

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division**

JENNIFER ELLER,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 18-cv-03649-TDC
)	
PRINCE GEORGE’S COUNTY)	
PUBLIC SCHOOLS, et al.)	
)	
Defendants.)	
_____)	

STIPULATED PROTECTIVE ORDER

WHEREAS, discovery in the above-captioned action may involve the disclosure of confidential and particularly sensitive information of a party or non-party, pursuant to Federal Rule of Civil Procedure 26(c), IT IS HEREBY STIPULATED between Plaintiff Ms. Jennifer Eller and Defendants Prince George’s County Public Schools, Prince George’s County Board of Education, and Monica Goldson, each represented by and through their counsel, as follows:

Scope and Purpose of the Protective Order

1. This Stipulated Protective Order (the “Protective Order”) shall govern the use and dissemination by the Receiving Party (defined below) of all documents, electronically stored information, testimony, and other information designated as Confidential Information or Restricted Confidential Information in accordance with the terms of this Protective Order.

2. This Protective Order is not intended to address or govern claims of privilege or work-product that may otherwise be asserted by any of the parties.

3. This Protective Order does not restrict in any manner the Designating Party's (defined below) use of its own information or documents, regardless of how such information or documents may be designated under this Protective Order.

4. This Protective Order does not relieve any party of its obligations to respond to otherwise proper discovery in this case. Nothing contained in this Protective Order, or any action taken pursuant to it, shall waive or impair the right of any party to contest the alleged relevancy, admissibility, or discoverability of documents or information sought or produced in discovery.

5. This Protective Order shall not preclude any party from seeking or obtaining additional protection with respect to any answers, documents, materials, or information where necessary. The producing party shall act in good faith in designating discovery answers, documents, materials, or information as Confidential Information or Restricted Confidential Information pursuant to this Protective Order.

Confidential Information

6. Designation of Discovery Materials as Confidential. All documents, information, and materials produced in the course of discovery, all Answers to Interrogatories, all Answers to Requests for Admission, all Responses to Requests for Production of Documents, and all deposition testimony and deposition exhibits ("Discovery Materials") shall be subject to this Protective Order, as set forth below:

(a) Any party to this action who produces or supplies Discovery Materials in this action (the "Designating Party") to the opposing party (the "Receiving Party") may designate such Discovery Material as Confidential Information by placing or affixing on it in a manner which will not interfere with its legibility, the word "CONFIDENTIAL." The Designating Party can designate Discovery Material as Confidential Information only when it in good faith believes the Discovery

Material contains sensitive personal information (including, but not limited to, social security numbers, the names of minors, financial information, and medical information). A party shall not routinely designate Discovery Material as Confidential Information or make such a designation without reasonable inquiry to determine whether it qualifies for such designation. The designation of Confidential Information shall be made prior to, or contemporaneously with, the production or disclosure of that information.

(b) Portions of depositions of a party's present and former officers, directors, employees, agents, experts, and representatives shall be deemed Confidential Information only if they are designated as such when the deposition is taken or within seven business days after receipt of the transcript. Any testimony which describes Discovery Material which has been designated as Confidential Information shall also be deemed to be designated as Confidential Information. No persons other than persons authorized to receive access to Confidential Information may attend, review the transcripts of, or view videotaped witness depositions during the time when Confidential Information is shown or discussed.

(c) Discovery Material designated as Confidential Information under this Protective Order shall not be used or disclosed by the parties or counsel for the parties or any persons identified in subparagraph (d) below for any purposes whatsoever other than preparing for and conducting the litigation in which the Discovery Materials were disclosed (including appeals).

(d) Parties and counsel for the parties shall not disclose or permit the disclosure of any Discovery Material designated as Confidential Information under this Protective Order to any other person or entity, except that disclosure may be made to the following:

(i) Counsel and employees of counsel for the parties who have direct functional responsibility for the preparation and trial of the lawsuit. Any such employee to whom counsel for

the parties makes a disclosure shall be provided with a copy of, and become subject to, the provisions of this Protective Order requiring that the Discovery Materials be held in confidence;

(ii) Employees of a party required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed;

(iii) Court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents. Prior to disclosure to any such court reporter or person engaged in making photocopies of documents, such person must agree to be bound by the terms of this Protective Order;

(iv) Experts employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit. Prior to disclosure to any expert, the expert must be informed of and agree in writing to be subject to the provisions of this Protective Order requiring that the Discovery Materials be held in confidence;

(v) Persons who prepared, received, or reviewed Confidential Information prior to its production in this case; and

(vi) The Court and its personnel, including any mediators and/or Special Masters appointed by the Court, and videographers and court reporters.

