

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

L.E., by his next friend and parents,)
SHELLEY ESQUIVEL and)
MARIO ESQUIVEL,)
)
Plaintiff,)
)
v.)
)
BILL LEE, in his official capacity as)
Governor of Tennessee, et al.)
)
Defendants.)

No. 3:21-cv-00835
Chief Judge Crenshaw
Magistrate Judge Newbern

JOINT MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff and Defendants hereby jointly move this Court to enter the proposed and agreed upon Protective Order, attached as Exhibit A. In support of this Motion, the Parties state as follows:

1. This Court has broad authority to regulate discovery and to enter in protective orders pursuant to Federal Rule of Civil Procedure 26.
2. The Parties agree that discovery in this matter will involve the disclosure or production of certain documents, things, and information, by one or more parties, that constitute or contain confidential information, trade secrets, or other priority information within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure, and which should be protected by way of an appropriate protective order.
3. The Parties desire to prevent unnecessary dissemination or disclosure of the confidential information.
4. Based upon the foregoing, the Parties agree to abide by the provisions and protections forth in the

proposed Protective Order attached as Exhibit A.

WHEREFORE, the Parties respectfully request this Court to grant their Motion and enter the proposed Protective Order attached as Exhibit A.

Dated: May 10, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2022, a true and correct copy of the foregoing Joint Motion for Protective Order was served on counsel for all Defendants via the Court's ECF/CM system.

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/s/ Stella Yarbrough
Stella Yarbrough

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No. 3:21-CV-00835
Chief Judge Crenshaw
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AGREED PROTECTIVE ORDER
REGARDING CONFIDENTIAL INFORMATION

Now before this Court is the Parties’ Joint Motion for a Protective Order. The Parties to this lawsuit have stipulated that the disclosures and discovery in this case may involve production of sensitive, personal, or confidential information and materials. Based on the Parties’ stipulation and agreement, and in order to preserve the confidentiality of certain records and information and to facilitate discovery, the Court finds that good cause exists for the issuance of this Protective Order. The Motion is hereby **GRANTED**.

Therefore, this Court **ORDERS** that:

1. Any documents, information, testimony, interrogatories, correspondence, or other materials that are in the custody or possession of the Parties and/or which are provided by a third party to a Party may in good faith and for good cause be designated as “CONFIDENTIAL – Subject to Protective Order” by any Party or third party producing the documents or information in discovery. Such designation may be made by (a) stamping “CONFIDENTIAL – Subject to

Protective Order” on a document, (b) including the legend “CONFIDENTIAL – Subject to Protective Order” next to responses to interrogatories, or (c) counsel’s written designation of documents, portions of documents, or responses to interrogatories as “CONFIDENTIAL – Subject to Protective Order” made after receiving service of such document or information. The term “document,” in the singular or the plural, shall have the same meaning in this Protective Order as under Federal Rule of Civil Procedure 34(a). This provision will not extend protective order confidentiality to documents or materials already properly within another party’s possession.

2. Confidential Information may include, but is not limited to:

- a. Information pertaining to Plaintiff, Plaintiff’s family, Plaintiff’s physicians, other students, and school staff, including, but not limited to, personal identifying information, financial information, medical information, demographic information, the identities of persons associated with Plaintiff who have not already been made public in this action, and any information that may jeopardize safety or privacy.
- b. Documents made confidential pursuant to federal law, including, but not limited to, the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. §1232g.
- c. Documents made confidential pursuant to Tennessee law, including, but not limited to, T.C.A. §10-7-504; and
- d. Any other confidential or legally protected documents or information.

3. Unless otherwise stated herein, agreed to in writing by the Parties, or ordered by this Court, all discovery material designated “CONFIDENTIAL – Subject to Protective Order”

shall be used solely for the preparation and prosecution of claims or defenses in the above-captioned case, including any appeal thereof, and for no other purpose.

4. It shall be the obligation of the Parties or third parties to mark as “CONFIDENTIAL – Subject to Protective Order” any documents, interrogatory responses, or other materials provided in discovery that are believed to contain Confidential Information. However, the failure to designate correctly any Confidential Information produced does not waive the protection otherwise attaching to the Confidential Information. Upon a Party’s or third party’s realization that particular information was incorrectly designated, or not designated, as Confidential Information, that Party or third party shall promptly provide notice to counsel for the appropriate Parties. Counsel shall then have ten (10) calendar days in which to designate or redesignate Confidential Information. In the interim, the information may not be used in a manner inconsistent with this Order.

5. If the receiving Party wishes to challenge the designation of a document, thing, or other discovery as “CONFIDENTIAL – Subject to Protective Order,” the receiving Party shall notify the producing Party or third party in writing. The Parties or third party will meet and confer in a good faith effort to resolve any disputes that may arise. If the Parties fail to reach agreement on any such disputes, the Party challenging any designation of Confidential Information may file a motion challenging the designation with the Court.

