

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**JOHN DOE, a minor, by his parents and
next friends, SUSAN AND JACK DOE,**

Plaintiff,

v.

Case No: 6:18-cv-102-Orl-37GJK

VOLUSIA COUNTY SCHOOL BOARD,

Defendant.

ORDER

This cause came on for consideration without oral argument on the following motion:

**MOTION: MOTION FOR ENTRY OF PROTECTIVE ORDER (Doc.
No. 49)**

FILED: May 10, 2018

**THEREON it is ORDERED that the motion is GRANTED in part and
DENIED in part.**

On January 19, 2018, Plaintiff, a minor, filed this action seeking injunctive relief. Doc. No. 1. Plaintiff is transgender and asks that the Court, among other things, issue a permanent injunction directing Defendant to provide Plaintiff with access to male-designated restrooms and locker rooms at school. *Id.* On January 30, 2018, the Court granted Plaintiff's Motion to Proceed Under Pseudonyms. Doc. No. 8.

On May 10, 2018, Plaintiff filed a Motion for Entry of Protective Order (the "Motion"). Doc. No. 49. Plaintiff asks that the Court enter the Protective Order attached to the Motion as Exhibit A, Doc. No. 49-1. Doc. No. 49 at 4. The proposed Protective Order governs how the parties

handle designated confidential information during this litigation. Doc. No. 49-1. It does not affect the admissibility of the confidential information. *Id.* at 11.

Plaintiff argues that the Protective Order is necessary because “[t]his case involves, among other things, issues related to Plaintiff’s medical and psychological history” Doc. No. 49 at 2. Plaintiff argues that as a minor, he enjoys special status and vulnerability, and “his transgender identity places him at a heightened risk of stigmatization or retaliation if any potentially identifying information about him is not kept confidential.” *Id.* at 3.

Defendant objects to the proposed Protective Order, arguing that it is unnecessary and too broad. Doc. No. 54. Defendant asserts that much of the information that would be covered by the Protective Order is protected under the Family Education Rights and Privacy Act (“FERPA”), the Health Insurance Portability and Accountability Act (“HIPAA”), and Florida’s Public Records Act. *Id.* at 1, 4-5. Defendant states that it:

agreed that, to the extent possible, it will not file any document in the public CM/ECF record containing the “Confidential Information” the Plaintiff has identified in Section I.(a) of the proposed “protective order,” and that if such information is necessary for the Court’s consideration, the Defendant will seek leave to file the information under seal.

Id. at 3-4. Defendant argues that it is impractical for the Protective Order to apply to information not filed with the Court because it attempts to keep confidential information that is in the public sphere. *Id.* at 5. Finally, Defendant states that the Protective Order “would cause unnecessary hardship by requiring much information—beyond what is protected by law, and outside the discovery process—to be marked as ‘confidential.’” *Id.* at 6.

Defendant’s arguments are unavailing. The fact that much of the information that would be covered under the Protective Order is subject to other protections under statutory law does not negate the necessity of the Protective Order, as the Protective Order is specific to this litigation.

Defendant's promise to refrain from filing any document considered confidential or moving to seal such information does not provide assurance that Plaintiff's private information turned over in discovery will not be shared with those having no legitimate reason to see it. As an example of public information that the Protective Order would apply to, Defendant cites names of school administrators from which one could discern the name of the school that Plaintiff attends, and points to the provision in the Protective Order regarding identifying Plaintiff's school. Doc. No. 54 at 5. That provision reads as follows regarding what is Confidential Information:

information, which either on its own, or together with other information, may lead to the identification of the names or identities of the Plaintiff or the Plaintiff's immediate family, including, without limitation, their names, home address, e-mail addresses, telephone numbers, *information that explicitly identifies* the school (or schools) as one (or ones) Plaintiff has attended or is currently attending

Doc. No. 49-1 at 3 (emphasis added). Although Defendant omitted the italicized phrase from its quotation of the Protective Order in its argument, the phrase "explicitly identifies" negates Defendant's example of public information that could be considered Confidential Information. Defendant provides no other examples supporting its argument that the Protective Order would cause it unnecessary hardship.

Plaintiff demonstrates good cause for entry of the Protective Order attached to the Motion. The Protective Order is modified, however, to provide for compliance with the undersigned's Standing Order Regarding Motions to Seal or Redact, Case No. 6:18-mc-22-Orl-GJK, which can be found on the Court's website, should a motion to seal or redact be necessary.

Accordingly, it is **ORDERED** that the Motion (Doc. No. 49) is **GRANTED in part** and

DENIED in part as follows:

1. The Protective Order attached as Exhibit A to the Motion, Doc. No. 49-1, is adopted and incorporated herein, with the following revisions:
 - a. The text under Section IV Use in Briefs and as Exhibits is deleted; and
 - b. The following provision replaces the text in Section IV:

Any request to restrict access must comply with the applicable Federal rules, the governing rules of the Middle District of Florida, and Magistrate Judge Gregory J. Kelly's Standing Order Regarding Motions to Seal or Redact, Case No. 6:18-mc-22-Orl-GJK. Before filing any Confidential Information with the Court, the party seeking to file the information may move for an order allowing the filing of redacted copies of the documents containing Confidential Information on the public record and the sealed filing of unredacted copies. If the party wishing to file Confidential Information is not the owner of the Confidential Information, then the party wishing to file the Confidential Information shall notify the owner of the Confidential Information of its intent to file specific documents fourteen days prior to filing so that the owner can file a motion for protective order. The parties must also abide by Section X herein with respect to the filing of Plaintiff's PHI obtained from covered entities.
2. In all other respects, the Motion is **DENIED**.
3. The Court is not making any ruling on relevancy or the admissibility at trial of

documents and information produced pursuant to the Protective Order.

DONE and **ORDERED** in Orlando, Florida, on June 28, 2018.



GREGORY J. KELLY
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties