

**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,**

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

Plaintiff,

v.

**THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,**

Defendant.

JOINT MOTION FOR ENTRY OF STIPULATED PROTECTIVE ORDER

The parties, pursuant to Fed. R. Civ. P. 26 (c) and M.D. Fla. Loc. R. 3.01, jointly move the Court for the entry of the parties' proposed Stipulated Protective Order¹ which governs certain confidential information and documents related to this case. The proposed Stipulated Protective Order specifies the conditions under which private, sensitive, and/or legally confidential documents and information in possession of the parties must be exchanged, used, and protected in this litigation, and authorizes the parties to disclose that information in furtherance of this litigation. The proposed Stipulated Protective Order is justified by Rule 26(c) of the Federal Rules of Civil Procedure and is necessary in order for the parties to timely proceed with discovery.

WHEREFORE, the parties respectfully request that the Court approve and enter the Stipulated Protective Order together with any other relief this Court deems just and proper.

¹ A copy of which shall be filed as an exhibit to this Motion.

MEMORANDUM OF LAW

This case involves, among other things, issues related to Plaintiff's medical and psychological history. As part of this case, the parties need to obtain and disclose, in certain circumstances, confidential information relating to Plaintiff.² Recognizing Plaintiff is a minor child and that this information is sensitive, the parties have agreed to a procedure for handling such information as set forth in the Stipulated Protective Order accompanying this Motion.

The Eleventh Circuit permits district courts to "issue umbrella protective orders to expedite the flow of discovery material and to protect the confidentiality of documents." Kuhns v. Zimmer, Inc., 806-CV-2343T-23TBM, 2007 WL 781783, at *1 (M.D. Fla. Mar. 13, 2007), citing McCarthy v. Barnett Bank of Polk County, 876 F.2d 89, 91 (11th Cir. 1989); In re Alexander Grant & Co. Litig., 820 F.2d 352, 356 (11th Cir. 1987). Notwithstanding the foregoing, the parties recognize that Section V(a) of the Stipulated Protective Order calls for the filing of confidential information (as defined in the Stipulated Protective Order) under seal and that such a provision may be counter to the requirements of M.D. Fla. Loc. R. 1.09. As such, the parties will follow the procedure required by Rule 1.09 when seeking to file a document under seal.

Respectfully submitted this 9th day of October, 2017.

/s/ Shani Rivaux
Shani Rivaux
Florida Bar No: 42095
Jennifer Altman

Kirsten Doolittle, Trial Counsel
Florida Bar No. 942391
THE LAW OFFICE OF KIRSTEN DOOLITTLE,
P.A.

² The Stipulated Protective Order applies equally to Plaintiff's and Defendant's confidential information.

Florida Bar No: 881384
Aryeh Kaplan
Florida Bar No: 60558
PILLSBURY WINTHROP SHAW PITTMAN, LLP
600 Brickell Avenue Suite 3100
Miami, FL 33131
Telephone: 786-913-4900
Facsimile: 786-913-4901
jennifer.altman@pillsburylaw.com
shani.rivaux@pillsburylaw.com
aryeh.kaplan@pillsburylaw.com

Tara L. Borelli (*admitted pro hac vice*)
LAMBDA LEGAL DEFENSE AND EDUCATION
FUND, INC.
730 Peachtree Street NE, Suite 640
Atlanta, GA 30308-1210
Telephone: 404-897-1880
Facsimile: 404-897-1884
tborelli@lambdalegal.org

Counsel for Plaintiff

/s/ Terry J. Harmon

TERRY J. HARMON

Florida Bar Number: 0029001
tharmon@sniffenlaw.com

MICHAEL P. SPELLMAN

Florida Bar Number: 937975
mspellman@sniffenlaw.com

ROBERT J. SNIFFEN

Florida Bar Number: 0000795
rsniffen@sniffenlaw.com

KEVIN KOSTELNIK

Florida Bar Number: 0118763
kkostelnik@sniffenlaw.com

SNIFFEN & SPELLMAN, P.A.

