

**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,

v.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,

Defendant.

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

**PLAINTIFF’S UNOPPOSED MOTION TO SEAL CERTAIN TRIAL EXHIBITS AND
REDACT PORTIONS OF THE TRIAL TRANSCRIPT**

I. INTRODUCTION

Pursuant to Local Rule 1.09 and the Court’s December 15, 2017 orders (ECF Nos. 143, 144, and 145), Plaintiff Drew Adams, a minor, by and through his next friend and mother, Erica Adams Kasper (“Plaintiff”), moves the Court for entry of an order permitting certain trial exhibits to be filed under seal, and certain portions of the trial transcripts to be redacted before the transcripts are publicly filed. Plaintiff conferred with Defendant, who does not oppose this motion.

Plaintiff seeks to file under seal the following trial exhibits:

- Court Exhibits 1, 4, and 5(M);
- Defendant’s Exhibits 22, 254, and 255; and,
- Plaintiff’s Exhibit 4.

Plaintiff seeks to redact the following portions of the trial transcript:

- Trial Tr. Vol. I, 78:12; *id.* 132:2-7; *id.* 133:22-24; *id.* 134:15-21; *id.* 135:2-138:24; *id.* 138:24-144:19;
- Trial Tr. Vol. II, 29:2-9; *id.* 28:2-20;
- Trial Tr. Vol. III, 161:12-17; *id.* 165:9-11;
- Court Exhibit 2, 86:19-100:5; *id.* 111:12-118:12; *id.* 119:12-121:14; *id.* 126:1-129:11; *id.* 159:3-7;
- Court Exhibit 5(A), 53:11-55:18; *id.* 60:25-64:4; *id.* 134:3-18; *id.* 152:14-160:11; *id.* 162:25-163:5; *id.* 167:12-16; *id.* 168:16-21; *id.* 170:20-23; *id.* 237:9-238:3; *id.* 265-290; and
- Court Ex. 5(E) ¶¶ 49, 50.¹

On December 11-13, 2017, the Court conducted a trial in this matter, during which certain highly sensitive medical and school records of the minor Plaintiff were discussed and admitted into evidence. As explained below, publicly disclosing these confidential records and any related testimony would invade the minor Plaintiff's privacy and potentially cause him harm that could be avoided by merely filing the records under seal. Plaintiff is a minor and a junior in high school, who looks forward to attending college and then medical school. As this Court may recall, Plaintiff sought leave to exclude certain information from the trial, ECF Nos. 109-110, relating to his medical and school records because the information was irrelevant to the limited issues to be tried. It is the same information that Plaintiff now seeks to file under seal, because it is potentially prejudicial and has no relationship to the issues that were tried. The request to exclude information from the public is limited in nature and a review of the specific requests will confirm that they consist of the type of information that this Court would traditionally file under seal. *See* ECF No. 39. For these reasons, Plaintiff respectfully requests that the Court order that

¹ Should the Court prefer that Plaintiff submit a copy of the trial transcripts or relevant exhibits with the requested redactions marked thereon (or in some other format) rather than page and line numbers, Plaintiff would be glad to do so at the Court's instruction.

the relevant records be filed under seal, and portions of the trial transcript redacted, to avoid releasing his private information into the public record.

II. LOCAL RULE 1.09: DESCRIPTION OF DOCUMENTS TO BE FILED UNDER SEAL, AND NECESSITY OF FILING UNDER SEAL

In this District, a party seeking to seal materials must file a motion that includes: (1) identification and description of each item proposed for sealing; (2) the reason that filing each item is necessary; (3) the reason that sealing each item is necessary; (4) the reason that a means other than sealing is unavailable or unsatisfactory to preserve the interest advanced by the movant in support of the seal; (5) the proposed duration of the seal; and (6) a memorandum of legal authority supporting the seal. M.D. Fla. L.R. 1.09. As demonstrated below, Plaintiff has met each of these requirements for the trial exhibits and transcript portions that he seeks to protect. The information at issue exceeds the standards required by this Court.

A. Certain trial exhibits should be filed under seal because they contain highly sensitive and irrelevant medical and educational information about the minor Plaintiff.

