UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

G.H., *et al*.,

Plaintiffs,

Case No.: 4:19-cv-431-MW/MJF

v.

SIMONE MARSTILLER, *et al*.,

Defendants.

PLAINTIFFS' MOTION TO QUASH NON-PARTY SUBPOENAS AND FOR A PROTECTIVE ORDER WITH INCORPORATED MEMORANDUM OF LAW

Pursuant to Rules 45(d)(3) and 26(c) of the Federal Rules of Civil Procedure, Plaintiffs, G.H., R.L., and B.W., by and through their undersigned counsel, hereby respectfully move this Court for: (1) an Order to quash 28 non-party subpoenas issued by Defendants Simone Marstiller and the Florida Department of Juvenile Justice (Defendants) which are not limited in scope or time, and seek *all* medical records, mental health records, and school records for each minor Plaintiff which contain confidential and private information; and (2) an Order to protect each Plaintiff from the compelled discovery of this information through non-party subpoenas from Defendants.

Plaintiffs allege that Defendants' policies and practices of solitary confinement subject the named Plaintiffs, and the putative class, to a substantial risk of serious harm in violation of the Eighth Amendment to the U.S. Constitution and constitute disability discrimination in violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. ECF 22 at 2-3. Plaintiffs have provided discovery responses that disclose significant medical and mental health information and education records dating from one to two years before their first experience in secure detention in the Department of Juvenile Justice (DJJ).[1] This information explains Plaintiffs' medical histories, medical conditions, history of inpatient and outpatient psychiatric hospitalizations, disabilities, educational needs, special education evaluations and services. It provides relevant facts about each Plaintiff's risk of harm at the time Defendants subjected them to solitary confinement in a secure DJJ juvenile detention facility. In contrast, Plaintiffs' medical, mental health, and education records sought by Defendants are too distant in time to be relevant to the claims and defenses in this action, nor are these records proportional to the needs of this case.

[1] Only Plaintiff G.H. provided this information from two years prior to his first experience in secure detention in the Department of Juvenile Justice (DJJ) because Plaintiffs alleged that he received treatment in a Statewide Inpatient Psychiatric Program for adolescents two years prior to the first time he was in DJJ secure detention. ECF 2 at ¶ 14. Plaintiffs R.L and B.W. provided this information from one year prior to their first experience in DJJ secure detention.

Defendants are engaged in a fishing expedition through overbroad subpoenas that serve only to harass and embarrass the minor Plaintiffs (who are 15 or 16 years old) by requiring the disclosure of irrelevant information going back to their infancy. This is not a damages action where Defendants need evidence to dispute the cause of any injury and minimize compensation for damages. In addition, the relevant information here, which is limited in time, can be more conveniently obtained from Plaintiffs who have (or are obtaining) these records.

As grounds for this motion, Plaintiffs state as follows:

BACKGROUND

1. This is a civil rights case arising from Defendants' statewide policies and practices of isolating children in solitary confinement. ECF 22 at 2-3. Defendants repeatedly isolate children in solitary confinement for days on end, with no time limit, in locked cells. *Id.* at 3. In isolation, children suffer conditions including a lack of meaningful social interaction, environmental stimulation, outdoor recreation, education, sanitation, and access to personal property. *Id.* Defendants, through the use of isolation, subject the named Plaintiffs, and over 4,000 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 Amendment. *Id.* DJJ policymakers have exhibited deliberate indifference towards

these risks. *Id.* Plaintiffs also challenge Defendants' solitary confinement policy and practice as discriminatory against children with disabilities. *Id.*

2. On January 15, and 17, 2020, Plaintiffs G.H., R.L., and B.W. served responses and objections to Defendants' First Set of Interrogatories to each of them. Four of these Interrogatories (nos. 4, 6, 14, and 15) requested information related to all schools each Plaintiff had ever attended, and all mental health treatment, medical treatment, physicians, and mental health professionals that had ever seen, treated, assessed, examined, or provided any service to each Plaintiff. These Interrogatories either had no temporal limit (nos. 4, 6, and 14) asked for ten years of information (no. 15).

