Notice sent: Final Interlocutory None
Disp Parties:
Disp code: CVD / CLS
Redact pgs:
Judge JKD Clerk LAT

DC BK12159 PG926

Filed in The District Court of Travis County, Texas
LM JUN 06 2012
At 2:52 p M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, *et al.*, Plaintiffs,	§	IN THE DISTRICT COURT OF
VS.	§	
ROBERT SCOTT, TEXAS COMMISSIONER OF EDUCATION, *et.al.*, Defendants	§	
Consolidated Case:	§	
FORT BEND INDEPENDENT SCHOOL DISTRICT, *et al.*, Plaintiffs,	§	
VS.	§	TRAVIS COUNTY, TEXAS
ROBERT SCOTT, TEXAS COMMISSIONER OF EDUCATION, *et. al.*, Defendants.	§	200TH JUDICIAL DISTRICT

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STIPULATED PROTECTIVE ORDER GOVERNING EDUCATIONAL RECORDS

Plaintiffs, Fort Bend Independent School District *et al,* seek student level data that is generally protected from disclosure under the Federal Educational Rights and Privacy Act ("FERPA"). To protect the confidentiality of the student level data sought in this Action, pursuant to 20 U.S.C. § 1232g(b)(2)(B), the Court enters the following Protective Order.

1. Introduction and Scope

Fort Bend ISD Plaintiffs will place the notice attached as Exhibit A to this order in the newspapers listed on Exhibit B to this order and on each Plaintiff school district's website, notifying Texas students' parents that the Texas Education Agency is producing some of their children's educational data to Fort Bend ISD Plaintiffs to be used in this Action.

Fort Bend ISD Plaintiffs have made the assurance that this data will be used solely for the prosecution of this Action and that they will not attempt to use the data to identify any child.

This notice is reasonable under FERPA particularly in light of the unlikely disclosure of any student's personally identifiable information and the Fort Bend ISD Plaintiffs assurances regarding the data's use.

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Any privacy interest in the data being produced is outweighed by the Fort Bend ISD Plaintiffs' need for the data for purposes of this action.

2. Scope of this Order

This Protective Order shall govern documents and information exchanged during this action, including, but not limited to, documents produced by the parties or non-parties, deposition testimony, testimony taken at a hearing or other proceeding, interrogatory answers, responses to requests for admission, and correspondence between counsel (collectively, "Discovery Material").

3. Designation of Certain Discovery Material as "FERPA-Protected, Attorneys' Eyes Only"

"FERPA-Protected, Attorneys' Eyes Only" Material includes any "educational records" protected by the federal Family Educational and Privacy Rights Act ("FERPA"), 20 U.S.C. § 1232g. More specifically, it includes student level data like a student's test scores, grade, race and certain socio-economic designations.

A party may designate Discovery Material as "FERPA-Protected, Attorneys' Eyes Only" if such Discovery Material contains information that the producing party believes in good faith is an "educational record" protected by FERPA. Such Discovery Material shall be so identified at the time of service of such Discovery Material by including on each page, on each disc or other electronic media, or in each file name the legend "FERPA-Protected, Attorneys' Eyes Only." This designation shall be used as sparingly as possible. The designation of any document, material, or information as "FERPA-Protected, Attorneys' Eyes Only" in the manner described above shall constitute a certification by the attorney reviewing the material and making such designation that he or she in good faith believes the material deserves this heightened level of protection under 20 U.S.C. § 1232g and shall be used sparingly.

4. Limitations on Access to and Use of Material Marked "FERPA-Protected, Attorneys' Eyes Only"

"FERPA-Protected, Attorneys' Eyes Only" Discovery Material shall not (a) be disclosed to anyone other than the Court, its officers and its clerical staff, and Counsel for the parties and testifying and consulting experts as specified below; or (b) be used by anyone other than a party for any purpose other than the prosecution or defense of this litigation. No person or entity authorized to use this information will disclose any individual student's name, date of birth, or social security number under any circumstances without permission from that student's parent.

Any "FERPA-Protected, Attorneys' Eyes Only" discovery material disclosed under this order shall be protected at all times in a manner that will not permit the personal identification of students and their parents. Access to and disclosure of "FERPA-Protected, Attorneys' Eyes Only" Discovery Material marked and identified in accordance with this Protective Order shall be limited solely to the Court, its officers and its clerical staff and to the Authorized Personnel listed below. "FERPA-Protected, Attorneys' Eyes Only" Discovery Material shall not be

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provided, shown, made available or communicated in any way to any person or entity other than provided for in this paragraph.

(a) Outside counsel of record for the parties to this lawsuit and outside counsel not of record that become signatories to this Order, including paralegal, secretarial, and clerical personnel reasonably necessary to assist such counsel;

(b) Testifying or consulting experts and their staff who are retained by a party or attorney to assist in this action. A party desiring to disclose "FERPA-Protected, Attorneys' Eyes Only" Discovery Material to experts or consultants shall first obtain from each expert or consultant an Acknowledgement in the form provided in Exhibit C, and the attorney for the party shall keep the executed Acknowledgement for a one year period following the final termination of this Action. The disclosing attorney must have a good faith belief that disclosure of such documents to the expert of consultant is necessary for the expert or consultant's review of the issues in this Action.

5. Related Material

The restrictions on the use of "FERPA-Protected, Attorneys' Eyes Only" Discovery Material established by this Protective Order shall extend to all copies, extracts and complete or partial summaries prepared from such Discovery Material.

6. Expert's Own Information

The restrictions on the use of Discovery Material established by this Protective Order are applicable only to Discovery Material received by a party or expert from another party through discovery in this litigation. A technical expert or consultant and his or her staff is free to use its own documents, material, or information obtained through other means for whatever purpose he or she chooses.

7. Restrictions and Procedures for Filing "FERPA-Protected, Attorneys' Eyes Only" Discovery Material

Parties and technical experts and consultants may use summaries and analysis of "FERPA-Protected, Attorneys' Eyes Only" Discovery Material in a manner that does not include any individual student records, including a student's name, social security number, address or date of birth, in any pleading, motion, brief, expert report, or other paper. Parties shall not include, disclose, or attach any individual student record from "FERPA-Protected, Attorneys' Eyes Only" Discovery Material as part of or with any pleading, motion, brief, expert report or other paper filed with the Clerk of this Court, unless absolutely necessary. Any party doing so shall file the material under seal in accordance with the Court's applicable rules, without the need for a hearing under Rule 76a, as access to the material is "otherwise restricted by law" per Tex. R. Civ. P. 76a.2(a)(2) and 20 U.S.C. § 1232g. Copies of the papers filed under seal shall be timely served on counsel for the parties.

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8. Restrictions on Use of "FERPA-Protected, Attorneys' Eyes Only" Discovery Material at Hearing or Trial

Parties shall not use any individual student record from "FERPA-Protected, Attorneys' Eyes Only" Discovery Material at any hearing or trial relating to this proceeding unless absolutely necessary. In the event that any "FERPA-Protected, Attorneys' Eyes Only" Discovery Material is used in any court proceeding in connection with this litigation, the parties will ensure that the records do not include any student's name, social security number, address, or date of birth. Further, the parties shall request that attendance at those portions of the hearing or trial or access to the transcripts of those hearings or the trial in which "FERPA-Protected, Attorneys' Eyes Only" Discovery Material is disclosed be restricted to court personnel and persons authorized to receive disclosure by this Protective Order.

9. Waiver or Termination

The provisions of this Protective Order may not be modified, waived or terminated except by the written stipulation of counsel or order of the Court. The provisions of this Order shall, absent agreement of the parties or further order of this Court, continue in force throughout and after the conclusion of this litigation, including without limitation any appeals therefrom. Within sixty days after receiving notice of the entry of an order, judgment, or decree finally disposing of this litigation, including the exhaustion of all possible appeals, all persons having received materials containing "FERPA-Protected, Attorneys' Eyes Only" material shall either return any and all such materials to counsel for the party that produced them, or shall destroy all such materials and certify that fact to counsel for the producing party; provided, however, that to the extent confidential information exists in whole or in part on computer backup tapes or otherwise not readily accessible media used for disaster recovery purposes, information from such media does not need to be restored for purposes of destroying or returning confidential information to the producing party but such retained information shall continue to be treated in accordance with this Order.

Termination of the proceedings shall not relieve any person from the obligations of this Protective Order, unless the Court orders otherwise.

The Court shall retain jurisdiction to enforce the Protective Order despite the termination of this lawsuit.

10. Court Orders

Upon the entry of this Order, the Court orders Fort Bend ISD Plaintiffs to post the notice as set forth in Paragraph 1. Any student or parent who chooses to object to the disclosure of the data must file an objection or other motion requesting that data related to that student be excluded from the produced data by 5:00 p.m., June 13, 2012.

The Court further orders the Texas Education Agency to produce to the Fort Bend ISD Plaintiffs the data requested in their First and Second Requests for Production by June 15, 2012.

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The Court further orders that any other parties to this lawsuit wishing to have access to the "FERPA-Protected, Attorneys' Eyes Only" material produced in accordance with paragraph 10 must first post the notice in Exhibit A on each of its named Plaintiff school district's websites, as set forth in Paragraph 1. Any party may rely on the testimony of any consulting or testifying expert retained by the Fort Bend ISD Plaintiffs, and on any summary or analysis produced by those experts in accordance with Paragraph 7, without providing any such notice.

Entered on June 6, 2012.

John K. Dietz

The Honorable John Dietz, District Court Judge

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EXHIBIT A

Family Educational Rights and Privacy Act (FERPA)
Notice of Release of Information

The *Family Educational Rights and Privacy Act* (FERPA), a Federal law, requires a child's parent or guardian to provide written consent prior to the disclosure of personally identifiable information from a child's education records. The information also may be disclosed pursuant to a court order. The court, in *Texas Taxpayer and Student Fairness Coalition v. Robert Scott, et. al.* has issued a protective order requiring the Texas Education Agency (TEA) to provide records regarding all public school students in Texas for the 2005-2006 through the 2011-2012 school years to attorneys representing school districts, students and parents in the lawsuit and that the records be kept secure. TEA is providing the records in compliance with that order. **The records WILL NOT INCLUDE student names, addresses, social security numbers, unique identifying identification numbers, the student's date of birth or any other individually identifying information.** The information includes information on standardized test performance, graduation plans, and participation in educational programs such as bilingual education or special education. The information will be used only by the attorneys and their consulting and testifying experts, and anyone who has access to the data is prohibited from attempting to use it to identify individual students. **The information will not be used for any other purpose.**

TEA is providing the information to attorneys representing the school districts on June 15, 2012. If you do not want TEA to include information from your or your child's education records in the production, you must file an objection in the 250th District Court of Travis County, Judge John Dietz, presiding, by June 13, 2012 at 5 p.m. and provide the reason/s why your child's information should not be included in the production.

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EXHIBIT B

Austin American-Statesman

Dallas Morning News

Fort Worth Star-Telegram

Houston Chronicle

San Antonio Express-News

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EXHIBIT C

WRITTEN ACKNOWLEDGEMENT TO ABIDE BY THE TERMS OF THE STIPULATED PROTECTIVE ORDER GOVERNING EDUCATIONAL RECORDS

I, _____, do solemnly swear that I have received a copy of the Stipulated Protective Order Governing Educational Records that was entered into by the parties in connection with *Texas Taxpayer & Student Fairness Coalition, et. al., v. Scott, et. al.*, Cause No. D-1-GN-11-003130, in the 200th District Court of Travis County, and I hereby agree to be bound by its terms and conditions. I recognize that during my participation in the handling and development of this case I may have occasion to read or hear of Discovery Material that is designated "FERPA-Protected, Attorneys' Eyes Only." I agree to use any such Discovery Material solely in connection with my participation in this case and for no other purpose, and to maintain the security and confidentiality of the information. I hereby submit to the jurisdiction of the District Court of Travis County, 200th Judicial District, for the limited purpose of enforcing said Stipulated Protective Order Governing Educational Records, and this Acknowledgement, by contempt proceedings or other appropriate judicial remedies.

I am employed by _____ and my title is _____.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the ____ day of _____, 20__.

_____

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