The following trial exhibits contain highly confidential medical, therapy, or education-related information about Plaintiff and should be sealed: Court Ex. 1; Court Ex. 4; Court Ex. 5(M); Defendant's Ex. 254; Defendant's Ex. 255. The content of these exhibits is discussed in the following portions of the trial transcripts, and deposition transcripts offered into evidence, and they similarly should be redacted: Trial Tr. Vol. I, 132:2-7; *id.* 133:22-24; *id.* 134:15-21; 135:2-138:24; *id.* 138:24-144:19; Trial Tr. Vol. II, 29:2-9; *id.* 28:2-20; Trial Tr. Vol. III, 161:12-17; *id.* 165:9-11; Court Ex. 2, 86:19-100:5; Court Ex. 5(A), 53:11-55:18; *id.* 134:3-18; *id.* 237:9-238:3; Court Ex. 2, 111:12-118:12; *id.* 119:12-121:14; *id.* 126:1-129:11; *id.* 159:3-7; Court Ex. 5(A), 60:25-64:4; *id.* 152:14-160:11; *id.* 162:25-163:5; *id.* 167:12-16; *id.* 168:16-21; *id.* 170:20-23; *id.* 265-290; Court Ex. 5(E) ¶¶ 49, 50.

Court Exhibits 1 and 4: Court Exhibits 1 and 4 are expert deposition video recordings – specifically, Court Exhibit 1 is Dr. Adkins’ trial preservation deposition video recording, and Court Exhibit 4 is Dr. Ehrensaft’s discovery deposition video recording. Both should be sealed because the experts were examined by defense counsel on certain categories of sensitive information relating to Plaintiff’s medical and therapeutic treatment that are wholly unrelated to Plaintiff’s transgender status, or any of the issues in this case. Indeed, the protective order entered in this case (ECF No. 72) attests to the extremely sensitive nature of the minor Plaintiff’s personal health information. Plaintiff seeks below redactions of the deposition transcripts that correspond to these video recordings, but requests that the videos be filed under seal since there is no practical way to redact the video recordings. The specific information sought to be redacted has no bearing on the issues that were presented to the Court or those that will be ruled upon in this proceeding. Because discovery is broad, Plaintiff did not hinder the Defendant’s inquiries during deposition, but that does not prejudice Plaintiff’s position that much of the information sought was not probative of any of the issues necessary to adjudicate the parties’ claims or defenses. Placing the information in a public forum, however, will potentially harm the minor Plaintiff and the information should be filed under seal to avoid any adverse impact.

Defendant’s Exhibit 255 and Court Exhibit 5(M); Trial Tr. Vol. II, 29:2-9; Trial Tr. Vol. III, 165:9-11; Court Ex. 5(A), 237:9-238:3; Court Ex. 2, 111:12-118:12; id. 119:12-121:14; id. 126:1-129:11; id. 159:3-7: Defendant’s Exhibit 255 and Court Exhibit 5(M) are copies of a document that the Court has already agreed should be filed under seal; the former was introduced as an exhibit during Dr. Adkins’ trial preservation deposition, and the latter was introduced as an exhibit during Dr. Ehrensaft’s discovery deposition. This document was generated in connection with therapy Plaintiff received unrelated to the issues in this case, and

the Court sealed a third copy of this document when it was introduced at trial as Defendant's Exhibit 20. *See* Trial Tr. Vol. II, 41:24 – 42:1 (identifying the document as Defendant's Ex. 20), 44:6-8 ("I tell you what I'm going to do. I'm going to admit the exhibit. I'm going to put it under seal because it contains private therapeutic information.").

In addition to containing sensitive therapy-related information, the document's contents have no bearing on Plaintiff's request to use the boys' restroom at school – or on his transgender status at all. As Plaintiff's mother testified, the document was not "remotely related to his transgender situation," *id.* 43:10; nor does the face of the document itself contain any reference to Plaintiff's transgender status. Accordingly, this request to file this information under seal does not implicate the public's right to understand the evidence relevant to Plaintiff's claims. In short, there is no prejudice to the School Board in allowing these materials to be filed under seal, but the minor Plaintiff very well could sustain prejudice if the information were publicly available.

For the same reasons, discussion in the trial and expert deposition transcripts regarding these exhibits should be redacted and maintained under seal, *i.e.*, the testimony appearing at Trial Tr. Vol. II, 29:2-9; Trial Tr. Vol. III, 165:9-11; Court Ex. 5(A), 237:9-238:3; and Court Ex. 2, 111:12-118:12; *id.* 119:12-121:14; *id.* 126:1-129:11; *id.* 159:3-7. Anything to the contrary would undermine the Court's own recognition that the contents of the document are private and warrant protection from public disclosure. *See* Trial Tr. Vol. II, 41:24 – 42:1 (identifying document); *id.* 44:6-8 (sealing document).

