IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

P.A., on behalf of minor child, **A.A.**; *et al.*	*	CIVIL ACTION NO.: 2:23-cv-2228
Plaintiffs,	*	JUDGE BRANDON S. LONG
v.	*	MAGISTRATE JUDGE JANIS VAN MEERVELD
DORIS VOITIER, *et al.*	*	
Defendants.	*	

PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL DISCOVERY

Plaintiffs A.A., B.B., and C.C., by and through their parents, hereby submit this reply in support of their motion to compel discovery. Doc. 29; Doc 29-1. In their opposition memorandum, Defendants cite expense and administrative burden resulting from overbroad requests as the primary remaining objection to the disputed discovery. Doc. 31. But these alleged burdens remain vague and hypothetical, as evidenced by the declarations attached to the memorandum. Doc. 31-1 (Decl. of Joseph Cipollone) ("Cipollone Decl."); Doc. 31-2 (Decl. of Superintendent Doris Voitier) ("Voitier Decl."). Indeed, these declarations and Defendants' memorandum provide no clarity about the volume of records at issue and lack any information to assist Plaintiffs in narrowing their requests. The Court should disregard these unfounded objections, especially because Plaintiffs have made specific and still-unanswered proposals to narrow the scope of the information at issue.

I. Plaintiffs' Motion to Compel and Accompanying Memorandum Are Legally Sufficient and Satisfy the Certification Requirements of Rule 37.

Defendants do not contest that the Parties met and conferred, in good faith, prior to the filing of this motion, as required under the Local Rules and Federal Rule of Civil Procedure 37. Doc 29 ¶¶ 4-7; Doc. 29-1 at 2-5. Rather, they dispute the form of the certification. Doc. 31 at 4-5. Defendants cite no authority to suggest that Federal Rule of Civil Procedure 37 requires that the

certification appear in any particular form, much less that the failure to submit the certification in any particular form requires dismissal of an otherwise valid motion to compel. No such formality requirement exists under Rule 37. *See In re Presto*, 358 B.R. 290, 292 (Bankr. S.D. Tex. 2006) ("[B]ecause [Rule 37] does not expressly impose such a [specific certification] requirement, this Court concludes that the certification may be included in the body of the Motion."); *see also Martinolich v. New Orleans Hearst Television, Inc.*, No. CV 15-5376, 2017 WL 5125765, at *2 (E.D. La. Oct. 19, 2017) (citing favorably *In re Presto*), *report and recommendation adopted*, No. CV 15-5376, 2017 WL 5068343 (E.D. La. Nov. 3, 2017).

Plaintiffs' motion and memorandum met the requirements of this Court's Local Rules and Federal Rule of Civil Procedure 37, where these filings provide a detailed account of the conference held by Zoom between the Parties, including Plaintiffs' good faith efforts to resolve disputed discovery during and after said conference. Doc 29 ¶¶ 4-7; Doc. 29-1 at 2-5. Where Defendants have not presented any argument or evidence to suggest that Plaintiffs failed to engage in a fulsome meet-and-confer, it is appropriate for the Court to adjudicate this motion. *Compare MacNair v. Chubb Eur. Grp. SE*, No. CV 23-761, 2024 WL 663652, at *2 (E.D. La. Feb. 16, 2024) (even where Defendants alleged that Plaintiffs failed "to engage in a fulsome meet and confer on each disputed response prior to filing a discovery motion," permitting resolution of the motion to compel "in the interest of expediency and judicial economy"), *with Johnson v. Coca-Cola Enterprises, Inc.*, No. CIV.A. 3:05-1479, 2006 WL 1581218, at *1-*2 (W.D. La. June 6, 2006) (declining to resolve motion to compel where counsel failed to hold a meet and confer).

Plaintiffs' motion and memorandum detail steps taken to satisfy this Court's instruction that the Parties engage in a "meaningful and good faith effort to resolve their discovery disputes

prior to filing a motion to compel."[1] At the same time, counsel recognizes that, for efficiency reasons, a separate certification may be of assistance to the Court. Accordingly, Counsel attaches to this Reply a supplemental certification in the form contemplated by this Court's Supplemental Rule 37 Requirements. Ex. A.