(e) Except as provided in paragraph 6(d) above, counsel for the parties shall keep all Discovery Materials designated as Confidential Information which are received under this Protective Order secure within their exclusive possession and shall take reasonable efforts to place such Discovery Materials in a secure area.

(f) All copies, duplicates, extracts, summaries, or descriptions (“copies”) of Discovery Materials designated as Confidential Information under this Protective Order or any portion

thereof shall be immediately affixed with the word “CONFIDENTIAL,” if that word does not already appear.

Restricted Confidential Information

7. Designation of Discovery Materials as Restricted Confidential. All Discovery Materials shall be subject to this Protective Order, as set forth below:

(a) The Designating Party may designate Discovery Materials it produces or supplies to the Receiving Party as Restricted Confidential Information by placing or affixing on it, in a manner which will not interfere with its legibility, the word “RESTRICTED CONFIDENTIAL.” The Designating Party may designate Discovery Material as Restricted Confidential Information only when it in good faith believes the Discovery Material contains particularly sensitive information (including, but not limited to, information that can be used to identify employees of Defendants that provided support to, or otherwise assisted, Plaintiff). A party shall not routinely designate Discovery Material as Restricted Confidential Information or make such a designation without reasonable inquiry to determine whether it qualifies for such designation. The designation of Restricted Confidential Information shall be made prior to, or contemporaneously with, the production or disclosure of that information.

(b) Portions of depositions of a party’s present and former officers, directors, employees, agents, experts, and representatives shall be deemed Restricted Confidential Information only if they are designated as such when the deposition is taken or within seven business days after receipt of the transcript. Any testimony which describes Discovery Material which has been designated as Restricted Confidential Information as described above, shall also be deemed to be designated as Restricted Confidential Information. No persons other than persons authorized to receive access to Restricted Confidential Information may attend, review the

transcripts of, or view videotaped witness depositions during the time when Restricted Confidential Information is shown or discussed.

(c) Discovery Material designated as Restricted Confidential Information under this Protective Order shall only be used for the purpose of preparing for and conducting the litigation in which the Discovery Materials were disclosed (including appeals) and shall only be disclosed to the following persons or entities:

(i) Counsel and employees of counsel for the parties who have direct functional responsibility for the preparation and trial of the lawsuit. Any such employee to whom counsel for the parties makes a disclosure shall be provided with a copy of, and become subject to, the provisions of this Protective Order requiring that the Discovery Materials be held in confidence;

(ii) Defendants' General Counsel and employees of Defendants' Office of General Counsel who are assisting Counsel for Defendants in the preparation and trial of the lawsuit. Any such individual to whom counsel for the parties makes a disclosure shall be provided with a copy of, and become subject to, the provisions of this Protective Order requiring that the Discovery Materials be held in confidence;

(ii) Court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents. Prior to disclosure to any such court reporter or person engaged in making photocopies of documents, such person must agree to be bound by the terms of this Protective Order;

(iii) Persons who prepared, received, or reviewed Restricted Confidential Information prior to its production in this case;

(iv) The Court and its personnel, including any mediators and/or Special Masters appointed by the Court, and videographers and court reporters;

(d) Except as provided in paragraph 7(c) above, counsel for the parties shall keep all Discovery Materials designated as Restricted Confidential Information which are received under this Protective Order secure within their exclusive possession and shall take reasonable efforts to place such Discovery Materials in a secure area.

(e) All copies of Discovery Materials designated as Restricted Confidential Information under this Protective Order or any portion thereof shall be immediately affixed with the word “RESTRICTED CONFIDENTIAL,” if that word does not already appear.

