

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**B.P.J., by her next friend and mother,
HEATHER JACKSON,**

Plaintiff,

v.

**Civil Action No. 2:21-cv-00316
Honorable Joseph R. Goodwin, Judge**

**WEST VIRGINIA STATE BOARD OF
EDUCATION, HARRISON COUNTY
BOARD OF EDUCATION, WEST
VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION, W.
CLAYTON BURCH in his official capacity as
State Superintendent, and DORA STUTLER
in her official capacity as Harrison County
Superintendent, PATRICK MORRISEY in
his official capacity as Attorney General, and
THE STATE OF WEST VIRGINIA,**

Defendants.

REPORT OF THE PARTIES' RULE 26 PLANNING MEETING

1. The following persons participated in Rule 26(f) conference meetings on August 20, 2021, and on August 27, 2021, where they considered all matters required by Fed. R. Civ. P. 16 and 26(f) and L.R. Civ. P. 16.01(b):

Loree Stark, Esq., Julie Veroff, Esq., Taylor Brown, Esq., Andrew Barr, Esq., Avatara Smith-Carrington, Esq. representing the Plaintiff, B.P.J., by her next friend and mother, Heather Jackson.

Roberta F. Green, Esq. and Anthony E. Nortz, Esq. representing the Defendant, West Virginia Secondary School Activities Commission.

Susan Llewellyn Deniker, Esq. representing the Harrison County Board of Education and Dora Stutler in her official capacity as Harrison County Superintendent.

Kelly C. Morgan representing the West Virginia State Board of Education and W. Clayton Burch in his official capacity as West Virginia State Board of Education Superintendent.

Curtis R. A. Capehart representing the State of West Virginia and Patrick Morrissey in his official capacity as Attorney General for the State of West Virginia.

2. Jury Trial: This issue has been fully briefed and is currently pending before the Court.
3. The Court scheduled a Scheduling Conference for September 20, 2021.
4. Discovery Plan. The parties jointly propose this discovery plan:
 - (a) Discovery will be needed on all claims and defenses as asserted in the Complaint and Defendants' responsive pleadings.
 - (b) Discovery shall be completed on or before March 25, 2022.
 - (c) All written discovery requests shall be filed on or before February 11, 2022.
 - (d) The parties have discussed the preservation, discovery, and disclosure of electronically stored information (ESI) and have determined that one or more parties will likely seek discovery of ESI such as emails, files, or documents stored on a server or computer.

Plaintiff B.P.J.'s and Defendants Harrison County and Dora Stutler's Position: ESI productions should comply with the protocol set forth in Exhibit A attached to this document.

Defendant School Activities Commission's Position: ESI productions should comply with the protocol set forth in Exhibit B attached to this document.

Defendants State of West Virginia and Patrick Morrissey's Position: Expect to be able to agree with Exhibit A or B.

Defendants West Virginia State Board of Education and W. Clayton Burch's Position: Expect to be able to agree with Exhibit A or B.
5. The parties agree to have a United States Magistrate Judge resolve any discovery disputes in this matter. However, the parties do not consent to a United States Magistrate Judge presiding over the trial of this matter.
6. The parties agree that Plaintiff shall disclose all experts retained under Rule 26(a)(2)

- and expert reports shall be due on or before December 3, 2021. The parties agree that Defendants shall disclose all experts retained under Rule 26(a)(2) and expert reports shall be due on or before January 21, 2022. The parties agree that rebuttal experts and reports shall be disclosed on or before February 18, 2022.
7. Plaintiff and Defendants should be allowed until October 20, 2021, to join additional parties and amend the pleadings.
 8. The Parties agree and request that dispositive motions be filed on or before April 11, 2022, responses to dispositive motions be filed on or before May 2, 2022, and replies be due on or before May 23, 2022.
 9. The Parties agree and request a mediation deadline of May 25, 2022.
 10. The Parties agree and request a date of settlement meeting and Rule 26(a)(3) disclosure deadline of June 20, 2022.
 11. The Parties agree and request that Plaintiff's portion of Pretrial Order be due to Defendants on June 27, 2022.
 12. The Parties agree and request that the Integrated Pretrial Order be due on June 30, 2022.
 13. The Parties agree and request a Pretrial conference on July 11, 2022.
 14. The Parties agree and request that proposed findings of fact and conclusion of law be due on July 11, 2022.
 15. The Parties agree and request that the final settlement conference date be July 22, 2022.
 16. This matter should be ready for trial by July 25, 2022, and the parties request four (4) days for trial.

