

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.

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, DORA STUTLER in her official capacity as Harrison County Superintendent, and THE STATE OF WEST VIRGINIA,

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**MEMORANDUM IN SUPPORT OF
JOINT MOTION TO PLACE
DOCUMENTS UNDER SEAL**

BACKGROUND

The Parties in the above-captioned case move the Court pursuant to Local Rule 26.4(b)(2), Local Rule 5.2.1, and the Court's December 9, 2021 Protective Order (Dkt. No. 147) for an Order to seal Dkt. No. 280-8, Dkt. No. 285-9, Dkt. No. 289-20, and Dkt. No. 286-1. The documents contain a transcript of a deposition taken in this matter and it contains certain personal and/or other sensitive information that the Parties designated as "Confidential" under the Court's Protective Order and that the Parties believe warrant redaction in this case. However, upon previously submitting these documents, certain personal and/or sensitive information was not redacted. As such, all Parties respectfully request that the Court seal the incorrectly redacted documents.

DISCUSSION

A. Legal Standard

Under Local Rule of Civil Procedure 26.4(b)(2), a motion to seal must be accompanied by a memorandum of law that contains “(A) the reasons why sealing is necessary, including the reasons why alternatives to sealing, such as redaction, are inadequate; (B) the requested duration of the proposed seal; and (C) a discussion of the propriety of sealing, giving due regard to the parameters of the common law and First Amendment rights of access as interpreted by the Supreme Court and our court of appeals.” Loc. R. Civ. P. 26.4(b)(2). Although there is a presumption of access, this presumption “may be rebutted if countervailing interests heavily outweigh the public interests in access.” *Dilliner v. Gen. Motors, LLC*, No. 2:19-CV-00415, 2021 WL 665531, at *2 (S.D.W. Va. Feb. 19, 2021) (internal quotations and citation omitted). In general, redaction of information in order to “protect[] the privacy rights” of a party or non-party is a sufficiently compelling interest to justify sealing under both the common law and the First Amendment. *BrickStreet Mut. Ins. Co. v. Zurich Am. Ins. Co.*, No. 2:15-CV-06172, 2016 WL 10789403, at *2 (S.D.W. Va. June 17, 2016) (citing *Doe v. Public Citizen*, 749 F.3d 246, 269 (4th Cir. 2014)).

B. Redaction of Personally Identifying Information is Appropriate

Limited additional redaction of the above documents is appropriate because the documents contain testimony that reflects personally identifying information. The documents reference Dr. Kidd’s home address. Such personally identifying information is routinely redacted or sealed in court filings. *In re Marriott Int’l Customer Data Sec. Breach Litig.*, No. 19-MD-2879, 2022 WL 951692, at *4 (D. Md. Mar. 30, 2022) (noting that courts across the country “routinely permit parties to redact or seal the types of PII . . . including, without limitation, home addresses, phone

numbers . . . regardless of the applicable standard”). There is no reason to publish Dr. Kidd’s address, which is private. *Cf. Doe v. Rostker*, 89 F.R.D. 158, 161 (N.D. Cal. 1981) (noting that restriction of personally identifying information is appropriate in cases involving, among other things, transgender individuals and cases involving children). This interest in privacy far outweighs whatever interest the public could have in such personally identifying information, which is of no relevance to the claims in this case. *See Graening.*, 2022 WL 433332, at *2 (granting motion to seal where public’s interest in information was low). Furthermore, such minimal additional redaction would not restrict the public’s ability to otherwise review or understand the content of the transcript. In addition, and with the Court’s permission, the Parties also intend to file revised redacted versions of the documents at issue which will be available to the public.

CONCLUSION

For the foregoing reasons, the parties respectfully request that the Joint Motion to Place Documents Under Seal be granted and that the Court seal the following documents:

- Dkt. No. 280-8
- Dkt. No. 285-9
- Dkt. No. 286-1
- Dkt. No. 289-20.

Dated: June 6, 2022

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CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 6th day of June, 2022, I electronically filed a true and exact copy of the *Memorandum in Support of Joint Motion to Place Exhibit Under Seal* with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

Loree Stark

West Virginia Bar No. 12936