6. In producing documents in discovery, a Party or third party may redact the following types of information in order to protect the personal information of individuals: (a) the names of students, guardians, third party physicians, and staff members who have not previously been identified in this litigation; (b) the direct contact information for students, guardians, third party physicians, and staff members, including telephone numbers, email addresses, and physical

addresses; and (c) any student's identifying and contact information, including, but not limited to, names, dates of birth, telephone numbers, physical addresses, medical information, financial information, demographic information, and email addresses. Whenever the names and personal identifying information of students, guardians, physicians, or staff members, or any Plaintiff or third party, are redacted, the Plaintiff or third party shall provide alternative means of identifying that person, such as initials or a coded number. To the extent a Party objects to any such redaction, that Party shall consult with all other Parties and attempt to reach agreement regarding the redaction. Should the Parties be unable to reach agreement, the Party seeking to challenge the redaction may propose that the Court conduct an *in camera* review of a non-redacted version of the document in order to resolve the dispute. To the extent a Party seeks to acquire any identifying information redacted or otherwise omitted from the Confidential Information, the Party may file a motion challenging the redactions or omissions with the Court.

7. Except as provided in one or more of the paragraphs below, all discovery material designated Confidential may not be shown or otherwise disclosed to any person other than the following:

- a. Legal counsel for the Parties, and the necessary paralegal, secretarial, clerical, and investigatory personnel, and other assistants employed by such counsel, as necessary to aid counsel in preparing to prosecute claims and defenses in this action, except as herein set out;
- b. The Parties to this action, as well as employees of the Parties, to the extent such disclosure is necessary for preparation, trial, or other proceedings in this case, but only after each person to whom Confidential Information is disclosed pursuant to this paragraph has read this Protective Order;

- c. Expert witnesses and consultants retained in connection with this proceeding, to the extent such disclosure is necessary for preparation, trial, or other proceedings in this case, but only after each person to whom Confidential Information is disclosed pursuant to this paragraph has read this Protective Order; and
- d. The Court, and any clerical or administrative staff who are engaged in proceedings necessarily incident to the conduct of the action.

8. It shall be the responsibility of counsel to bring this Protective Order to the attention of all attorneys in their respective offices, as well as paralegals, clerical staff, and other support staff or assistants actively working on this case, and all expert witnesses and outside consultants to whom they disclose protected material, and to ensure that all such persons comply with the terms of this Order. Counsel for the Parties shall make reasonable efforts to prevent the unauthorized disclosure of documents designated as “CONFIDENTIAL – Subject to Protective Order” pursuant to the terms of this Protective Order.

9. Prior to production or disclosure of confidential information, all copies, electronic images, duplicates, extracts, summaries, or descriptions of documents or materials designated as Confidential under this Protective Order shall be affixed with the designation “CONFIDENTIAL–Subject to Protective Order” if the word “Confidential” does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. This restriction does not apply to extracts, summaries, or descriptions that do not disclose Confidential Information. Should a Party believe that an extract, summary, or description discloses Confidential Information and should be subject to this Protective Order, the Party or

third party may move the Court to redact that information from the public record and treat it as Confidential Information.

10. The term “copies,” as used herein, means photographic, electrical, mechanical, or copier reproduction of any document or thing, or any verbatim transcript, in whole or in part, of such document or thing.

11. There is no waiver of the attorney–client privilege or the attorney work-product doctrine should any document and/or thing be produced which the producing Party in good faith asserts is covered by the attorney–client privilege or the attorney work-product doctrine and which was inadvertently produced. Upon prompt notice by a producing Party and upon a showing of privilege or protection together with a showing of inadvertent production, the receiving Party shall immediately return the originals and all copies of the privileged or immune document or thing.

12. Any person who receives any such designated discovery material shall not use it for any purpose other than that specified herein. With regard to persons named in Paragraph 7, they shall not disclose designated discovery material to anyone for any purpose unless solely for the purpose of preparation and prosecution or defense of the instant lawsuit.

13. Should any person receive inquiry from another person not a party to the lawsuit concerning documents designated “CONFIDENTIAL – Subject to Protective Order” they received, the person who has received confidential documents shall make no response to such inquiring person whatsoever, except to confirm that he or she has received confidential documents, and is not permitted to further disseminate them, and may refer the person so inquiring to counsel in this case.

14. If a Party learns of any unauthorized disclosure of documents or information designated as “CONFIDENTIAL – Subject to Protective Order” under this Protective Order, the Party must immediately and in writing notify the other Party of all pertinent facts relating to such disclosure and, without prejudice to other rights and remedies of the producing Party, make every effort to prevent further disclosure by the recipient or the person to whom the recipient disclosed such Confidential Information. In the event of such a violation, the Parties may seek enforcement of this Order, together with any other appropriate relief, by filing a motion with this Court and scheduling that motion for hearing, upon adequate notice to opposing counsel in this case. Any such motion shall state, with specificity, the identity of the person believed to have violated the terms of this Order and the evidentiary basis for the motion.

15. If any Party shall find it necessary in the preparation and prosecution of claims or defenses of this action to disclose any such discovery material to any person not described in Paragraph 7 of this Order, then counsel for that Party, at least ten (10) days before disclosure, shall first notify counsel for the producing Party in writing of the discovery material at issue, and of the name and identity of each person to whom disclosures are proposed to be made. Within five (5) days after receipt of that notice, counsel may object to the disclosure to the person so identified. If any objection is made, then no disclosures shall be made until the objection has been resolved, either by agreement of the Parties or by decision of this Court on motion filed by the Party seeking to make disclosure.