Dated: September 7, 2021

/s/ Loree Stark
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Exhibit A – Document Production Format

1. Definitions

The following definitions apply to these instructions:

- A. **“Database”** means an electronic collection of structured data (often maintained in a non-custodial manner), such as data created and maintained in Oracle, SAP, SQL, or Microsoft Access.
- B. **“ESI” or “Electronic Document”** refers to information stored in electronic form including word processing files (*e.g.*, Microsoft Word), computer presentations (*e.g.*, Microsoft PowerPoint), spreadsheets (*e.g.*, Microsoft Excel) and email, together with the available metadata associated with each such document.
- C. **“Extracted Text”** refers the result of the process by which textual content of an Electronic Document is extracted by eDiscovery processing or indexing software.
- D. **“Load File”** refers to a file or files issued with each production providing a map to the images and metadata or coding associated with the records in the production.
- E. **“Native Format”** as used herein, means the default format of an Electronic Document created by its associated software program. For example, Microsoft Excel produces its output as ‘.xls’ files by default, which is the Native Format of Excel.
- F. **“OCR”** refers to optical character recognition, or the result of the process by which a hard copy or non-searchable Electronic Document is analyzed by a computer in order to glean the textual content of the document.

2. Production Format

With the exception of documents to be provided in Native Format described in Paragraph E, documents shall be produced as Bates Numbered tagged image file format (“TIFF” or “JPEG”)

images accompanied by an image Load File, a data Load File with fielded metadata, document-level Extracted Text for ESI, and OCR text for scanned hard copy documents and ESI that does not contain extractable text.

A. **De-duplication.** The producing party shall use industry standard Md5, SHA1, or SHA256 hash comparison method to globally de-duplicate all files identified for production. Loose Electronic Documents shall not be compared to email attachments for deduplication purposes. Emails shall be deduplicated at the family level (i.e. an email and its attachments shall be considered together for deduplication purposes). Hard copy documents containing handwritten notes shall not be considered as duplicative of any other document.

B. **ESI Processing Time zone.** All ESI shall be processed in the industry standard time zone, Coordinated Universal Time (UTC).

C. **Document Unitization.** Where documents with attachments are produced, they shall be attached in the same manner as included in the original file. Where documents are produced and all attachments thereto are not included, the producing party shall identify the missing attachments by means of a “place holder” file and explain the reason for their non-production. Documents that are segregated or separated from other documents, whether by inclusion of binders, files, dividers, tabs, clips or any other method, shall be produced in a manner that reflects these divisions. Where the producing party converts paper documents into electronic format, distinct documents must not be merged into a single record, and single documents must not be split into multiple records (*i.e.*, paper documents must be logically unitized). In the case of an organized compilation of separate documents – for example, a binder containing several separate documents behind numbered tabs – the document behind each tab should be scanned separately.

D. **Production Delivery.** Productions shall be delivered via FTP, or another secure data transfer method.

E. **JPEG/TIFF Image Requirements.**

i. JPEG images shall be produced when color is present in an image. TIFF images preferable for black and white images. JPEG/TIFF images shall be provided in single-page format and consecutively Bates Numbered.

ii. Images shall include the following content where present:

a. For word processing files (*e.g.*, Microsoft Word): Comments, “tracked changes,” similar in-line editing and all hidden content contained within the document.

b. For presentation files (*e.g.*, Microsoft PowerPoint): Speaker notes, comments and all other hidden content.

c. For spreadsheet files (*e.g.*, Microsoft Excel – if applicable): Hidden columns, rows, and sheets; comments, and “tracked changes” and any similar in-line editing or hidden content.

F. **Native Production Requirements.**

i. Spreadsheet files (*e.g.*, Microsoft Excel and .Csv files) are to be provided in Native Format.

a. In lieu of a full TIFF image version of each spreadsheet file, a single placeholder image bearing the relevant Bates number and confidentiality designation shall be produced.

b. When redaction of a spreadsheet is necessary, native redaction using an industry standard software solution (*i.e.* Mylili Blackout) is preferred. If native redaction is not possible, a redacted full TIFF version may be produced provided that the spreadsheet is manually formatted for optimal printing. If the spreadsheet requiring redaction is not reasonably useable with native redaction or in TIFF format, the Parties shall meet-and-confer to determine a suitable production format.

c. If redactions within a native spreadsheet are necessary, contact the receiving party to meet-and-confer to discuss the process, and provide a means to identify such documents in the production.

ii. Media files (e.g. .mp3, .wmv, etc.) shall be produced in Native Format with a single placeholder image bearing the relevant Bates number and confidentiality designations.

iii. Contact the receiving party to discuss a suitable production format for any proprietary or non-standard file types that require special software or technical knowledge for review, Databases or Database reports, or any data not covered by the technical specifications in this protocol. This includes data collected from collaboration and chat applications such as Slack, Microsoft Teams, Jira, mobile device data, etc.

iv. Any responsive files that cannot be accurately rendered in a reviewable TIFF format shall be produced in Native Format.

G. Load File Requirements.

i. The parties will provide a Concordance compatible data Load File with each production volume using standard ASCII delimiters and Unicode containing a header row listing the metadata fields included in the production volume.

ii. Image Load Files shall be produced in Concordance/Opticon compatible format.