123 North Monroe Street
Tallahassee, Florida 32301
Telephone: (850) 205-1996
Facsimile: (850) 205-3004

Counsel for Defendant, St. Johns County School Board

The Elks Building
207 North Laura Street, Ste. 240
Jacksonville, FL 32202
Telephone: 904-551-7775
Facsimile: 904-513-9254
kd@kdlawoffice.com

Richard M. Segal (*admitted pro hac vice*)
Nathaniel R. Smith (*admitted pro hac vice*)
PILLSBURY WINTHROP SHAW PITTMAN LLP
501 W. Broadway, Suite 1100
San Diego, CA 92101
Telephone: 619-234-5000
Facsimile: 619-236-1995
richard.segal@pillsburylaw.com
nathaniel.smith@pillsburylaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that on the 9th day of October, 2017, a true and correct copy of the foregoing was electronically filed in the US 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/Shani Rivaux

SHANI RIVAUX, ESQ.

FBN: 42095

Pillsbury Winthrop Shaw Pittman LLP

600 Brickell Avenue – Suite 3100

Miami, FL 33131

Tel: (786) 913-4900

Fax: (786) 913-4901

Shani.Rivaux@pillsburylaw.com

/s/ Terry J. Harmon

TERRY J. HARMON, ESQ.

FBN: 0029001

Sniffen & Spellman, P.A.

123 North Monroe Street

Tallahassee, FL 32301

Tel: (850) 205-1996

Fax: (850) 205-3004

THarmon@sniffenlaw.com

**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,**

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

Plaintiff,

v.

**THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,**

Defendant.

STIPULATED PROTECTIVE ORDER

Plaintiff, Drew Adams, a minor, by and through his next friend and mother, Erica Adams Kasper (“Plaintiff”) and Defendant, The School Board of St. Johns County, Florida (the “School Board”) (collectively, the “parties”), by and through their undersigned counsel and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, hereby enter into this Stipulated Protective Order with respect to certain documents disclosed by the parties, as follows:

I. Confidential Information.

- (a) As used in this Stipulated Protective Order, “CONFIDENTIAL” or “CONFIDENTIAL INFORMATION” shall mean social security numbers, protected health information, personal financial data, and information related to the criminal history or sexual history of any witness or party that

any party or third party (the “Designating Party”) in good faith designates as CONFIDENTIAL INFORMATION pursuant to Sections I (b) to (c) below. Any party to this litigation shall have the right to designate information as “CONFIDENTIAL” pursuant to this Stipulated Protective Order.

- (b) Any Designating Party covered by this Stipulated Protective Order, who produces or discloses any material designated as “CONFIDENTIAL,” including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: “CONFIDENTIAL” upon each page of the document, taking care to avoid obscuring any text, before providing it to the opposing party. Information marked CONFIDENTIAL shall not be utilized or disclosed by a receiving party (the “Recipient Party”), its agents, or its employees, except in accordance with the terms of this Stipulated Protective Order and the Stipulation Regarding HIPAA-Protected Information executed on September 29, 2017.
- (c) If another party produces any information, document, transcript, or thing that contains CONFIDENTIAL INFORMATION concerning one or more parties to this action, including employees of Defendant, any party may designate such material as CONFIDENTIAL INFORMATION by serving written notice on all parties within 5 days of receipt of such information. The notice shall identify the CONFIDENTIAL portions of the information

by Bates number, page (and if applicable line number), or equivalent means.

- (d) All CONFIDENTIAL INFORMATION shall be used by the Recipient Party solely for matters reasonably connected with this case, shall not be used by the Recipient Party for any business, commercial, competitive, personal or other purpose, and shall not be disclosed by the Recipient Party to anyone other than as set forth in subparagraph (f) below and the Stipulation Regarding HIPAA-Protected Information executed on September 29, 2017, unless and until the restrictions herein are removed either by written agreement of counsel for the parties, or by order of the Court.
- (e) Inadvertent or mistaken production of any information, document, transcript, or thing without a designation of CONFIDENTIAL shall not, in and of itself, be deemed a waiver of any party's claim of confidentiality as to such matter. If any information, document, transcript, or thing claimed to be CONFIDENTIAL is inadvertently produced without that designation, the producing party shall notify the Recipient Party within a reasonable time. All parties shall use their best efforts to protect the confidentiality of that information. Upon receipt of notice that CONFIDENTIAL INFORMATION was produced inadvertently without an appropriate initial designation of confidentiality, the Recipient Party shall thereafter (1) treat such information as CONFIDENTIAL

