UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

P.A., on behalf of minor child, **A.A.;**	*	
P.B., on behalf of minor child, **B.B.;**	*	
P.C., on behalf of minor child, **C.C.**	*	
Plaintiffs,	*	**CIVIL ACTION NO. 2:23-cv-02228**
	*	
VS.	*	
	*	
DORIS VOITIER in her official	*	**JUDGE BRANDON S.**
capacity, as Superintendent of	*	**LONG**
St. Bernard Parish Public Schools; and	*	
ST. BERNARD PARISH	*	**MAGISTRATE JANIS**
SCHOOL BOARD	*	**VAN MEERVELD**
Defendants.	*	
	*	

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MEMORANDUM IN OPPOSITION OF
PLAINTIFFS' MOTION TO COMPEL

MAY IT PLEASE THE COURT:

INTRODUCTION

The St. Bernard Parish School Board ("School Board" or "District") is defending this lawsuit filed by parents of three students ("Plaintiffs") who were referred to C.F. Rowley Alternative School ("Rowley") because they did not comply with District disciplinary rules. Generally, Plaintiffs Motion to Compel seeks the Court's authorization of their clearly overbroad, onerous discovery that far exceeds the needs of this case. The Board has provided full responses that complied with the discovery responses about which the Board did not lodge its objections. This litigation is essentially concerning three referrals to the District's alternative center, but Plaintiffs are seeking discovery that goes far beyond the claims in their First Amended Complaint and are geared toward class litigation that they have not filed. The Board asks the Court to deny Plaintiffs' Motion to Compel and to sustain the Board's detailed and timely objections.

PLEADINGS AND RELEVANT PROCEDURAL HISTORY

Plaintiffs filed their initial complaint, at Record Document 1, on June 27, 2023. The School Board filed its initial Answer and Defenses, at Record Document 8, on August 26, 2023. On December 12, 2023, at Record Document 19, Plaintiffs filed their First Amended Complaint. The School Board filed its Answer and Defenses to the First Amended Complaint on December 26, 2023, at Record Document 20. In the complaint filed with the Court, Plaintiffs included seven (7) counts including alleged violations of state and federal disability discrimination laws, retaliation, procedural due process under the United States and Louisiana Constitutions, and the Individuals with Disabilities Education Act ("IDEA").[1] Plaintiffs filed a Motion for Leave to file a Second Amended Complaint seeking to add additional plaintiffs that is currently pending before this Court. Rec. Doc. 26. This Court is also considering the District's motion for judgment on the pleadings. Rec. Doc. 22. Plaintiffs have opposed that motion, Rec. Doc. 25., and the Board has filed its Reply at Recor Document 28.

The current Scheduling Order states that all discovery, including depositions, shall be completed no later than August 23, 2024—Rec. Doc. 12.

On November 3, 2023, Plaintiffs served their First Set of Interrogatories and Requests for Production ("Requests") on the District by email. On December 4, 2023, within thirty (30) days of the date that the District received Plaintiffs' First Set of Interrogatories and Requests for Production, the Board served their initial Responses and Objections ("Responses") to Plaintiffs. In January of 2024, the parties participated in a meet-and-confer to discuss issues related to the Board's Responses. During the meet-and-confer, Board attorneys and Plaintiffs' attorneys discussed the parties' respective positions on the relevancy and scope of the Requests. Despite examining the positions of Plaintiffs' counsel, counsel for the Board explained that that several Requests were beyond the temporal scope

[1] Plaintiffs filed their initial complaint at Rec. Doc. 1. On December 12, 2023, Plaintiffs filed their First Amended Complaint. All references herein to the Plaintiffs' "Complaint" will be to the First Amended Complaint.

and the scope of the actual claims pleaded in this litigation. Counsel for the Board also discussed how the Plaintiffs' Requests were overly burdensome, vague, and overbroad.