Defendant's Exhibit 254; Trial Tr. Vol. II, 28:2-20; Trial Tr. Vol. III, 161:12-17; Court Exhibit 2, 86:19-100:5; Court Exhibit 5(A), 53:11-55:18; id. 134:3-18: Defendant's Exhibit 254 is an informed consent form for Plaintiff's medical treatment from Dr. Adkins' medical file that contains all manner of confidential information regarding the minor Plaintiff.

Accordingly, it too should be sealed. *See* 42 U.S.C. § 1320d *et seq.* (Health Insurance Portability and Accountability Act of 1996); *cf.* Fla. Stat. Ann. § 395.3025(4) (recognizing the confidentiality of patient records). Like the document above (which was sealed as Defendant’s Exhibit 20), this medical record – and Defendant’s unjustified insinuations that informed consent was lacking for Plaintiff’s transition-related care – have no relevance to any issues in this case. Both Plaintiff’s parents testified that they provided informed consent for his medical care. Trial Tr. Vol. I, 232:10-12; Trial Tr. Vol. II, 89:1-90:2. Regardless, this case asks a very different question: whether Defendant can lawfully exclude Plaintiff from the boys’ restroom at school; consent for Plaintiff’s medical care simply has nothing to do with it.

Discussion of this medical record should be redacted and maintained under seal for the same reasons, including the testimony in Trial Tr. Vol. II, 28:2-20; Trial Tr. Vol. III, 161:12-17; Court Exhibit 2, 86:19-100:5; and Court Exhibit 5(A), 53:11-55:18; and *id.* 134:3-18.

Trial Tr. Vol. I, 135:2-138:24; Court Ex. 5(A), 60:25-64:4; id. 152:14-160:11; id. 162:25-163:5; id. 167:12-16; id. 168:16-21; id. 170:20-23; id. 265-290; Court Ex. 5(E) ¶¶ 49, 50: Throughout several portions of the trial record – including cross-examination of Plaintiff, Dr. Adkins, and Dr. Ehrensaft – Defendant elicited testimony about an unrelated, highly sensitive medical event for which Plaintiff received medical care. Like much of the other medical information Defendant has attempted to inject into the record (to which Plaintiff objected before trial by filing a motion in limine), this too has no relevance to Drew’s request to use the boys’ restrooms at high school; in fact, it occurred before he entered high school, and even before he came out as transgender. Given the heightened sensitivity of information about this medical event, and the fact that it does not bear upon the public’s right to understand the evidence relevant to Plaintiff’s claims in this case, Plaintiff requests that the relevant portions of

the record be sealed and redacted, including Trial Tr. Vol. I, 135:2-138:24; Court Ex. 5(A), 60:25-64:4; *id.* 152:14-160:11; *id.* 162:25-163:5; *id.* 167:12-16; *id.* 168:16-21; *id.* 170:20-23; *id.* 265-290²; and Court Ex. 5(E) ¶¶ 49, 50.

Trial Tr. Vol. I, 132:2-7; id. 133:22-24; id. 134:15-21: Defendant asked Plaintiff a series of questions during cross-examination about sensitive information regarding his relationship with another student during middle school. Trial Tr. Vol. I, 132:2-7; *id.* 133:22-24; *id.* 134:15-21. Clearly, this information had no bearing on the issues presented, and is neither necessary nor relevant to this Court’s ultimate resolution of the limited issues presented. *See* ECF No. 110 (Plaintiff’s motion in limine seeking to exclude this information). Given the nature of the information, Plaintiff believes that Defendant obtained it either from Plaintiff’s confidential therapy records or education records, since Plaintiff is not aware that the information is available from any other source. Because the Court has recognized that both medical and educational records warrant protection from disclosure, Plaintiff requests that the Court extend the same protection to the content of those records discussed at trial. *See* Trial Tr. Vol. II, 41:24 – 42:1, 44:6-18 (identifying and sealing both therapy and education-related records); ECF No. 38 at (Defendant’s unopposed motion to seal Plaintiff’s education records, recognizing that the privacy of such records is protected by the Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U.S.C. § 1232g and 34 C.F.R. Part 99); ECF No. 39 (order sealing education records). There should be no countervailing public interest in this information since these events

² Court Ex. 5(A) 265-290 constitutes the index for the discovery deposition of Dr. Ehrensaft that was offered into evidence in lieu of her live testimony at trial. Plaintiff requests that the index be sealed as well because various terms interspersed throughout the index reveal the nature of this medical event, and requesting redaction of those specific terms in this motion would also reveal the information sought be protected.

occurred before Plaintiff understood he was transgender – let alone before he began taking steps to transition and use the boys’ restroom – and before Plaintiff began attending the high school at which all relevant events transpired.