II. Plaintiffs' Proposed Temporal Scope Is Relevant and Proportional to the Needs of This Case, Notwithstanding any Premature Prescription Argument Raised by Defendants.

In their opposition memorandum, Defendants abandon their position that discovery is limited to the statute of limitations.[2] Doc. 31 at 5-7. Accordingly, all that remains for the Court to decide is whether the request for information from 2018-present is relevant and proportional under Federal Rule of Civil Procedure 26. It is, for all the reasons stated in Plaintiffs' memorandum, with some additional points of clarity provided here.

First, a clarification on relevance, given Defendants' issue with Plaintiffs' reliance on the "pattern or practice" language.[3] Doc. 31 at 6. In the absence of an official, written policy, *Monell* liability may be established through evidence of a pattern "so common and well-settled as to constitute a custom that fairly represents municipal policy." *Peterson v. City of Ft. Worth, Tex.*, 588 F.3d 838, 850 (5th Cir. 2009) (internal citations omitted). Such a pattern or practice has been alleged here. Doc. 19 ¶¶ 57-59. To prove the alleged unwritten policy, Plaintiffs will be required to show "a pattern of abuses" extending beyond "a single case." *Peterson*, 588 F.3d at 850-51

[1] *See* Meet and Confer, The Honorable Janis van Meerveld, https://www.laed.uscourts.gov/judges-information/judge/honorable-janis-van-meerveld.

[2] Plaintiffs maintain their position, stated in the original memorandum, that the appropriate limitations period is premature for resolution by this Court. *See* Doc. 29-1 at 6-9. Plaintiffs do not concede that Defendants have appropriately construed the limitations period.

[3] Defendants' claim that this "pattern or practice" argument is "vague," as explained above, ignores the standard for *Monell* claims. Doc. 31 at 6. So too does Defendants' uncited insistence that "[t]he facts surrounding the relevant disciplinary referral [*sic*] to Rowley are uncontested." *Id*. For all the reasons stated in Plaintiffs' memorandum in opposition to the pending 12(c) motion for judgment on the pleadings, these facts are contested. *See* Doc. 25.

(internal citations omitted). From this doctrine courts have derived the precedent, cited in Plaintiffs' original memorandum, entitling them to discovery before and after any applicable limitations period.[4] Doc. 29-1 at 7-8 (citing, *inter alia*, *Mullenix v. Univ. of Texas at Austin*, No. 1-19-CV-1203-LY, 2021 WL 1647760, at *4 (W.D. Tex. Apr. 26, 2021); *Adams v. City of New Orleans*, 2017 WL 713853, at *2 -*3 (E.D. La. Feb. 23, 2017)). To address overbreadth and burdensomeness concerns that may result, courts fashion appropriate temporal limitations. *See* Doc. 29-1 at 11 (citing *Brown v. City of Alexandria*, No. 1:20-CV-00541, 2022 WL 951407, at *8 n.12 (W.D. La. Mar. 29, 2022)).

The proposed temporal extent of Plaintiffs' request—of five (5) years—is necessary and reasonable, particularly in light of disruptions created by the COVID-19 pandemic. A shorter temporal limitation on discovery would block access to records during years that at least one Plaintiff was enrolled at Rowley and further would result in information that was severely impacted by irregularities in schooling that occurred in the 2019-2020 and 2020-2021 school years. Under the circumstances, Plaintiffs' proposed five (5)-year limitation reflects tailoring of its request such that Plaintiffs are able to fully test their claims against any existing documentary evidence, while accounting for the burden of production on Defendants. Meanwhile, Defendants appear to have not even searched their records to determine the number of documents responsive to a five (5)-year limit on discovery versus, for example, a two (2)- to three (3)-year period of