INFORMATION pursuant to the terms of this Stipulated Protective Order, and (2) shall use its best efforts to retrieve such materials or correct the effects of any use or disclosure of such CONFIDENTIAL INFORMATION based upon the earlier mistaken view that such materials were not confidential. However, nothing herein restricts the right of the Recipient Party to challenge the producing party's claim of privilege, as set forth in section VI of this Stipulated Protective Order, after receiving notice of the inadvertent or mistaken disclosure.

- (f) CONFIDENTIAL INFORMATION shall not be disclosed to any persons other than:
- (i) the parties (including Defendant's Superintendent, officers, members, employees, representatives, and agents) and the parties' insurers;
 - (ii) copy service companies;
 - (iii) the attorneys for the Recipient Party and the attorneys' firms in this litigation, including paralegals, law clerks, and clerical staff (whether employees or independent contractors) who are assisting in the litigation, as well as the School Board's general counsel and his firm, including paralegals, law clerks, and clerical staff (whether employees or independent contractors);

- (iv) agents or employees of the Recipient Party who have direct responsibility for assisting such counsel in the preparation and trial of the action;
- (v) the Court, including any Court personnel assisting the Court, secretarial or other clerical personnel, and stenographers or other persons involved in taking, transcribing, or videotaping testimony in this action;
- (vi) experts, consultants and investigators and their staff who communicate with or who are retained by a party for purposes relating to this litigation and who have executed a Confidentiality Agreement (attached herewith as Exhibit A) in conformity with this Stipulated Protective Order; and
- (vii) any other non-party witnesses or non-party deponents who have executed a Confidentiality Agreement in (attached herewith as Exhibit A), conformity with this Stipulated Protective Order, or deponents who agree on the record to maintain the confidentiality of the material. If a deponent declines to execute the Confidentiality Agreement or otherwise maintain the confidentiality of the material on the record, the party seeking to disclose CONFIDENTIAL INFORMATION to a non-party deponent must obtain leave from the Court or written consent from the opposing party to disclose such information. The parties agree

not to unreasonably withhold consent. If leave of Court is sought, the moving party shall request that the Court require the witness or deponent to maintain the confidentiality of the information.

- (viii) CONFIDENTIAL INFORMATION received by any of the persons in the categories listed above shall be used only for purposes of this litigation and for no other purposes, including for any other litigation, whether on the same issues in this case or others, or for any business or personal purpose. Nothing in this Stipulated Protective Order shall prevent the Designating Party from any use of its own confidential documents any differently than they would on a routine basis.
- (ix) CONFIDENTIAL INFORMATION may not be disclosed to the persons described in subparagraphs (vi) and (vii), above, unless the disclosure is for purposes relating to this litigation and the disclosing party determines in good faith that the disclosure is necessary for the purpose of developing testimony of such witness, for the prosecution or defense of any claim in the litigation, or if reasonably calculated to lead to the discovery of admissible evidence.
- (x) CONFIDENTIAL INFORMATION provided to a receiving party shall be securely maintained in the offices of that party's outside counsel unless otherwise disclosed in accordance with this

document. Any recipient of CONFIDENTIAL INFORMATION shall maintain such information in a secure and safe manner, and the recipient shall exercise due and proper care with respect to the storage, custody, access and use of all such information. In addition, any summary or copy of CONFIDENTIAL INFORMATION shall be subject to the terms of this Confidentiality Order to the same extent as the information or document of which summary or copy is made, and must be clearly labeled as containing CONFIDENTIAL INFORMATION.