Trial Tr. Vol. I, 138:24-144:19: For the same reasons, the Court should also order redaction of testimony regarding Defendant’s Exhibit 7, a “safety plan” education record that the Court sealed during trial. *Trial Tr. Vol. II, 44:8-18* (sealing the safety plan). In so ordering, the Court recognized that this document contains “private” information “that should not be in the public record.” *Id.* 44:15-18. That privacy interest can only be served if testimony about the content of the document is protected along with the document itself. Accordingly, discussion regarding the content of that document should be redacted at *Trial Tr. Vol. I, 138:24-144:19*.

B. Other exhibits and testimony should be sealed because they identify the minor Plaintiff’s date of birth, home address, and information that might be linked to financial accounts.

The following trial exhibits and transcript excerpts contain sensitive personal information such as the minor Plaintiff’s birth date and home address, and the mother’s maiden name, and should be sealed or redacted: Defendant’s Ex. 22; *Trial Tr. Vol. I, 78:12*; Plaintiff’s Ex. 4. Clearly, this information has no bearing on the dispositive issues to be adjudicated, but can subject the minor Plaintiff to harassment or prejudice, or unnecessarily expose sensitive identifying information.

Defendant’s Ex. 22: This document consists of medical correspondence between two of Plaintiff’s medical providers. Plaintiff has no objection to publicly releasing the general content of the document, but wishes to protect his date of birth, which appears in the first line of the letter’s text. *See Fed. R. Civ. P. 5.2(a)(2)*. Plaintiff requests that the Court either file the

document under seal, or if the Court prefers, order that a redacted version be filed, which Plaintiff would be glad to provide to the Court.

Trial Tr. Vol. I, 78:12: Plaintiff stated his home address in this trial testimony, and he requests that it be redacted to help ensure his security and privacy at home. While Plaintiff has received broad support among fellow students at school, there certainly exists a risk of a disturbance at his home by a community member with strong feelings about the case and, accordingly, Plaintiff seeks to avoid this harm to the extent possible by filing his address under seal. There is no legitimate public interest in knowing that information.

Plaintiff's Ex. 4: Plaintiff's Exhibit 4 consists of his birth certificate, and he requests that it be sealed since it contains his mother's maiden name. Because that name can be linked to certain financial accounts, the document should be sealed.

III. DURATION OF SEAL

Plaintiff respectfully requests that the unredacted versions of the trial exhibits and portions of the trial transcripts listed above be maintained under seal for the duration of this matter, including any appeals, and be destroyed at the conclusion of this litigation. Good cause exists to maintain the privacy of these records until they are destroyed because the concerns and substantial invasion of privacy that would result to Plaintiff from disclosure would not end or abate at any particular point in time. *See also* ECF No. 39 (ordering that Plaintiff's education records be sealed until the conclusion of the case and then destroyed).

IV. MEMORANDUM OF LEGAL AUTHORITY

In considering motions to seal, courts must balance the movant's interests in keeping information confidential against the public's interest in accessing court documents. *See, e.g., Romero v. Drummond Co., Inc.*, 480 F.3d 1234, 1246 (11th Cir. 2007); *Chicago Tribune Co. v.*

Bridgestone/Firestone, Inc., 263 F.3d 1304, 1314-15 (11th Cir. 2001). The public's common law right of access to judicial proceedings can be overcome by a showing of good cause, which courts evaluate by considering "whether allowing access would impair court functions or harm legitimate privacy interests, the degree of and likelihood of injury if made public, the reliability of the information, whether there will be an opportunity to respond to the information, whether the information concerns public officials or public concerns, and the availability of a less onerous alternative to sealing the documents." *Romero*, 480 F.3d at 1246; *see also Graphic Packaging Int'l, Inc. v. C.W. Zumbiel Co.*, No. 3:10-cv-891-TJC-JBT, 2010 WL 6790538, at *1 (M.D. Fla. Oct. 28, 2010).

