

IN THE CIRCUIT COURT OF SUMMIT COUNTY

JAMES S.	:	CASE NO.
	:	JUDGE
	:	
	:	
Plaintiff	:	
	:	
vs.	:	
	:	
STOW-MUNROE FALLS HIGH	:	
SCHOOL, <u>et al.</u>	:	
	:	
Defendants	:	

PLAINTIFF’S MEMORANDUM IN RESPONSE TO DEFENDANT STOW-MONROE FALLS BOARD OF EDUCATION’S REPLY TO PLAINTIFF’S MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS

Plaintiff, James S. (“Chip S.” or “Chip”), through undersigned counsel, hereby responds to the Reply to Plaintiff’s Motion to Compel filed by Stow-Monroe Falls Board of Education (“Reply”):

The Stow-Monroe Falls Board of Education (the “Board”) argues that Ohio and Federal law “strictly limits the disclosure of personally identifiable information about pupils in public schools.” Reply, p.3. However, the Board admits that both of these statutes provide that “student records may be produced in response to a court order” after the school makes “a reasonable effort to notify the parent so that the parent has the opportunity to seek a protective order from the court.”¹ Id. at p.4.

I. The Student Defendants Were Notified of the Document Production Requests and the

¹ Section 1232g(d) states that “whenever a student has obtained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.” Ohio law has a similar provision. See O.R.C. § 3319.321(B).

Motion to Compel; Their Failure to Respond Constitutes a Waiver of Their Right to Contest the Motion to Compel

The student defendants received carbon copies of the Document Production Requests (Exhibit B) and the Motion to Compel (Exhibit C) sent by plaintiff to the Board. Further, the Board twice notified the student defendants of plaintiff's Document Production Requests. See Exhibit D. The student defendants have not filed motions for protective orders with this Court; nor have they filed objections to plaintiff's Motion to Compel. Such objection would have been due ___ days after the motion was filed, on _____. See Ohio Rule of Civ. Pro. #.

The student defendants have no reasonable or lawful reason for preventing disclosure of their records. Indeed, they have not even weighed in on this dispute by joining the Board in seeking protection of their records. Given this posture, it is clear that there is no real privacy issue preventing production of the records, and the student defendants have waived any objections they might have had.

II. The Board Could Not Be Held Liable for Releasing the Student Defendants' Records in Compliance With a Court Order

The Board also wrongly suggests that it could be exposed to liability if it releases the records of the student defendants. First, O.R.C. § 3319.321 applies only to students currently attending the school. See Phillips v. Village of Carey, 2000 WL 1061234 (Oh. App. 2000). Since most, if not all, of the student defendants no longer attend the high school, there is no possibility that the Board will be liable under O.R.C. § 3319.321 for releasing their records. Second, under the Federal rule, Federal funds will be withheld only where the school "has a policy or practice of releasing, or providing access to," student records. See 20 U.S.C. § 1232g(b)(2). Disclosing records in this circumstance does not establish a regular practice necessary to expose the school to liability. Thus, there is no danger of liability under the Federal statute.

Moreover, both the Ohio and Federal laws allow disclosure pursuant to a subpoena or order issued by this Court. If the Court issues an order compelling production of the requested documents and the Board notifies the student defendant (which they have already done), there is no possibility that the Board will be held liable. See O.R.C. § 3319.321(C); 20 U.S.C. § 1232g(b)(2)(B).

Finally, none of the student defendants have even filed pleadings suggesting that they intend to hold the school liable if it produces the records pursuant to plaintiff's discovery request or an order issued by this Court. For all these reasons, the Board's argument that it will suffer liability if the records are released is without merit.

III. The Records Are Needed to Determining the Veracity of the Allegations and Defenses in This Case

The Court should order the Board to produce the requested documents because they contain the factual record established during investigative hearings held by the high school. At these hearings, Chip S.'s allegations were openly addressed and, most likely, the defendants disclosed important facts about how and why he was injured. These records are a principal contemporaneous source of information about the alleged hazing. These documents are also necessary to test the veracity of the *defenses raised by the student defendants themselves*. For example, student defendants Donald Dew, William Foster, Scott Foster, and Bent Ardo assert that they have no knowledge of important facts alleged in the Complaint. No doubt, the testimony they provided at the investigative hearings will help to confirm or refute the defenses of the student defendants.

The documents are also needed to determine the further course of discovery, including depositions. Since the Court can craft its order to protect the confidential information contained in the records, there is no danger that the information would be used for an improper purpose.

For the reasons discussed above, and in the Motion to Compel, an order compelling production of the requested records is justified in this case. Accordingly, Chip S. respectfully requests that this Court grant his Motion to Compel, and order the Board to produce the requested records.

Respectfully Submitted,

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Plaintiff's Memorandum in Response to Defendant Stow-Monroe Falls Board of Education's Reply to Plaintiff's Motion to Compel the Production of Documents has been served this ____ day of February, 2001, via first-class United States Mail, postage prepaid, upon:

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