LAW AND ARGUMENT

I. Standard for Discovery

The Federal Rules of Civil Procedure permit the party seeking discovery to "move for an order compelling an answer, designation, production, or inspection," and the party filing a motion to compel bears the burden of proving that the information requested is relevant and otherwise within the permitted scope of discovery.[2]

"The scope of all federal civil discovery is limited by the provisions of Rule 26(b)(1), whether sought pursuant to Rule 33, Rule 34, or any other discovery provision. Rule 26 was intended to and by its terms does limit discovery to the acquisition of information in discovery that is actually relevant to the subject matter of the action."[3] Rule 26(b)(1) establishes relevance as the outer boundary to the scope of discovery. The rule's language is plain and clear: "Parties 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[.]"[4] Additionally, "[i]nformation requested in discovery need not be admissible in evidence to be discoverable."[5] But "[w]hile relevancy in the discovery context is broader than in the trial context, that legal tenet should not be misapplied to allow fishing expeditions in discovery."[6]

While it is designed to allow civil trial litigants sufficient information, the discovery process has "ultimate and necessary boundaries."[7] Discovery under Rule 26(b) is not "a license to engage in

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[2] Fed. R. Civ. P. 37(a)(3)(B)(iii)–(iv).
[3] *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978).
[4] *See* Fed. R. Civ. P. 26(b)(1).
[5] *Id.*
[6] *Crescent City Remodeling, LLC v. CMR Constr. & Roofing, LLC*, No. CV 22-859, 2022 WL 17403556, at *2 (E.D. La. Dec. 2, 2022) (citations omitted).
[7] *Marine Power Holding, LLC v. Malibu Boats, LLC*, No. CV 14-0912, 2016 WL 403650, at *2 (E.D. La. Jan. 11, 2016) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)).

an unwieldy, burdensome, and speculative fishing expedition."[8] As this Court has recognized, "As to proportionality, the 2015 amendments to Rule 26(b)(1) emphasize the need to impose reasonable limits on discovery through increased reliance on the common-sense concept of proportionality."[9] Accordingly, Rule 26(b)(2)(C) requires the limitation of evidence outside the scope of Rule 26(b)(1) by stating the following,

> On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:
> (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
> (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
> (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

Additionally, "it is well established that the scope of discovery is within the sound discretion of the trial court."[10] This discretion includes the ability to limit discovery.[11] Moreover, Rule 34, pursuant to which a party can seek production of documents, is bounded to requests "within the scope of Rule 26(b)."[12]

II. Argument

A. Plaintiffs' Motion to Compel is not Legally Sufficient and Should be Dismissed on Procedural Grounds.

The Plaintiffs have not complied with Rule 37(a)(1). This rule is restated on the Court's website:

> [A] party may move for an order compelling disclosure or discovery. The motion *must* include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.[13]

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[8] *Crescent City Remodeling*, 2022 WL 17403556, at *2.
[9] *FSC Interactive, L.L.C. v. Rogers Collective, Inc.*, No. CV 22-4450, 2023 WL 8522949, at *1 (E.D. La. Nov. 14, 2023).
[10] *Marine Power Holding*, 2016 WL 403650, at *2.
[11] *Id.* at *3 (denying motion to compel due to speculative claim); *Jones v. Cannizzaro*, No. CV 18-503, 2019 WL 8888002 (E.D. La. Oct. 23, 2019) (limiting discovery in civil rights case).
[12] *See* Fed. R. Civ. P. 34.
[13] Eastern District of Louisiana, Honorable Janis van Meerveld, https://www.laed.uscourts.gov/judges-information/judge/honorable-janis-van-meerveld (last accessed on April 16, 2024) ("Meet and Confer" subpage).

In the Plaintiffs' filings, although there is discussion of the meet and confer discussion on January 24, 2024, the Plaintiffs failed to certify that their attorneys conferred in good faith with the Board's counsel prior to their filing. Therefore, Plaintiffs failed to comply with Rule 37(a)(1), their motion is not legally sufficient, and the Court should deny Plaintiffs' motion due to this failure.

As the Board indicated in its March 4, 2024 correspondence to Plaintiffs' counsel, the Board would be open to conducting an additional Rule 37 Conference.[14] The Board would also be agreeable to using the Court's Supplemental Rule 37 Conference requirements, which are linked in the Court's website. In the event that the supplemental Rule 37 conference does not resolve the Plaintiffs' discovery concerns, the Plaintiffs could then file a Motion to Compel, with the required certification, and in compliance with the Federal Rules of Civil Procedure.

