

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN FRESHWATER, <i>et al.</i> ,)	CASE NO. 2:09 CV 464
)	
Plaintiffs,)	JUDGE FROST
)	MAGISTRATE JUDGE KING
v.)	
)	
MOUNT VERNON CITY)	<u>RULE 26(f) REPORT OF THE PARTIES</u>
SCHOOL DISTRICT BOARD OF)	
EDUCATION, <i>et al.</i> ,)	
)	
Defendants.)	

1. Pursuant to Federal Rule of Civil Procedure 26(f), a meeting was held by telephone conference on August 21, 2009 and was attended by the following:

R. Kelly Hamilton, Attorney for Plaintiffs

Sarah Moore, Attorney for Defendants Mount Vernon City School District Board of Education, Stephen Short and William White

Nicole M. Donovan, Attorney for Defendant Lynda Weston

Anthony Holman, Attorney for Defendant Lynda Weston

Julie C. Martin & Kate Davis, Attorney for Defendant David Millstone

Larry Craig Greathouse, Attorney for Defendant H.R. On Call, Thomas Herlevi and Julia Herlevi

2. The parties do not unanimously consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

3. The parties will exchange initial disclosures within 30 days following the Court's determination of all motions to dismiss, motions for sanctions and fees, and its order in regard to

certain of Defendants' obligations under the Family Education Rights and Privacy Act ("FERPA") 20 U.S.C. §1232g, as well as Ohio Revised Code §3319.321 related to student information and privacy issues, whichever is later.

4. Jurisdiction and Venue: There are no contested issues relating to subject matter jurisdiction, personal jurisdiction, or venue.

5. The parties recommend a cut-off date of February 19, 2010 for filing any motion to amend the pleadings and/or to add additional parties. If Plaintiffs amend the Complaint on or before that date, Defendants may file an Amended Answer thereafter in accordance with the Federal Rules of Civil Procedure.

6. Recommended discovery plan:

a. The parties will exchange written discovery and/or depositions with respect to all claims of liability and damages and all defenses.

b. The parties do not anticipate needing any changes in the limitations on discovery under the Federal Rules of Civil Procedure and Local Rules. To the extent changes are necessary, the parties agree to confer and attempt to reach an agreement as to such changes.

c. N/A

d. The parties anticipate certain claims of privilege or of protection as trial preparation materials based on Defendant David Millstone having served as legal counsel to Defendant Mount Vernon City School District Board of Education during the time period covered by Plaintiffs' claims.

e. Defendants' seek deferral of discovery until the Court rules upon all motions to dismiss, motions for sanctions and fees, and the Court has determined obligations in regard to student privacy and information. (See 3, above).

f. The parties do not recommend conducting discovery in phases, although Defendants' believe the issues discussed in 3, above, must be addressed prior to discovery commencing.

g. Plaintiffs anticipate retaining expert witness(es) with respect to damages issues. Defendants reserve the right to disclose rebuttal expert witnesses. To the extent either party subsequently determines that experts or rebuttal experts are necessary, they reserve the right to identify experts in accordance with the schedule below.

i. Each party will provide the other party with the name, address, curriculum vitae and a written summary of the opinion of each expert witness pursuant to Federal Rule of Civil Procedure 26(a)(2) on or before July 9, 2010.

ii. To the extent rebuttal expert designations are deemed necessary, the parties shall designate such experts on or before August 31, 2010.

h. Recommended discovery cut-off date: September 30, 2010.

7. Recommended dispositive motion date: October 29, 2010.

8. Settlement.

a. No Settlement Demand has been made to date.

- b. Plaintiffs anticipate that a settlement demand can be made upon all Defendants within thirty (30) days after initial disclosures are made. Defendants anticipate that a response can be made within fourteen (14) days after receiving a settlement demand from Plaintiffs.

9. The earliest Settlement Week referral reasonably likely to be productive is the June 2010 Settlement Week.

10. Other matters for the attention of the Court:

- a) Defendant Mount Vernon City School District Board of Education submits that FERPA prohibits Defendant Board, its administrators, and employees from releasing personally identifiable student information except under limited circumstances. As discovery sought in this matter is likely to include information protected by FERPA, the Parties seek the Court's guidance on how to proceed with respect to this issue. FERPA permits Defendants to disclose student information in order to comply with a judicial order or lawfully issued subpoena, only after making reasonable efforts to notify the parents of those students whose records are the subject of the judicial order, in advance of compliance, so that those parents may seek protective action. 34 C.F.R. §99.31(a)(9)(i). Also, Ohio law requires written parental consent before a school district can release personally identifiable student information. O.C.R. §3319.321(B). The Court's guidance is necessary for the parties to identify appropriate discovery procedures that will not run afoul of federal and state statutory requirements.
- b) The parties seek the Court's guidance on addressing certain claims of privilege or of protection as trial preparation materials based on Defendant David Millstone having served as legal counsel to Defendant Mount Vernon City School District Board of Education during the time period covered by Plaintiffs' claims.

Jointly submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of September, 2009, a copy of the foregoing *Rule 26(f) Report of the Parties* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Sarah J. Moore

*Attorneys for Defendants Mount Vernon
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