The Eleventh Circuit has recognized that "[a] party's privacy or proprietary interest in information sometimes overcomes the interest of the public in accessing the information." *Romero*, 480 F.3d at 1246. Other courts within the Circuit have applied these principles to medical records because they "contain personal information in which [the patient] has a legitimate privacy interest." *Moreno v. Serco Inc.*, No. 1:15-cv-3382-CC-JKL, 2017 WL 4334245, at *3 (N.D. Ga. Apr. 14, 2017), *report and recommendation adopted*, No. 1:15-cv-3382-CC, 2017 WL 4456891 (N.D. Ga. June 28, 2017). Particularly where medical records "have no bearing whatsoever on the issues being decided by the Court," as is the case with the records Plaintiff seeks to seal here, "there is minimal public need to review those records to understand the Court's ruling." *Id.*; *see also Clark v. Unum Life Ins. Co. of Am.*, No. 3:14-cv-1037-J-34PDB, 2014 WL 12609869, at *2 (M.D. Fla. Oct. 16, 2014) (granting motion to seal based on "plaintiff's legitimate privacy interests in her personal medical and financial information").

Protection for a student's education records is well-established under FERPA and its

implementing regulations. *See* 20 U.S.C. § 1232g and 34 C.F.R. Part 99. Given that the Court has already sealed previously-filed education records in this case based on Defendant's unopposed request, ECF Nos. 38-39, doing so for the trial record would be fully consistent with the Court and the parties' approach to this issue throughout the litigation. *See* ECF No. 39 (citing FERPA and its regulations).

Additionally, the records Plaintiff seeks to protect relating to his birth date, mother's maiden name, and home address contain sensitive information that have no relevance to the case. Defendant's Exhibit 22, containing his birth date, should either be sealed or redacted pursuant to the protections in the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 5.2(a)(2) (requiring redaction of "the year of the individual's birth" in court filings). Additionally, nothing about his home address or mother's maiden name would serve the public's interest in understanding the issues in this case, while Plaintiff's interest in the privacy of that information is significant. Shielding his address would help prevent the possibility, however remote, of any unwanted surveillance or intrusion at his home; while protecting his mother's maiden name would assure that someone could not attempt to access financial accounts using that information. *See, e.g., Clark*, 2014 WL 12609869, at *2 (sealing financial information).

The information contained in the exhibits and portions of the trial transcripts that Plaintiff seeks to seal is not related to "public officials or public concerns," and there is no "less onerous" alternative to sealing these trial exhibits and transcript portions that would ensure that their confidential contents remain confidential, while allowing the parties to introduce them into evidence. *See Romero*, 480 F.3d at 1246; *Moreno*, 2017 WL 4334245, at *3. Accordingly, Plaintiff respectfully requests that the Court grant this motion to seal certain trial exhibits and transcript excerpts.

V. CONCLUSION

Plaintiff respectfully requests that the Court file under seal the following trial exhibits:

- Court Exhibits 1, 4, and 5(M);
- Defendant's Exhibits 22, 254, and 255; and,
- Plaintiff's Exhibit 4.

Plaintiff further requests that the Court redact the following portions of the trial and expert deposition transcripts:

- Trial Tr. Vol. I, 78:12; *id.* 132:2-7; *id.* 133:22-24; *id.* 134:15-21; *id.* 135:2-138:24; *id.* 138:24-144:19;
- Trial Tr. Vol. II, 29:2-9; *id.* 28:2-20;
- Trial Tr. Vol. III, 161:12-17; *id.* 165:9-11;
- Court Exhibit 2, 86:19-100:5; *id.* 111:12-118:12; *id.* 119:12-121:14; *id.* 126:1-129:11; *id.* 159:3-7;
- Court Exhibit 5(A), 53:11-55:18; *id.* 60:25-64:4; *id.* 134:3-18; *id.* 152:14-160:11; *id.* 162:25-163:5; *id.* 167:12-16; *id.* 168:16-21; *id.* 170:20-23; *id.* 237:9-238:3; *id.* 265-290; and Court Ex. 5(E) ¶¶ 49, 50.

Good cause exists to seal and redact these records for all of the reasons described above.

CERTIFICATE OF CONFERENCE PURSUANT TO LOCAL RULE 3.01(g)

Pursuant to 3.01(g) of the Local Rules of the Middle District of Florida, the undersigned certifies that counsel for Plaintiff conferred with counsel for Defendant in a good faith effort to resolve the issues in this motion, and Defendant does not oppose Plaintiff's request for relief.

Respectfully submitted,

Dated: January 5, 2018

s/ Tara L. Borelli

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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, causing a copy of the foregoing and all attachments to be served on all counsel of record.

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