B. Plaintiffs Requests for Prescribed Periods are Not Relevant to Their Claims.

Plaintiffs Request for information from 2018 through 2024 and "all school years" that the named student plaintiffs were assigned to Rowley is beyond the relevancy scope and limits for discovery. In their briefing, Plaintiffs concede that "the relevant time frame is case-specific."[15] In this case, the Plaintiffs are not contesting that the relevant school year is 2022-2023. In fact, in Plaintiffs' Opposition to the Board's Rule 12(c) Motion, they conceded this point by stating, "[e]ach of the Students was placed at Rowley . . . during the 2022-2023 school year—within on year of when the current suit was filed on June 27, 2023."[16] In an attempt to meet their burden[17] to demonstrate that the requested discovery meets the Rule 26(b) standard, Plaintiffs still argue that previous school years are relevant. However, the "case-specific" analysis compels the Court to deny the Plaintiffs' Motion for discovery concerning earlier school years.

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[14] Plaintiffs' Exhibit D, Rec. Doc. 29-5 at pp. 5-6. The Board is using ECF page numbers in this filing, as opposed to the page numbers listed on the bottom of the Plaintiffs' exhibits.
[15] Plaintiffs' Memorandum in Support of Motion to Compel Discovery, Rec. Doc. 29-1 at p. 7.
[16] Plaintiffs' Opposition to Board 12(C) Motion, Rec. Doc. 25 at p. 11.
[17] *Humphrey v. LeBlanc*, 2021 WL 3560842, at *2 (M.D. La. 2021) (citations omitted).

Plaintiffs fail to explain why the Court should allow their various Interrogatories and Requests for Production to globally reach back to the 2018-2019 school year. While conceding that they cannot litigate disciplinary actions that preceded the 2022-2023 school year, Plaintiffs vaguely argue that they are examining a "pattern or practice" of the Board that extends to previous school years. This argument is unpersuasive upon a deeper analysis of the alleged facts in this case. Notably, the Board is not denying that the involved students were referred to Rowley during the 2022-2023 school year. The Board's filed Answer clearly states this position.[18] The facts surrounding the relevant disciplinary referral to Rowley are uncontested. Therefore, there is no need to review a "pattern or practice" to determine the circumstances of sole relevant referrals during the 2022-2023 school year.

Moreover, the Board is not opposed to providing the needed details of the referrals that did occur during the 2022-2023 school year—and it has already done so via discovery responses and student records requests. Through an examination of the relevant referrals, along with the policies that applied at the time, the Plaintiffs can fully examine their statutory and constitutional arguments. Relatedly, the Board has also already responded to Plaintiffs' requests for information about Rowley during the 2022-2023 school year. The provided information includes detailed service records, information and documents regarding employee qualifications, and extensive information about Rowley's offerings. The educational offerings, employees, and policies relating to Rowley during previous school years are prescribed and simply not relevant to this litigation. Likewise, Plaintiffs have not met their burden to demonstrate that they are relevant. Further, in light of their lack of relevance to the claims at issue in this case, the Plaintiffs' insistence that the Board provide full responses to *all* of Plaintiffs' Interrogatories and Requests for Production is not reasonable or proportional to the needs of this case.

Plaintiffs also stated that the current school year is now relevant because the Court allowed

[18] December 26, 2024 Answer and Defenses, Rec. Doc. at pp. 27 ¶ 85, 30 ¶ 102, 35 ¶ 123.

the Plaintiffs to add C.C. to this litigation in December of 2023. It is true that C.C. was referred to Rowley during the 2023-2024 school year. However, Plaintiffs have not propounded discovery concerning C.C.; the discovery at issue only concerns A.A. and B.B.[19] In good faith, the Board has submitted the requested student records of C.C. However, the fact remains that the discovery at issue was not propounded concerning C.C.

C. Plaintiffs' Discovery Requests are Not Proportional to the Needs of this Case and the Burden of the Proposed Discovery Outweighs its likely benefit.

To determine relevancy under Rule 26(b)(1), the Court must consider whether a request is proportional to the needs of the case. Plaintiff's requests for communications are impermissibly vague, overly broad, and would be extremely onerous and expensive for the Board to comply with. As explained in the declarations of Superintendent Voitier and Mr. Cipollone, it will be virtually impossible to determine the scope and related costs of these Requests.[20] The Board will discuss each of these requests below.

1. Request 2: All documents and communications relating to Plaintiffs, including but not limited to the full and complete student record for each Plaintiff.

As discussed above, the Board has already responded to requests for the educational records of A.A. and B.B. Additionally, the Board has not limited these responses to the 2022-2023 school year. The Board also voluntarily submitted educational records concerning C.C. However, Plaintiffs' Request for Production 2 goes far beyond educational records. It is a request for all documents and communications "relating to" Plaintiffs in addition to all student records. The Board fully explained its objections to this Request in its timely December 4, 2023 response.[21]

To reiterate the crux Board's objection, this Request is clearly intended to cover as many

[19] Plaintiffs' Exhibit C., Rec. Doc. 29-4 at p. 5, ¶ 8.
[20] *See* Exhibit A, Declaration of Joseph Cipollone; Exhibit B, Declaration of Doris Voitier
[21] Plaintiffs' Exhibit F, pp. 3-5.

potential documents and communications as possible. The Plaintiffs' definition of "relating to" strongly illuminates the Board's concerns. Plaintiffs broadly defined "relating to" as "concerning, referring to, regarding, dealing with, discussing, involving, mentioning, arising from, describing, and otherwise having a logical connection to with a person, subject, event, matter, concept, document, place or thing."[22] Given how broadly this Request is drafted, it certainly would require the Board to search for a great many documents and communications. As explained in the Board's objection—this broad swath of documents would definitely include documents that are not relevant to a claim or defense of a party. Therefore, this Request is not specifically drafted to elicit documents that are discoverable per Rule 26(b)(1).

As written, Plaintiffs' Request even exceeds the broad definition of "educational records" under 20 U.S.C.A. § 1232g—which is a definition included within the Family Educational and Privacy Act ("FERPA"). Of course, a document that meets the definition of an "educational record" as defined by FERPA is not inherently discoverable, without being relevant to a claim or defense of a party in this litigation. Plaintiffs also argue that Request 2 communications are essential to "Plaintiffs' ADA and Section 504 act claims."[23] However, they do not explain how all of the many communications that would be covered by this Request relate to these claims. Further, as explained in the Board's submitted declarations, this Request is also clearly onerous because of the incalculable amount of time and money it would take to locate all the responsive materials and then redact them prior to submission.[24]

In its analysis of a similarly broad request, the Tenth Circuit held that a district court did not abuse its discretion in declining to compel production of a pharmacist's entire personnel file.[25] The

[22] Plaintiffs' Exhibit C, p. 5.
[23] Rec. Doc. 29-1 at p. 10.
[24] Board's Exhibit A, pp. 2-3; Board's Exhibit B, p. 2.
[25] *Regan-Touhy v. Walgreen Co.*, 526 F.3d 641, 648-49 (10th Cir. 2008).

appellate panel recognized that not all the material in the file was relevant and "the requirement of Rule 26(b)(1) that the material sought in discovery be 'relevant' should be firmly applied."[26] This Court, in *FSC Interactive, L.L.C. v. Rogers Collective, Inc.*, examined similar requests that "seek 'all documents' that 'concern' a thing."[27] In this case, the request at issue contained a definition similar to the Plaintiffs' "relating to" definition.[28] The Court found these requests "too broad to be proper" and called them "'blockbuster' requests."[29] The Court went on to find, "Such requests are an abdication of the proponent's obligation to narrowly tailor its requests to the claims and/or defenses in the case *and are never proper*."[30] The Board requests a similar finding regarding Plaintiffs' "blockbuster requests."

2. Requests 3, 4, 5, and 6.

Requests 3, 4, 5, and 6 are all also "blockbuster requests" that request all documents and communications that concern "practices, procedures, standards, and guidelines, written or unwritten, formal or informal." Because of the similarity to Request 2 in this regard, the Board has similar concerns about how broadly Plaintiffs drafted these Requests. Further, these Request are similarly onerous as explained in the Board's submitted declarations.[31] The Board, through its objections to these Requests, thoroughly explained these concerns to Plaintiffs.[32]

These Requests are also vaguer than Request 2 in that they discuss various policies, but do not stop at the identified "practices, procedures, standards, and guidelines." The Requests also stretch to "written or unwritten, formal or informal," which significantly broadens them. This expansion would require significant investigation to ensure full coverage of all informal and unwritten aspects of these Requests. Of course, the Board would then still have to determine how to identify, redact, and produce