[4] Defendants' statement that "Plaintiffs have not propounded discovery" concerning C.C., Doc. 31 at 6-7, is inaccurate. First, Defendants do not dispute that Rule 26(e) imposes an obligation to supplement discovery responses and that Plaintiffs requested this supplementation of their original request after C.C. was added as a Plaintiff. ECF 29-5 at 22. Second, even were this not the case, Plaintiffs propounded a second set of discovery requests to Defendants on April 10, 2024, almost a week before Defendants filed their response memorandum, which Plaintiffs can make available for the Court's review. Finally, Defendants do not dispute that Plaintiffs are entitled to evidence to prove the necessity of injunctive relief. Doc. 29-1 at 8-9. Nor do they provide authority to contradict extension of the liability period to the allegations in the 2023-2024 school year. *See, e.g.*, Doc. 19 ¶¶ 97, 115; *see also* Doc. 26-1 ¶¶ 100-101, 122 (proposed Second Amended Complaint). This Court, however, need not prematurely resolve the applicability of the relevant statute of limitations. Doc. 29-1 at 8-9.

discovery. *See* Doc. 31 at 5-7; *see also* Cipollone Decl.; Voitier Decl. Without such specific assertions of burden, Defendants' vague assertions about cost and expense are insufficient to defeat otherwise valid discovery requests for documents within the temporal scope.

III. The Communications Requested by Plaintiffs are Proportional to the Needs of this Multi-Plaintiff Litigation and Defendants' Vague Assertions of Burden are Insufficient to Block Discovery.

Defendants' primary objection to producing responsive communications, including emails and text messages, is undue burden. Defendants claim it is "virtually impossible" to determine the scope and burden of production of responsive communications Doc. 31 at 7 (citing Cipollone Decl.; Voitier Decl.). It is not impossible. All that is required is a preliminary search. But no search has been attempted. *See* Doc. 31 at 8 (stating that RFP 2 "would require" the Board to search for a "great many" responsive communications); *see also* Cipollone Decl. ¶ 5(b) (stating that there "could be hundreds of documents" responsive to RFPs 3-6). Vague guesses as to the possible burden of discovery are insufficient to block an otherwise relevant and proportional discovery request.

Defendants do not contest that the communications in RFPs 2 through 6 are relevant, nor can they. Rather, Defendants argue the requests sweep too broadly by requiring production of irrelevant communications along with relevant ones—in other words, overbreadth. But RFPs 2 through 6 are not, as Defendants claim, "blockbuster" requests, seeking any document "pertaining to this lawsuit," *O'Donnell v. Zavala Diaz*, No. 3:17-CV-1922-S (BK), 2018 WL 6335566, at *2 (N.D. Tex. Aug. 21, 2018); or a request for all documents and communications that "relate[] in any way to [Plaintiffs], [their] famil[ies], and any of the facts alleged in [ ] Plaintiffs' Complaint," *Cook v. City of Dallas*, No. 3:12-CV-3788-N, 2017 WL 9534098, at *9 (N.D. Tex. Apr. 10, 2017). RFP 2 is a particular request for individual student records, including those protected by the Family

Educational Rights and Privacy Act ("FERPA"). This is a discrete request for a portion of the student records at issue—namely, communications that other Courts have found discoverable in similar cases involving intentional discrimination. Doc. 29-1 at 10 (citing *Moore v. Baylor Scott & White Health*, No. A-18-CV-363-LY, 2019 WL 2642466, at *1 (W.D. Tex. June 5, 2019); *S.C. State Conf. of NAACP v. McMaster*, 584 F. Supp. 3d 152, 163 (D.S.C. 2022); *Edwards v. Hooks*, No. 5:21-CT-3270-D, 2022 WL 17367183, at *8 (E.D.N.C. Nov. 28, 2022)). Similarly, RFPs 3 through 6 are requests for particular "practices, procedures, standards, and guidelines" that Defendants both understand and recognize, as evidenced by their production of written policies responsive to these requests (although only for the 2022-2023 school year[5]). Plaintiffs have further narrowed the scope of records at issue by asking this Court to resolve only whether Defendants must produce emails and text messages.