Provisions Applicable to Both Confidential and Restricted Confidential Information

8. In the event that a Designating Party makes Discovery Materials available for inspection rather than delivering copies to another party, no marking need be made in advance of the initial inspection. For purpose of initial inspection, all Discovery Materials made available for inspection shall be considered Restricted Confidential Information. Upon production of copies of the inspected Discovery Materials, the Designating Party shall designate which of the produced or copied Discovery Materials are or contain Confidential or Restricted Confidential Information.

9. In the event that a Party inadvertently fails to properly designate Discovery Materials under this Protective Order, the Designating Party may designate Discovery Materials as Confidential Information or Restricted Confidential Information by delivering written notice to counsel for the other parties and by producing a copy of the Discovery Materials with the proper designation required by this Protective Order. The other parties shall destroy all prior copies of the Discovery Materials, and thereafter shall treat the Discovery Materials as Confidential Information or Restricted Confidential Information under this Protective Order. If the Receiving Party disclosed Discovery Material before being notified, it must take reasonable steps to retrieve it, but shall not be deemed to have breached this Protective Order for disclosure of the Discovery Material

prior to receiving the notice designating it as Confidential Information or Restricted Confidential Information. Counsel for the parties are responsible for employing reasonable measures, consistent with this Protective Order, to control duplication, distribution of and access to Confidential Information and Restricted Confidential Information.

10. A designation of Confidential or Restricted Confidential Information may be challenged upon motion. The burden of proving the confidentiality of designated information remains with the party asserting such confidentiality. The provisions of Fed. R. Civ. P. 37(a)(5) apply to such motions.

11. To the extent that any Discovery Material subject to this Protective Order (or any pleading, motion or memorandum disclosing them) are proposed to be filed or are filed with the Court, those Discovery Materials and papers, or any portion thereof which discloses Confidential or Restricted Confidential Information, may be filed subject to the following provisions:

(i) If the Confidential or Restricted Confidential Information contained in the Discovery Material is a limited portion of text and is a nonmaterial part of the document to be filed (e.g., a minor's name or a person's social security number), such Confidential or Restricted Confidential Information must be redacted before the Discovery Material may be filed on the public docket.

(ii) If the Confidential or Restricted Confidential Information is not so limited, or is not incidental to the Discovery Material (e.g., medical records and financial records), those Discovery Materials and papers, must be filed unredacted but under seal (by the filing party) with the Clerk of the Court with a simultaneous motion pursuant to L.R. 104.13(c) (hereinafter the "Interim Sealing Motion"), in accordance with the current version of the Court's Electronic Filing Requirements and Procedures for Civil Cases. The Interim Sealing Motion shall be governed by

L.R. 105.11. Even if the filing party believes that the Discovery Materials subject to the Protective Order are not properly classified as Confidential or Restricted Confidential Information, the filing party shall file the Interim Sealing Motion; provided, however, that the filing of the Interim Sealing Motion shall be wholly without prejudice to the filing party's rights under paragraph (10) of this Protective Order.

12. Nothing in this Protective Order shall be deemed to waive the right of any party to object to the admission into evidence of any information covered by this Protective Order.

13. Subject to the Federal Rules of Evidence, Confidential Information and Restricted Confidential Information may be offered as evidence at trial, subject to any restrictions the Court may order or apply to protect the Confidential Information and Restricted Confidential Information from unauthorized disclosure. A Designating Party may move the Court for an order that any evidence designated as Confidential Information or Restricted Confidential Information shall be received at trial under the conditions necessary to preserve confidentiality.

14. At the conclusion of the litigation, all Discovery Material designated as Confidential Information or Restricted Confidential Information under this Protective Order and not received in evidence shall be returned to the Designating Party or, at the sole option of the Designating Party, may be destroyed instead of being returned. The Clerk of the Court may return to counsel for the parties, or destroy, any sealed Discovery Materials at the end of the litigation, including any appeals.

15. The obligations and protections imposed by this Protective Order shall continue beyond the conclusion of this action, including any appellate proceedings, or until the Court orders otherwise.

16. Any party may petition the Court, on reasonable notice to all other parties, for a

modification of the terms of this Protective Order. The Court shall have continuing jurisdiction to modify, amend, enforce, interpret, or rescind any or all provisions of this Protective Order, notwithstanding the final termination or conclusion of this action.

October 4, 2019

Respectfully submitted,

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SO ORDERED on this _____ day of October, 2019.

UNITED STATES DISTRICT JUDGE