- (g) CONFIDENTIAL INFORMATION may be copied or reproduced only to the extent reasonably necessary for the conduct of this lawsuit. All such copies or reproductions shall be subject to the terms of this Stipulated Protective Order and the Stipulation Regarding HIPAA-Protected Information executed on September 29, 2017.
- (h) If the Court orders that access to or dissemination of CONFIDENTIAL INFORMATION shall be made to persons not included in paragraph 1(e) above, such CONFIDENTIAL INFORMATION shall only be accessible to, or disseminated to, such persons after they have executed a Confidentiality Agreement (attached herewith as Exhibit A) in conformity with this Stipulated Protective Order, unless the Court rules otherwise.
- (i) The parties to this agreement agree and acknowledge that they have no control over the conduct of third-parties who receive CONFIDENTIAL

INFORMATION and that nothing in this document shall place any responsibility on the parties for the actions of third-parties.

II. No Waiver.

The disclosure of CONFIDENTIAL INFORMATION pursuant to discovery or the procedures set forth in this Stipulated Protective Order shall not constitute a waiver of any trade secret or any intellectual property, proprietary, or other rights to or in such information.

III. Use in Depositions.

Material designated as CONFIDENTIAL may be used at a deposition if: (a) the counsel for the party using such material advises the witness of the terms of this Stipulated Protective Order and the witness agrees on the record to maintain the confidentiality of the material; or (b) the witness executes a Confidentiality Agreement (attached herewith as Exhibit A) in conformity with this Stipulated Protective Order. If the witness declines to execute the Confidentiality Agreement or otherwise maintain the confidentiality of the material, the party seeking to use such CONFIDENTIAL INFORMATION must obtain leave from the Court or consent from the opposing party before disclosing the material to the witness. Consent shall not be unreasonably withheld.

With respect to any depositions that involve a disclosure of CONFIDENTIAL MATERIAL of a party to this action, such party shall have until five (5) days after receipt of the deposition transcript within which to inform all other parties that portions of the transcript are to be designated CONFIDENTIAL, which

period may be extended by agreement of the parties. Upon being informed that certain portions of a deposition are to be designated as CONFIDENTIAL, all parties shall immediately cause each copy of the transcript in its custody or control to be appropriately marked and limit disclosure of that transcript in accordance with this Stipulated Protective Order.

IV. Use in Briefs and as Exhibits

Any request to restrict access must comply with the applicable federal and the governing rules of the District Court. Documents filed with the Court that contain social security numbers, protected health information, or personal financial data should be redacted when possible. If redaction is not feasible, such documents should be filed under restricted access pursuant to the applicable rules of court. The parties also agree to abide by the Stipulation Regarding HIPAA-Protected Information executed on September 29, 2017 with respect to the filing of Plaintiff's PHI obtained from covered entities.

V. Application of the Stipulated Protective Order.

- (a) With respect to documents containing CONFIDENTIAL INFORMATION, the parties agree to file any such documents under seal if they are used as an exhibit to a pleading or other filing in this proceeding.
- (b) Nothing in this Stipulated Protective Order shall affect the admissibility into evidence of CONFIDENTIAL INFORMATION, or abridge the rights of any party to seek judicial review or to pursue other appropriate judicial

action with respect to any ruling made by the Court concerning the status of CONFIDENTIAL INFORMATION. Agreement to the terms of this Stipulated Protective Order is without prejudice to a party's right to request that the Court rescind, modify, alter, or amend this Order with respect to specific documents or information.

VI. Confidentiality Challenge.

Any party may object to the designation of particular CONFIDENTIAL information by giving written notice to the party designating the disputed information. The written notice shall identify the information to which the object is made. If the parties cannot resolve the objection within five (5) business days after the time the notice is received, it shall be the obligation of the party seeking the designation of the information as CONFIDENTIAL to file an appropriate motion requesting that the Court determine whether the disputed information should be subject to the terms of this Stipulated Protective Order. The disputed information shall be treated as CONFIDENTIAL under the terms of this Stipulated Protective Order until the Court rules on the motion.

VII. Confidential Information at Trial.

Nothing in this Stipulated Protective Order shall preclude any party from seeking confidential treatment from the Court with respect to CONFIDENTIAL INFORMATION or from raising any available objections, including without limitation, objections concerning admissibility, materiality, and privilege. The parties to this Stipulated Protective Order expressly reserve at this time a

determination as to the manner in which CONFIDENTIAL INFORMATION may be used in an evidentiary hearing or at trial. Special procedures or in camera treatment, if any, shall be determined in the future.

VIII. Modification.

This Stipulated Protective Order may be modified only by Order of the Court.

IX. Return or Destruction of Confidential Information.

After final disposition of this case, whether by judgment, including appeals, settlement, or otherwise, counsel of record for each of the parties shall either return or destroy all CONFIDENTIAL INFORMATION the parties produced during the case, and all copies of such CONFIDENTIAL INFORMATION, unless such information must be maintained in accordance with any applicable Federal or Florida law.

Dated this 4th day of October, 2017.

/s/ Shani Rivaux

Jennifer Altman
Florida Bar No: 881384
Shani Rivaux
Florida Bar No: 42095
Aryeh Kaplan
Florida Bar No: 60558
PILLSBURY WINTHROP SHAW PITTMAN, LLP
600 Brickell Avenue Suite 3100
Miami, FL 33131
Telephone: 786-913-4900
Facsimile: 786-913-4901
jennifer.altman@pillsburylaw.com
shani.rivaux@pillsburylaw.com
aryeh.kaplan@pillsburylaw.com

Kirsten Doolittle, Trial Counsel
Florida Bar No. 942391
THE LAW OFFICE OF KIRSTEN DOOLITTLE, P.A.
The Elks Building
207 North Laura Street, Ste. 240
Jacksonville, FL 32202
Telephone: 904-551-7775
Facsimile: 904-513-9254
kd@kdlawoffice.com

Richard M. Segal (*admitted pro hac vice*)
Nathaniel R. Smith (*admitted pro hac vice*)
PILLSBURY WINTHROP SHAW PITTMAN LLP
501 W. Broadway, Suite 1100
San Diego, CA 92101
Telephone: 619-234-5000
Facsimile: 619-236-1995
richard.segal@pillsburylaw.com

nathaniel.smith@pillsburylaw.com

Tara L. Borelli (*admitted pro hac vice*)
LAMBDA LEGAL DEFENSE AND EDUCATION
FUND, INC.
730 Peachtree Street NE, Suite 640
Atlanta, GA 30308-1210
Telephone: 404-897-1880
Facsimile: 404-897-1884
tborelli@lambdalegal.org

Counsel for Plaintiff

/s/ Terry J. Harmon

TERRY J. HARMON

Florida Bar Number: 0029001
tharmon@sniffenlaw.com

MICHAEL P. SPELLMAN

Florida Bar Number: 937975
mspellman@sniffenlaw.com

ROBERT J. SNIFFEN

Florida Bar Number: 0000795
rsniffen@sniffenlaw.com

KEVIN KOSTELNIK

Florida Bar Number: 0118763
kkostelnik@sniffenlaw.com

SNIFFEN & SPELLMAN, P.A.

123 North Monroe Street
Tallahassee, Florida 32301
Telephone: (850) 205-1996
Facsimile: (850) 205-3004

Counsel for Defendant, St. Johns County School Board

SO ORDERED BY THE COURT:

U.S. District Court Judge

**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,**

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

Plaintiff,

v.

**THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,**

Defendant.

CONFIDENTIALITY AGREEMENT WITH STIPULATED PROTECTIVE ORDER

I, _____, have read the Stipulated Protective Order (“Protective Order”) in the above-captioned claim. I understand the terms of the Protective Order, agree to comply with the Protective Order in all respects, and hereby submit and waive any objection to the jurisdiction of the U.S. District Court for the Middle District of Florida, Jacksonville Division, for the adjudication of any dispute concerning or related to my compliance with the Protective Order. I understand that any violation of the terms of the Protective Order may be punishable under Federal or Florida laws.

Print or type the following:

Name: _____

Title and Affiliation _____

Address: _____

Telephone: _____

Executed this ___ day of _____, 2017.