H. Extracted Text/OCR Requirements.

i. Electronically extracted text must be provided for documents collected from electronic sources. Text generated via OCR must be provided when possible for all documents that do not contain electronically extractable text (e.g. non-searchable PDF files or JPG images) and for redacted and hard copy documents. The parties will not degrade the searchability of documents as part of the document production process.

ii. Document text shall be provided as separate, document-level text files and not be embedded in the metadata Load File.

iii. Text files shall be named according to the beginning Bates number of the document to which they correspond.

iv. If a document is provided in Native Format, the text file shall contain the Extracted Text of the native file.

v. A path to each Extracted Text file on the delivery media shall be included in a Load File field, or in a separate cross-reference file.

I. **Metadata.** The Parties will produce the following metadata fields, where available:

i. **BegBates** -- Beginning Bates number.

ii. **EndBates** -- Ending Bates number.

iii. **BegAttach** -- Bates number of the first page of a family range.

iv. **EndAttach** -- Bates number of the last page of a family range.

v. **PageCount** -- Number of pages in a Document.

vi. **FileExtension** -- Original file extension as the Document was maintained in the ordinary course.

vii. **FileSize** -- File size in bytes.

viii. **DocTitle** -- Document title as stored in file metadata.

ix. **DocSubject** -- Any value populated in the Subject field of the Document properties.

x. **Custodian** -- Primary custodian full name.

xi. **AllCustodians/DeDupe Custodians** – All custodians from whom a document was collected.

xii. **Author** -- Document author information for non-email.

xiii. **Email From**

xiv. **Email To**

xv. **Email CC**

xvi. **Email BCC**

xvii. **Email Subject**

xviii. **Attachments** -- Name of attached file(s) as maintained in the ordinary course of business.

xix. **DateCreated** -- File date and time created MM/DD/YYYY HH:MM AM/PM.

xx. **DateModified** -- File date and time modified MM/DD/YYYY HH:MM AM/PM.

xxi. **DateLastSaved** – File date and time last saved MM/DD/YYYY HH:MM AM/PM.

xxii. **DateSent** -- Email date and time sent MM/DD/YYYY HH:MM AM/PM.

xxiii. **DateReceived** -- Email date and time received. MM/DD/YYYY HH:MM AM/PM.

xxiv. **FileName** -- Name of the file as maintained in the ordinary course of business with extension.

xxv. **MD5Hash** -- The computer-generated MD5 Hash value for each Document.

xxvi. **TextPath** -- The path to the corresponding text file for each record on the delivery media, including filename.

xxvii. **NativePath** -- The path to the native-format file corresponding to the record on the delivery media, including the file name (if a native-format file is provided).

3. Documents Protected from Discovery

A. Documents that contain both privileged and non-privileged information shall be produced with the privileged information redacted in such a way as to show the location of the redaction within the Document.

Exhibit B – Document Production Format

1. Definitions

The following definitions apply to these instructions:

A. “**ESI**” or “**Electronic Document**” refers to information stored in electronic form including word processing files (*e.g.*, Microsoft Word), computer presentations (*e.g.*, Microsoft PowerPoint), spreadsheets (*e.g.*, Microsoft Excel) and email, together with the available metadata associated with each such document.

B. “**Native Format**” as used herein, means the default format of an Electronic Document created by its associated software program. For example, Microsoft Excel produces its output as ‘.xls’ files by default, which is the Native Format of Excel.

2. Production Format

Documents are to be provided in the native format in which they are maintained by the producing party.

A. Documents which are maintained electronically shall be produced electronically on an encrypted flash drive, hard drive, or via FTP, or another secure data transfer method. Documents that are maintained in paper format may be scanned and produced as a .pdf.

B. Where documents with attachments are produced, they shall be attached in the same manner as included in the original file.

C. Where documents are produced and all attachments thereto are not included, the producing party shall identify the missing attachments by means of a “place holder” file, and explain the reason for their non-production.

D. Documents that are segregated or separated from other documents, whether by inclusion of binders, files, dividers, tabs, clips or any other method, shall be produced in a manner that reflects these divisions.

E. Where the producing party converts paper documents into electronic format, distinct documents must not be merged into a single record, and single documents must not be split into multiple records (*i.e.*, paper documents must be logically unitized). In the case of an organized compilation of separate documents – for example, a binder containing several separate documents behind numbered tabs – the document behind each tab should be scanned separately, but the relationship among the documents in the compilation should be reflected in the proper coding of the beginning and ending document and attachment fields.

F. Media files (e.g. .mp3, .wmv, etc.) shall be produced in Native Format with a single placeholder image bearing the relevant Bates number and confidentiality designations.

G. Contact the receiving party to discuss a suitable production format for any proprietary or non-standard file types that require special software or technical knowledge for review, Databases or Database reports, or any data not covered by the technical specifications in this protocol. This includes data collected from collaboration and chat applications such as Slack, Microsoft Teams, Jira, mobile device data, etc.

H. **Metadata.** The Parties will not alter metadata of documents to be produced. The Parties will not “scrub” Metadata before production and to the extent possible Metadata will be included for all documents produced in the format in which they are maintained by the producing party.

3. Documents Protected from Discovery

Documents that contain both privileged and non-privileged information shall be produced with the privileged information redacted in such a way as to show the location of the redaction within the Document.