16. If a deposition requires the disclosure of Confidential Information, the deposition or portions thereof shall be designated as “CONFIDENTIAL – Subject to Protective Order,” and shall be subject to the provisions of this Protective Order. Such designation shall be made on the record during the deposition whenever possible, but a Party or third party may designate portions

of depositions as “CONFIDENTIAL – Subject to Protective Order” after transcription, provided that written notice is promptly given to all counsel of record within thirty (30) days after notice by the court reporter of the completion of the transcript. However, the failure to designate correctly any Confidential Information produced does not waive the protection otherwise attaching to the Confidential Information. Upon a Party’s or third party’s realization that particular information was incorrectly designated, or not designated, as Confidential Information, that Party or third party shall promptly provide notice to counsel for the other Parties. Counsel shall then have ten (10) calendar days in which to designate or redesignate Confidential Information. In the interim, the information may not be used in a manner inconsistent with this Order.

17. Pursuant to the Middle District of Tennessee’s User Manual for the ECF system, and consistent with the standards set forth in *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016), should a Party seek to use Confidential Information in connection with motions or any other pretrial issue brought before this Court (including any testimony related thereto or substantive references to the same in any pretrial materials), the Party shall either (a) redact the Confidential Information, if redaction is sufficient to remove all Confidential Information and the Confidential Information is extraneous to the issues in the filing; or (b) file a motion seeking leave to file the document under seal and file the document containing the Confidential Information as a sealed document. If the filing Party is seeking to file material it designated “CONFIDENTIAL – Subject to Protective Order,” then the filing Party shall set forth the bases for maintaining the proposed sealed document under seal. If the filing Party is seeking to file material designated “CONFIDENTIAL – Subject to Protective Order” by another Party or third party, then the filing Party shall cite this provision of this

Protective Order, and the Party or third party that designated the proposed sealed document as “CONFIDENTIAL – Subject to Protective Order” shall timely respond to the motion for leave to file under seal with a brief that sets forth the bases for maintaining the proposed sealed document under seal. If the Parties can reach an agreement in this regard, they may file a joint motion that sets forth the bases for maintaining the proposed document under seal. No Party waives any right that it might have to object on any ground to the admission of any evidence at the hearing or trial.

18. After termination of this litigation, the provisions of this Order shall continue to be binding upon all individuals who were at any time bound hereby, except with respect to those documents and those pieces of information which become a matter of public record. The Court hereby retains, and shall have continuing jurisdiction over, each and every person who receives copies of confidential documents hereunder, and their attorneys and experts, for enforcement of the provisions of this Order following termination of this litigation. Consent to the continuing personal jurisdiction of this Court for enforcement of this Order shall be deemed given by any person receiving confidential documents or information hereunder.

19. Nothing in this Order shall bar or otherwise restrict any attorney from rendering advice to his or her client with respect to this action and, in the course thereof, from referring to or relying generally upon his or her examination of Confidential Information. However, in rendering any such advice or otherwise communicating with his or her client, the attorney shall not disclose the contents or source of any Confidential Information in any manner contrary to the terms of this Order.

20. At the conclusion of this case, the Confidential Information provided by any Party or third party—except for any sealed portions or any depositions and any documents filed under

seal with the Court or any appellate court—shall be destroyed or alternatively returned to the entity who produced them within sixty (60) days of the conclusion of the final proceeding in this litigation. Any Confidential Information in the custody of counsel or the Parties which is modified to reflect attorney work product or attorney client communication shall be destroyed by counsel, rather than returned to the producing Party, and counsel shall certify in written correspondence that any such documents have been destroyed.

21. By entering into this Protective Order, no Party agrees to produce any particular document or information, including but not limited to any documentation or information referenced herein. Nothing in this Protective Order shall prejudice the right of any Party, non-party, or witness to contest the alleged relevancy, admissibility, or discoverability of any information sought or to interpose any other type of objection, claim, or response to any discovery request.

22. Nothing in this Protective Order shall prevent any Party from seeking a modification of, or appropriate relief from, any provision herein. Nor does anything in this Order prevent any Party, person, or entity from seeking further protection for Confidential Information or documents containing Confidential Information, or to seek any further protective relief from the Court with respect to any document or information sought in the course of discovery.

23. The termination of this litigation shall not relieve any person or Party that has received Confidential Information of his, her, or its obligations under this Protective Order.

IT IS SO ORDERED.

WAVERLY D. CRENSHAW, JR.
UNITED STATES CHIEF DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
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L.E., by his next friend and parents,)
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No. 3:21-CV-00835

ATTACHMENT A

The undersigned agrees as follows:

1. I have received a copy of the Protective Order entered by the Court in the above-captioned case (Dkt. No. _____).
2. I have reviewed the Protective Order and hereby agree to be bound by its terms and provisions and subject to the jurisdiction of this Court for enforcement of the Order.

Dated: _____

Name: _____

Signature: _____