3. On January 15, and 17, 2020, Plaintiffs G.H., R.L., and B.W. served responses and objections to Defendants' First Request to Produce which Defendants had addressed to each Plaintiff's parent and legal guardian. Plaintiffs objected to these requests because their guardians or parents are not the real parties in interest and cannot be served with discovery under Rule 34 of the Federal Rules of Civil Procedure.

4. The relevant Requests for Production from Defendants are as follows:

> Request No. 1: Any and all documents of any kind or nature concerning Plaintiff's medical or mental health evaluation or treatment for the past ten (10) years.
>
> Request No. 2: Any and all documents, including, but not limited to, medical reports executed by all treating and

> evaluating physicians and or mental health professionals regarding any condition allegedly sustained by Plaintiff and described in the Complaint.
>
> Request No. 3: Any and all documents including, but not limited to, medical reports executed by all treating and evaluating physicians or mental health professionals regarding any medical or mental health treatment or evaluation of Plaintiff for the past ten (10) years.

Plaintiffs objected to these requests, *inter alia*, as overly broad and unduly burdensome, too remote in time to be relevant to any claim or defense in this action, not likely to lead to the discovery of admissible evidence, and in violation of their right to privacy in personal, medical, and mental health information.

5. On February 21, 2020, Plaintiffs' counsel received the 28 non-party subpoenas by email from Defendants with three accompanying notices of intent to serve the subpoenas. *See* Exhibits 1-28 attached hereto. The notices and subpoenas failed to include a date when the subpoenas would be served. Each subpoena requires the production of the requested information by March 30, 2020, at the law offices of Defendants' counsel.

6. The non-party subpoenas are issued to each of the mental health providers, medical providers, and education entities identified by Plaintiffs in their responses to Defendants' First Set of Interrogatories. *Id.* The subpoenas seek all records in a Plaintiff's file with no limit as to time or scope. The information sought includes, for example: reports, assessments, consultations, progress notes,

handwritten notes, office notes, correspondence, admission and discharge records, diagnosis and prognosis, treatment, evaluation, counseling, drug or alcohol treatment, disciplinary records, conditions, applications, aptitude tests, attendance records, exams, scholastic performance, and grades.

7. Plaintiffs seek no damages in this action related to physical injury, emotional distress, medical needs, or otherwise.

8. Plaintiff G.H.'s first experience with any DJJ secure detention facility was in January 2019. Plaintiff R.L.'s first experience with any DJJ secure detention facility was in November 2017. Plaintiff B.W.'s first experience with any DJJ secure detention facility was in January 2017.

9. Plaintiffs' medical and mental health conditions, treatments, evaluations, and provider notes dating back several years prior to their experience at any DJJ secure detention facility are irrelevant to their constitutional and disability discrimination claims. Plaintiffs challenge conditions of confinement during the time that each child was subject to solitary confinement based on the Defendants' policies and practices.

10. **Certificate of Attorney Conference:** Pursuant to N.D. Fla. Local Rule 7.1(B) and (C), Plaintiffs' counsel has conferred with counsel for Defendants on February 25, 2020, by phone about this matter. The parties were unable to reach

agreement as to the relevant scope of permissible discovery as to Plaintiffs' medical, mental health, and education records in this action.

11. **Certificate of Word Limit**: Pursuant to N.D. Local Rule 7.1(F), the undersigned counsel hereby certify that this motion contains 3,763 words.

WHEREFORE, Plaintiffs respectfully request that the Court grant their Motion to Quash Non-Party Subpoenas and issue a Protective Order precluding Defendants from any further discovery through subpoenas into subjects of Plaintiffs' medical records and information, mental health records and information, substance abuse treatment records, and any related information, diagnoses, and treatment history from any medical and mental health provider and educational agency for the time period prior to January 1, 2017 for Plaintiff G.H., prior to January 1, 2018 for Plaintiff R.L., and prior to January 1, 2016 for Plaintiff B.W.

MEMORANDUM

I. Legal Standard

Under Rule 45 of the Federal Rules of Civil Procedure, a court must quash, modify, or specify the conditions for responding to a subpoena for production of records when it presents an undue burden or requires disclosure of privileged or other protected matter if no exception or waiver applies. Fed. R. Civ. P. 45(3)(A)(iii). A party has standing to quash a subpoena to a non-party where he or she alleges infringement of a "personal right or privilege" with regard to the

documents sought. *See Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir.1979);[2] *see also Russell v. City of Tampa*, No: 8:16–cv–912–T–30JSS, 2017 WL 2869518, at *2 (M.D. Fla. July 5, 2017) (party has standing to challenge subpoena for their medical records). The moving party bears the burden of establishing that the subpoena must be quashed. *Rodgers v. Herbalife Int'l of Am., Inc.*, 8:19-MC-115-T-35AAS, 2020 WL 263667, at *1 (M.D. Fla. Jan. 17, 2020).

The scope of discovery pursuant to a subpoena is limited subject to the requirements of Rules 26(b) and 34 of the Federal Rules of Civil Procedure. *Jordan v. Comm'r, Mississippi Dep't of Corr.*, 947 F.3d 1322, 1329 (11th Cir. 2020) (citations omitted). Therefore, a subpoena should be quashed if it seeks irrelevant information or is overly broad. *See Russell*, 2017 WL 2869518, at *2-3. Similarly, a subpoena is limited to discovery on "any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). When the relevance of sought after discovery is not apparent on

[2] In *Bonner v. City of Pritchard*, 661 F.2d 1206, 1207, 1209 (11th Cir.1981) (en banc), the Eleventh Circuit adopted as binding precedent the decisions of the Fifth Circuit rendered prior to October 1, 1981.

its face, the party seeking discovery through a subpoena has the threshold burden of demonstrating that the discovery requested is relevant. *See Barrington v. Mortage IT, Inc.*, No. 07-61304-CIV, 2007 WL 4370647, at *3 (S.D. Fla. Dec. 10, 2007).

In addition to quashing a subpoena, a court can enter a protective order where a subpoena is overly broad or seeks irrelevant information. *See Auto-Owners Ins. Co. v. Southeast Floating Docks, Inc.*, 231 F.R.D. 426, 429-30 (M.D. Fla. 2005); Fed. R. Civ. P. 26(b)(1). A protective order can issue "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c). If the moving party shows "good cause," the Court may impose specified terms and conditions on how discovery is conducted. *See id*. In determining whether good cause exists, a Court should balance a party's interest in obtaining the discovery against the opposing party's interest in protecting the information. *Chicago Tribune Co. v. Bridgestone/Firestone*, 263 F.3d 1304, 1313 (11th Cir. 2001). The Court enjoys broad discretion in entering a protective order. *In re Alexander Grant & Co. Litig*., 820 F.2d 352, 357 (11th Cir. 1987). The decision to enter a protective order is within the Court's discretion and does not depend on a legal privilege. *Auto-Owners Ins.Co.*, 231 F.R.D. at 429 (citation omitted).

A. Defendants' Subpoenas Are Overly Broad and Seek Information Too Remote in Time to be Relevant to the Claims and Defenses

Defendants seek information that is irrelevant and not proportional to the claims and defenses in this case because the subpoenas have no limit as to temporal scope and the amount of information sought (i.e., all records). For these reasons, the Court should quash the subpoenas and grant a protective order.

Defendants' non-party subpoenas seek documents and information so remote in time that they lack any relevance to the claims and defenses in this action. *See Russell*, 2017 WL 2869518, at *3-4 (limiting subpoena seeking records for three years before claim for termination and related damages to time period after claim was brought). To determine the relevance of the information sought through a subpoena, courts examine the claims asserted in the underlying action. *See, e.g.*, *Jordan*, 947 F.3d at 1329 (citations omitted) (affirming decision to quash subpoena seeking information about execution drug as lacking relevance to Eighth Amendment claim requiring a showing that execution presents a substantial risk of serious harm).

Here, a two-part analysis governs Plaintiffs' Eighth Amendment challenge to conditions of confinement. ECF 22 at 5. "First, the conditions of confinement must be objectively 'serious' or 'extreme,'" i.e., "the prisoner 'must show that a condition of his confinement pose[s] an unreasonable risk of serious damage to his future health or safety.'" *Id.*

"Second, the prisoner must show that the defendant prison officials subjectively acted with 'deliberate indifference' with regard to the conditions at issue." *Id.* "[T]o find deliberate indifference on part of a prison official, a plaintiff inmate must show: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; [and] (3) by conduct that is more than gross negligence." *Id.* at 22. "That is, the evidence must demonstrate that "with knowledge of the infirm conditions, [the official] knowingly or recklessly declined to take actions that would have improved the conditions." *Id.* (citation omitted). And "[w]hether a prison official had the requisite knowledge of a substantial risk is subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Id.*

Defendants cannot establish how records and information from several years prior to a child's confinement in a secure detention facility have any relevance to a determination about how the conditions of his or her confinement poses an unreasonable risk of serious harm to his future health or safety. If a Plaintiff got into a fight at school three years ago or did not receive counseling when they were sexually abused at age four, for example, this information has no relevance to whether Defendants were deliberately indifferent to a known risk of harm by subjecting that child to solitary confinement years later. Defendants seek years of

irrelevant medical information from the minor Plaintiffs' medical records that involve treatment, provider notes, and other private information with no logical relationship to the claims and defenses in this action. *See, e.g.*, *Cameron v. Supermedia, LLC*, No. 4:15CV315–MW/CAS, 2016 WL 1572952, at *3 (N.D. Fla. Apr. 19, 2016) (internal citations and quotations omitted) (even in a claim for emotional distress damages, medical records must have "a logical connection to the plaintiff's claims of injury."). They should not be permitted to do so.

The information that Defendants seek through subpoena is also not proportional to the needs of this case. 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. One to two years of such records provides ample relevant information that is proportional to the needs of the case. Allowing Defendants to rummage through the backgrounds of minors without legal justification only serves to embarrass Plaintiffs.

Defendants also do not need all of Plaintiffs' private medical and education records to defend their case. Defendants' deliberate indifference to a known risk of harm is based on their policy and practice of solitary confinement. *See* ECF 22 at 12, 14. For example, although Plaintiffs dispute that Defendants follow their own written confinement policy, *assuming arguendo* that they do, Defendants can only

isolate a child in confinement "during volatile situations in which a youth's sudden or unforeseen onset of behavior imminently and substantially threatens the physical safety of others or himself." *See* Fla. Admin. Code R. 63G-2.014(7). This Court can discern the actual reasons why Defendants placed Plaintiffs in confinement from contemporaneous records concerning Plaintiffs' detention and confinement. Plaintiffs' private medical and educational records from years prior to their first experience with DJJ secure detention have no bearing on this determination.

Defendants are not automatically entitled to unfettered access to Plaintiffs' medical, mental health, and education records because some allegation of harm may be at issue in this case. *See Cameron*, 2016 WL 1572952, at *3 (examining how "[w]hat's discoverable depends on what's claimed") (internal citations and quotations omitted). Although Plaintiffs make no claim for damages in this case, Defendants are treating it like a damages action. Instead, Defendants must tailor their discovery requests to the actual claims and defenses raised. Even where a plaintiff seeks economic and non-economic damages for emotional pain, suffering, and loss of enjoyment of life, courts have not permitted unlimited access to medical information that is irrelevant to the claims, lacking any temporal limit, and not proportional to the needs of the case. *See, e.g.*, *Valentine Ge. v. Dun & Bradstreet, Inc.*, No: 6:15-cv-1029-Orl-41GJK, 2016 WL 11464651, at *4 (M.D.

Fla. July 15, 2016) (limiting discovery request for unlimited health care provider records in employment discrimination action based on gender identity).

Defendants' subpoenas, which seek records very remote in time, illustrate their fundamental misunderstanding of Plaintiffs' Eighth Amendment claim. Although Plaintiffs allege actual harm based on Defendants' solitary confinement policies and practices, actual harm is not required to establish an Eighth Amendment claim. ECF 22 at 9-12. Rather, Plaintiffs can show, and do allege here, that Defendants' solitary confinement policies and practices subject them, and putative class members, to a substantial risk of serious harm. *Id.* at 5-6. The records that Defendants seek are not relevant or necessary to a determination of this objective standard as to the named Plaintiffs or the putative class.