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[26] *Id.*
[27] No. CV 22-4450, 2023 WL 8522949, at *2.
[28] *Id.* ("referring to, reflecting or related to in any manner, logically, factually, indirectly or directly to the matter discussed.").
[29] *Id.*
[30] *Id.* (emphasis supplied).
[31] Exhibit A, p. 3; Exhibit B, pp. 2-3.
[32] Rec. Doc. 29-7 at pp. 5-11.

all of the documents and communications otherwise covered by these Requests. Because these Requests are all similarly overbroad, vague, and onerous, they also go far beyond the scope of Rule 26(b)(1).

Plaintiffs also stated that they offered to limit their communications Requests to emails and texts. However, this offer does not address the Board's concerns about how broadly Plaintiffs drafted these Requests. They will still cover an indiscernible range of emails and texts and still require the production of irrelevant documents and communications.

3. Requests 9 and 22 are far beyond the scope of this litigation.

Request 9 concerns "documents and communications sufficient to show data about the age, grade, sex, race, disability status, and number of students who are or were enrolled at Rowley during the relevant period and, for each student, the reason for the student's placement at Rowley and duration of the student's period of enrollment." The Board objected to providing this information that concerns other students, among other bases.[33] This is far beyond the 26(b)(1). Plaintiffs openly seek a range of documents concerning other students, who are not in this litigation. Plaintiffs, in an attempt to support their request for racial numbers, also misleadingly state that that they have pled the disproportionate placement of "Black and Brown students at Rowley."[34] While they may have stated this unproven allegation in their Complaint, the Plaintiffs have not made a claim of racial discrimination in this litigation. This request is an indication that Plaintiffs are improperly using this discovery process to "fish" for claims and possibly clients that are not yet included in this litigation. The circumstances of other students and their education and demographic information are, in no way, relevant to the claims that are in this litigation.

[33] Rec. Doc. 29-7 at p. 14.
[34] Rec. Doc. 29-1 at p. 12.

Regarding Request 22, Plaintiffs initially requested "All documents, including but not limited to IEPs, 504 Plans, evaluations, assessments, behavior plans, behavior data, Edgenuity completion logs, discipline records, and administrative records relating to students in Plaintiffs' academic classes, including virtual classes, at Rowley in the 2022-2023 and 2023-2024 school years, with identifying information redacted." This Request is so broadly drafted that it literally requests "all documents . . . relating to any student attending Rowley in the 2022-2023 and 2023-2024 school years." The Board properly objected to the brazenly broad scope of this Request, and it stated that it is a "blatant example of Plaintiffs attempting to conduct class discovery for claims that concern two students."[35]

Plaintiffs later stated that they would accept a sample of records limited to the students in the classes of A.A. and B.B. while they attended Rowley. However, the Board would still have to provide every document it has for all of these students; and it would also have to somehow provide every document in the Board's possession "relating to" all of these students. Assuming the Board could accomplish this, then it would have to conduct line-by-line reviews of these documents to redact private information before submitting them to Plaintiffs. This is another "blockbuster" request, that is also clearly beyond the scope of relevant discovery.

CONCLUSION

The School Board provided responses to the Plaintiff's discovery requests and delivered supplemental responses to provide the clarity requested by Plaintiffs. If further clarity in the responses is needed, the School Board will continue to work with Plaintiffs in good faith to determine whether it can further respond to Plaintiff discovery within the scope of applicable discovery rules. However, the Board *will not* assist the Plaintiffs' or their attorneys with client development or issue development for future litigation. Nor can the Board allow the Plaintiffs to force the endless search for unreasonably broad Requests that will take a virtually unlimited amount of staff time and Board funds. The Board

[35] *Id.* at pp. 25-26.

thanks the Court for its assistance in resolving this Motion and considering the concerns stated in this Opposition. For the reasons explained herein, the St. Bernard Parish School Board prays that the Court deny Plaintiffs' Motion to Compel Discovery.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I have this day caused a copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will forward a copy to all attorneys of record.

Baton Rouge, Louisiana this 16th day of April 2024.

/s/ Timothy J. Riveria
TIMOTHY J. RIVERIA