIK