IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

G.H., a minor, by and through his parent and legal guardian, Gregory Henry, et al.,

***Plaintiffs*,**

v. **CASE NO.: 4:19cv431-MW/CAS**

SIMONE MARSTILLER, in her official capacity as Secretary of the Florida Department of Juvenile Justice, et al.,

***Defendants*.**
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ORDER ON PLAINTIFFS' MOTION TO QUASH SUBPOENA AND MOTION FOR A PROTECTIVE ORDER

This Court has considered, without hearing, Plaintiffs' Motion to Quash Non-Party Subpoenas and Motion for a Protective Order. ECF No. 37. At issue are twenty-eight non-party subpoenas issued by Defendants requesting all medical, mental health, and school records. *See, e.g.*, ECF No. 37-6, at 4. The requests lack any temporal limit. For the reasons provided below, Plaintiffs' motion is **GRANTED IN PART AND DENIED IN PART**.

I

This is a civil rights case arising from statewide policies and practices of isolating children in solitary confinement. Plaintiffs allege that Defendants

repeatedly isolate children for days at a time, with no time limit, in locked cells. The isolation, along with the conditions imposed, subject Plaintiffs, and over four thousand children placed in isolation every year, to a substantial risk of serious harm to their psychological and physical health and safety in violation of the Eighth and Fourteenth Amendment and that policymakers have exhibited deliberate indifference towards these risks. Plaintiffs also allege that Defendants discriminate against children with disabilities through the same policies and practices and, therefore, violate the rights protected by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

On November 5, 2019, Defendants served Plaintiffs with their First Requests for Production and First Set of Interrogatories. Four of the Interrogatories requested information related to all schools Plaintiffs ever attended, Plaintiffs' mental health and medical treatment, and all physicians and mental health professionals that had ever seen, treated, assessed, examined, or provided any services to Plaintiffs. ECF No. 37, at 4. Three of the interrogatories had no temporal limit, and one asked for ten years of information. The Requests for Production requested, among other things, all documents related to Plaintiffs' (1) medical or mental health evaluation or treatment for the past ten years, (2) medical reports executed by all treating and evaluating physicians and/or mental health professionals regarding conditions allegedly sustained by Plaintiffs and described in the Complaint, and (3) medical

reports executed by all treating and evaluating physicians or mental health professionals regarding any medical or mental health treatment or evaluation of Plaintiffs for the past ten years. ECF No. 37, at 4–5. Plaintiffs objected to these requests as overbroad, unduly burdensome, too remote in time to be relevant, and in violation of Plaintiffs' right to privacy. Plaintiffs provided discovery responses that disclose medical and mental health information, as well as education histories dating from one to two years before their first experience in secure detention in the Department of Juvenile Justice ("DJJ"). ECF No. 37, at 2; ECF No. 39, at 2.[1]

Because Defendants sought more extensive discovery than Plaintiffs provided, Defendants served notices of intent to serve twenty-eight non-party subpoenas with the accompanying subpoenas. *See* ECF No. 37-1 to ECF No. 37-28. The subpoenas seek any and all school, medical, and mental health records without any temporal limit. *See, e.g.*, ECF No. 37-6, at 4. Plaintiffs move to quash the subpoenas and ask this Court to enter a protective order.

II

As a preliminary matter, this Court must determine whether Plaintiffs have standing to quash the non-party subpoenas. A party has standing to challenge a subpoena to a non-party if the party alleges a "personal right or privilege" with

[1] Only Plaintiff G.H. provided this information from two years before his first experience in secure detention in DJJ. Two other Plaintiffs, R.L. and B.W., provided information dating back one year from their first experience in DJJ secure detention.

respect to the subpoenas. *See Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979).[2] Plaintiffs' allegations clearly fit the bill. Defendants seek medical and education records, both of which invoke a personal right or privilege. *See Black v. Kyle-Reno*, No. 1:12-cv-503, 2014 WL 667788, at *1 n.1 (S.D. Ohio Feb. 20, 2014) (concluding that the plaintiff had standing to quash a third-party subpoena for her educational records based on privacy interest under the Family Educational Rights and Privacy Act of 1974); *Primrose v. Castle Branch, Inc.*, No. 7:14-cv-235-D, 2016 WL 917318, at *5–6 (E.D.N.C. Mar. 8, 2016) (concluding that the plaintiff had standing to challenge the third-party subpoenas for, among other things, her student files); *Mielcarek v. Jackson*, 286 F.R.D. 521, 526–27 (N.D. Ga. 2012) (recognizing a plaintiff's privacy rights in the educational records based on Family Educational Rights and Privacy Act of 1974); *Russell v. City of Tampa*, No. 8:16-cv-912-T-30JSS, 2017 2869518, at *2 (M.D. Fla. July 4, 2017) (holding that a party had standing to challenge the non-party subpoenas for their medical records). Additionally, as parties to the suit, Plaintiffs have standing to move for entry of a protective order.

[2] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981), the United States Court of Appeals for the Eleventh Circuit held all decisions of the United States Court of Appeals for the Fifth Circuit issued before the close of business on September 30, 1981, are binding precedent in the Eleventh Circuit.

III

Having determined that Plaintiffs have standing to challenge the non-party subpoenas, the next issue is whether quashing the subpoenas is appropriate. This Court may quash or modify a subpoena that, among other things, requires disclosure of privilege or protected matter, if no exception or waiver applies. Fed. R. Civ. P. 45(d)(3)(A)(iii). The scope of discovery pursuant to a subpoena is subject to the requirements of the Federal Rules of Civil Procedure 26(b) and 34. *See Jordan v. Comm'r, Miss. Dep't of Corr.*, 947 F.3d 1322, 1329 (11th Cir. 2020). Therefore, a party, using subpoena under Rule 45, may obtain discovery "regarding any nonprivileged matter that is *relevant* to any party's claim or defense and *proportional* to the needs of the case . . . ." Fed. R. Civ. P. 26(b)(1). It is the movant's burden to establish that the subpoena must be quashed. *See Rodgers v. Herbalife Int'l of Am., Inc.*, No. 8:19-MC-115-T-35AAS, 2020 WL 263667, at *1 (M.D. Fla. Jan. 17, 2020). When the relevancy of a discovery request is not apparent, the burden is on the party seeking discovery to show the relevancy of the discovery request. *See Barrington v. Mortage IT, Inc.*, No. 07-61304-CIV, 2007 WL 4370647, at *3 (S.D. Fla. Dec. 10, 2007) (citation omitted).

The question presented is not whether medical, mental health, or education records are relevant. Indeed, Plaintiffs agree that their medical, mental health, and education records are relevant and have agreed to produce discovery related to these

records. ECF No. 37, at 12 ("Plaintiffs' agree that they need to provide medical, mental health, and education records to substantiate their disabilities, their mental health needs, and the risk of harm to their future health or safety."); ECF No. 37, at 16 ("Plaintiffs also concede that information in [Plaintiffs'] education records . . . is relevant to their claims."); ECF No. 37, at 17 ("Plaintiffs' discovery responses state that they will produce such relevant information within a limited time period of one or two years or Defendants may subpoena these records for this period."). The issue is whether certain records Defendants seek are too distant in time to be relevant or proportional to the needs of the case.[3] Relying on their retained expert's affidavit, ECF No. 39-2, Defendants argue that the more information, the merrier, because access to a plethora of information may assist them in accurately refuting Plaintiffs' claims. On the other hand, Plaintiffs argue that one or two years of information is sufficient, and anything more is just a fishing expedition.

Courts regularly narrow the scope of records requests that have no temporal limit or when the requested time period is too distant from the events giving rise to a plaintiff's claims. *See, e.g.*, *Cafra v. RLI Ins. Co.*, No. 8:14-cv-843-T-17EAJ, 2015 WL 12844288, at *2 (M.D. Fla. Feb. 5, 2015) (quashing subpoenas because the

[3] It is unclear whether Plaintiffs argue that the substantive scope of Defendants' subpoenas is irrelevant or not proportional to the needs of this case. This Court does not construe Plaintiffs' motion as challenging the substantive scope of the subpoenas; rather it construes Plaintiffs' motion as challenging only the temporal scope of the subpoenas. As such, this Order deals only with the temporal scope of the subpoenas.

defendant had "not drafted the subpoenas to seek relevant academic records temporally closer" to the events giving rise to the plaintiff's claims); *Smith v. Haag*, No. 08-CV-6360CJS, 2009 WL 3073976, at *4 (W.D.N.Y. Sept. 22, 2009) (limiting the temporal scope of the discovery sought because "absence of any temporal limitation renders [discovery] overbroad"). Implicit in these rulings is the understanding that there is an inverse relationship between time on one side, and relevance and proportionality on the other. That is to say, the more distant in time the information is, the less relevant it is and the more likely it is that discovering it would be disproportional to the needs of the case. This logic applies here.

In this case, the issues are whether solitary confinement, along with its conditions, poses an unreasonable risk of serious damage to Plaintiffs' future health or safety, whether Defendants were deliberately indifferent to the serious risk, whether Plaintiffs were disabled, and whether Defendants discriminated against Plaintiffs on account of their disability. It is unclear to this Court how records that pre-date Plaintiffs reaching adolescent age are relevant to any of the issues presented in this case, and Defendants' expert's affidavit provides no guidance either. In a conclusory manner, Defendants' expert states that in order to fully evaluate Plaintiffs' claims, he needs to review any and all medical, mental health, and education records that may exist because "[i]n [his] . . . professional capacity the diagnosis and determination of any benefits and detriments from any conduct

requires review of more, not less information." ECF No. 39-2, ¶ 4. Defendants' expert further states, without any explanation, that the records would help him determine "whether [the] . . . diagnosis alter and effect the individual in their daily activities, appropriate treatment for said conditions and what if any level of behavioral and/or social interactions enhances and/or deteriorates any metal [sic] health conditions." These statements still beg the question—why are the medical, mental health, and education records from Plaintiffs' early childhood relevant to the issues presented in this case? How does a child's mental state when she was four years old relate to whether her placement in solitary confinement poses an unreasonable risk of damage to her psychological well being? Similarly, how does a six-year-old child's aptitude test results matter to determine whether the conditions of confinement violate contemporary standards of decency or whether she is presently disabled?

The standard for violation of the Eighth Amendment is, in part, forward-looking. It asks whether conditions of confinement pose an unreasonable risk of serious damage to a plaintiff's "*future* health or safety." *Quintanilla v. Bryson*, 730 F. App'x 738, 746 (11th Cir. 2018) (emphasis added). At the same time, the test is "an objective test from the point of view of the prisoner." *G.H. v. Marstiller*, No. 4:19-cv-431-MW/CAS, 2019 WL 6694738, at *3 (N.D. Fla. Dec. 6, 2019). As such, Plaintiffs' mental and medical states, along with their education levels, at the time

of solitary confinement would be relevant. Additionally, these records would be relevant to determine whether Plaintiffs were disabled. However, this Court finds that records that are too distant in time to the events giving rise to Plaintiffs' claims bear no relevance to the claims at issue in this case. Moreover, even if the medical, mental health, and education records from Plaintiffs' early childhoods have any relation to the claims, their relevance is, at best, marginal. Such marginal relevance does not entitle Defendants an unfettered access to all of Plaintiffs' records because discovery sought must also be proportional to the needs of this case.

Defendants also point to specific allegations in Plaintiffs' Complaint to support their discovery request. However, these allegations are not related to the Plaintiffs whose medical records Defendants seek. Instead, in most instances, the allegations relied on by Defendants cite to specific professional, medical, or correctional authority and do not pertain to any single individual named in this lawsuit. *See, e.g.*, ECF No. 2, ¶¶ 70, 72, 74. It is true, as Defendants argue, that since the allegations are that solitary confinement and the conditions it imposes results in a substantial risk of long-term psychological and physiological harm, Defendants are entitled to explore whether Plaintiffs already suffered from such harms. However, under Defendants theory of proper discovery, there would be no limitation on the discovery of medical records, if a party claims any form medical harm. Not

so. Reasonable limits must be placed on the scope of discovery if the relevance and proportionality requirements of Rule 26 mean something.

The information Defendants seek can be obtained by placing a reasonable limitation on the temporal scope of discovery. This Court finds the appropriate scope to be five years preceding each Plaintiffs' detention. Plaintiffs, in this case, are fifteen or sixteen years old. Records from the time Plaintiffs reached the adolescent age should provide Defendants sufficient information to rebut Plaintiffs' claims effectively. The five-year time period also strikes the right balance between proportionality and relevance. For Plaintiff G.H., Defendants may subpoena records from January 1, 2014; for Plaintiff R.L., Defendants may subpoena records from November 1, 2012; and for Plaintiff B.W., Defendants may subpoena records from January 1, 2012. This Court, therefore, quashes the subpoenas to the extent they seek information outside the five-year period preceding each Plaintiff's detention. Defendants may serve modified subpoenas with the temporal scope described in this Order.

IV

This Court may, for good cause, issue a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Fed. R. Civ. P. 26(c). Under Rule 26(c), a "party seeking a protective order has the burden to demonstrate good cause, and must make 'a particular and specific

demonstration of fact as distinguished from stereotyped and conclusory statements' supporting the need for a protective order." *Auto-Owners Ins. Co. v. Se. Floating Docks, Inc.*, 231 F.R.D. 427, 429–30 (M.D. Fla. 2005). In determining whether good cause exists, a court should balance the interests of the parties. *See Chicago Tribune Co. v. Bridgestone/Firestone*, 263 F.3d 1304, 1313 (11th Cir. 2001).

For the reasons provided *supra* Section III, this Court finds that Plaintiffs have shown good cause supporting the need for a protective order. Defendants' request for all medical, mental health, and education records, without a temporal limit, will result in embarrassment to Plaintiffs because of the private nature of the information sought and the records will provide information that is only tangentially relevant and certainly not proportional to the needs of this case. On balance, this Court concludes that a protective order precluding Defendants from discovery into Plaintiffs' medical, mental health, and education records for a time period prior to January 1, 2014 for Plaintiff G.H., November 1, 2012 for Plaintiff R.L., and January 1, 2012 for Plaintiff B.W., is appropriate. For these reasons, Defendants are precluded from discovery of Plaintiffs' medical, mental health, and education records outside the five-year period preceding each Plaintiff's detention.

SO ORDERED on March 24, 2020.

s/Mark E. Walker
Chief United States District Judge