Defendants' intrusive and harassing attempts at discovery into personal, sensitive, and irrelevant records are not justified by the needs of this case. *See*, *e.g.*, *Sheets v. Sorrento Villas, Section 5, Ass'n, Inc*., Case No. 8:15-CV-1674-T-30JSS, 2016 WL 11493318, at *3 (M.D. Fla. May 9, 2016) (finding good cause for protective order when discovery sought was overbroad and sought information not related to parties' claims or defenses). The court should issue an order to prevent this improper disclosure of information.

B. The Subpoenas Are Overly Broad and Intrude on Significant Privacy Interests in Education Records

Defendants also seek all of Plaintiffs' records from any education agency identified in Plaintiffs' responses to Interrogatories. These requests are overly broad, seek irrelevant information, and infringe on significant privacy interests.

Courts have recognized privacy interests in education records as significant considerations in a motion to quash such subpoenas for this information. *See Alig-Mielcarek v. Jackson*, 286 F.R.D. 521, 526–27 (N.D. Ga. Aug. 6, 2012) (quashing a plaintiff's request for non-party educational records based in part on the privacy rights protected by the Family Educational Rights and Privacy Act of 1974 which protects the confidentiality of educational records). Discovery is permitted only when the party requesting disclosure of educational records has met a "significantly heavier burden" to show that its interests in obtaining the records outweighs the significant privacy interest of the student. *See id.* (citation omitted). Defendants cannot meet this burden.

The subpoenas for each Plaintiff's education records seek: "Any and all school records, including but not limited to, applications, aptitude tests, attendance records, medical records or exams, counseling and mental health records, records of drug or alcohol treatment, discipline records, and records related to scholastic performance and grades. The transcripts and records are requested from the inception of your records to the present date."

These overly broad requests for the entirety of each Plaintiff's academic, disciplinary, attendance, and school performance records from years prior have absolutely no bearing on the Eighth Amendment or disability discrimination claims which relate to their conditions of confinement in DJJ secure detention. *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 which sought every record from each school that plaintiffs attended or currently attend as overly broad rather than limiting records and time period closer to vehicle accident date and reasonable period after); *see also N.D. ex rel. Dorman v. Golden*, No. 2:13CV540-MEF-TFM, 2014 WL 1764714, at *4 (M.D. Ala. May 1, 2014) (finding subpoenas for all of plaintiff's high school academic, attendance, and disciplinary records have no relevance to claims related to arrest and use of force claims involving off campus incident and request does not outweigh student's privacy interests). Defendants' requests impermissibly infringe on Plaintiffs' privacy interests in their education records.

Plaintiffs concede that their special education related school records have relevance to their risk of harm in solitary confinement or their disability claims that require proof that an action occurred because of disability. Plaintiffs also concede that information in their education records from just prior to their placement in a DJJ secure detention center is relevant to their claims. For example: what grade

each child was in, what level of schoolwork they should have received while subject to confinement, and if they were receiving or eligible for special education services. Plaintiffs' discovery responses state that they will produce such relevant information within a limited time period of one to two years or Defendants may subpoena these records for this time period.

Education information beyond this time period is too attenuated in time to be relevant to the Plaintiffs' conditions of confinement in DJJ secure detention. Further, on balance, Plaintiffs' interests in the confidentiality of this sensitive information weighs against the unnecessary disclosure of more than is appropriate for the needs of this case.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court enter an order quashing all subpoenas to medical providers, mental health providers, and education agencies, and enter a Protective Order precluding Defendants from any further discovery through subpoena into the subjects of Plaintiffs' medical records and information, mental health records and information, substance abuse treatment records, and any related information, diagnoses, and treatment history from any medical and mental health provider and educational agency for the time period prior to January 1, 2017 for Plaintiff G.H., prior to January 1, 2018 for Plaintiff R.L., and prior to January 1, 2016 for Plaintiff B.W.

Dated: March 5, 2020

Respectfully submitted,

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