To the extent any overbreadth or burdensomeness concerns remain—such as the concern about the use of "relating to" and "written or unwritten, formal or informal"—Plaintiffs reemphasize their efforts to negotiate by proposing an ESI Protocol, which includes a procedure for collaborative identification of search terms and assessment of requests returning large numbers of search results. Doc. 29-1 at 4, 11-12 (citing Doc. 29-5 at 5-6, 24-44)). In an age of electronic discovery, where all defendants—not just this school district—have a large amount of potentially discoverable electronic information, the identification of search terms is essential to targeted and efficient discovery. But Defendants refused to enter that proposed ESI protocol and still, as evidenced in their opposition memorandum, refuse to engage with other negotiation efforts to

[5] Of note, Defendants have also produced two Student Handbooks from the School Board and Chalmette High School from the 2023-2024 schoolyear, further undermining their claims that production of documents from earlier or later school years would be excessively burdensome—and evidently demonstrating their understanding of the relevance of current practices to Plaintiffs' claims for injunctive relief. Notably, the 2023-2024 Student Handbook for Rowley has not been produced.

identify the documents at issue in a timely, efficient, and cost-effective manner. This failure to even attempt negotiation of reasonable search terms strongly calls into question Defendants' motives for blocking the requested discovery.

IV. Specific Requests for Production 9 and 22 are Relevant and Proportional to this Litigation and Defendants' Vague Assertions of Burden Remain Insufficient to Block Discovery.

i. RFP 9

In their opposition, Defendants raise no objection to the relevance and proportionality of the requested student demographic information, except to say that the request is "far beyond" the scope of the litigation. Doc. 31 at 10. While Defendants take issue with the request for racial demographics, they have failed to produce important, requested information about the demographics of students at Rowley, including the "number of students" enrolled at Rowley and their "disability status," in addition to the "reason for [each] student's placement at Rowley and duration of the student's period of enrollment at Rowley." Doc. 29-4 at 7. The inclusion of race within this other basic student demographic data is standard, and, indeed, has already been produced by the school district (albeit in unsearchable form) in response to a Public Records Request. Doc. 29-1 at 12-13. Presumably, it would be less burdensome for the school district to produce, in a searchable, Excel format, the same data it has already produced once, rather than re-run the data set. If Defendants would prefer to remove racial demographics and produce the other data requested, Plaintiffs will not object, even if it will cost the school district additional time and resources. Contrary to Defendants' assertions, Plaintiffs are not engaged in a "fishing expedition," especially where there is a protective order in place in this litigation preventing the Parties from using information gained during this litigation in any other proceeding. Doc. 14. Plaintiffs' objective with this request, and all others, is to gain relevant information as efficiently and

expediently as possible.

ii. RFP 22

Defendants mischaracterize the nature of this request for records, which Plaintiffs agreed to amend. To reiterate, the request is not (and never has been) for all documents relating to any student attending Rowley in the 2022-2023 and 2023-2024 school years. Doc. 29-1 at 13-14 (describing original RFP 22 and as amended). RFP 22 seeks a limited set of student records[6] for students at a discrete point in time: for any student in Plaintiffs' academic classes, including virtual classes, in the 2022-2023 and 2023-2024 school years. *Id*. There is no Rule 26 defense to discovery based on a characterization of a request as seeking "class discovery." If discovery is relevant (as it is here, to claims of unjustified isolation) and proportional (limited in time and scope to students only in Plaintiffs' classes), Defendants are required to comply with the discovery request, unless they assert a valid objection. *See McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990). Defendants refuse to comply with this discovery request, yet they have not demonstrated that it is overly burdensome or broad, where they have failed to identify the number of students this request covers, much less the number of pages of redactions required. Defendants' objections are baseless and unsupported by due diligence. Therefore, Plaintiffs do not see any other option than asking this Court to mediate and facilitate an efficient, reasonable solution.

CONCLUSION

Plaintiffs have propounded relevant and proportional discovery requests, including the discovery requests described above. This Court should reject Defendants' continued delay in producing this discoverable information, especially where Defendants have not provided any

[6] Defendants ignore Plaintiffs' offer in footnote 12 to limit the records received for each student to IEPs, 504 Plans, discipline records, Edgenuity records, and administrative records only. Doc. 29-1 at 15.

specific assessment to substantiate their objections and noncompliance with Plaintiffs' discovery requests, other than general allegations that the volume of documents requested is burdensome. Accordingly, this Court should grant Plaintiffs' motion to compel discovery.

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Respectfully submitted,

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