

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

JOHN DOE, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	Case No. 1:16-CV-373 (lead)
v.)	
)	Judge Travis R. McDonough
HAMILTON COUNTY BOARD OF EDUCATION, <i>et al.</i> ,)	
)	Magistrate Judge Christopher H. Steger
)	
<i>Defendants.</i>)	
RICHARD ROE, SR., <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	Case No. 1:16-CV-497
v.)	
)	Judge Travis R. McDonough
HAMILTON COUNTY DEPARTMENT OF EDUCATION, <i>et al.</i> ,)	
)	Magistrate Judge Christopher H. Steger
)	
<i>Defendants.</i>)	

ORDER

On January 24, 2018, the Court entered a Memorandum Order [Doc. 144] granting Plaintiffs' Joint Motion to Compel Documents [Doc. 134]. Specifically, the undersigned ordered Defendant Hamilton County Board of Education (the "Board") "to provide to Plaintiffs' counsel copies of all documents listed in the [Board's] Privilege Log, including draft reports and communications to or from Attorney [Courtney] Bullard, which relate to her investigation and preparation of the Bullard Report." In compliance with that Order, the Board's counsel provided to Plaintiff's counsel hundreds of Bates-stamped documents corresponding to the entries in the Privilege Log; however, Plaintiffs' counsel represented to the Court that they had withheld from production the following documents identified in the Privilege Log:

1. Date: 3/21/2016; Documents Bates-stamped 272-280
2. Date: 3/24/2016; Documents Bates-stamped 106-108
3. Date: 3/24/2016; Documents Bates-stamped 038-046 and 064-066
4. Date: 5/2/2016; Documents Bates-stamped 270-271
5. Date: 6/1/2016; Documents Bates-stamped 326-331

Based on the Court's previous instruction to counsel in the Memorandum Order [Doc. 144], the Board's attorneys' sole basis for refusing to produce these documents to Plaintiffs' counsel can only be that the referenced documents do not constitute "draft reports and communications to or from Attorney Bullard, which relate to her investigation and preparation of the Bullard Report." The Board's attorneys submitted the withheld documents to the Court for an *in camera* inspection, consistent with the guidance provided by the Court in its Order.

Following the Court's initial review of the documents withheld from production, the undersigned had to point out to the Board's counsel that some of the documents they had refused to produce were exact duplicates of documents which had, in fact, already been produced by the Board's counsel to Plaintiffs' counsel albeit under different Bates-stamp numbers. As a result, the Board's counsel withdrew their request that the Court characterize as privileged and non-discoverable the documents described in items 2 and 3 immediately above (documents Bates-stamped 106-108; 038-046; 064-066).

With that request withdrawn, the Board's counsel nevertheless persevered in their request that the Court not require them to produce the remaining items in the Privilege Log. Items 1 and 4 in the above list encompass collectively documents Bates-stamped 270-280. This group of documents is composed of emails between the Board's attorneys, Scott Bennett and Courtney Bullard, and three persons associated with the Board, including primarily James Jarvis. In a nutshell, these ten pages of emails primarily reflect an effort on the part of Attorney Bennett to persuade Mr. Jarvis to be more proactive about taking steps to assist the students and families

affected by the assaults that took place during the trip to Gatlinburg. Attorney Bullard was copied on or otherwise received each of these emails. Attorney Bullard specifically addresses this topic at page 14 of Bullard Report, wherein she states:

By in [sic] large, though, there was no concerted, organized effort to reach out to families. I relayed this information to Mr. Bennett, who attempted to convince Mr. Jarvis of the necessity of speaking to these families. I also spoke to Mr. Jarvis and attempted to explain the need. Mr. Jarvis failed to understand the need to reach out to these families because "there was only one victim that he was aware of." When I explained that many students have transferred, are in need of counseling services and so on, Mr. Jarvis continued to be unable to understand why parents should be contacted unless he had news for them regarding the upcoming basketball season. Ultimately efforts with Mr. Jarvis were exhausted, and the Title IX Coordinator began reaching out to families.

By way of reminder, in its earlier Order [Doc. 144] concerning the items in the Privilege Log, the Court held that the Board's counsel had, to a significant extent, waived attorney-client privilege and the protection of the work product doctrine with the release of the Bullard Report. For that reason and others more fully explained in the Court's Order, the Board's attorneys were specifically directed to produce to Plaintiff's counsel all documents previously identified in the Privilege Log which constituted "draft reports and communications to or from Attorney [Courtney] Bullard, which relate to her investigation and preparation of the Bullard Report." The emails in question (Bates-stamped 270-280) unquestionably relate to the opinion expressed by Ms. Bullard on page 14 of her report that Mr. Jarvis was not sufficiently proactive. It is difficult to imagine how the Board's counsel could have reviewed these emails and reached the conclusion that these emails did not constitute "communications to or from Attorney Bullard, which relate to her investigation and preparation of the Bullard Report."

The final tranche of documents (item 5 in the above list), Bates-stamped 326-331, is a list of cafeteria workers and teachers sent by the Hamilton County Department of Education to Courtney Bullard while she was performing her investigation. The Board's attorneys do not

assert that this information is not discoverable. Indeed, there is no question that the information is discoverable. Instead, the Board's attorneys raise a concern that the list contains personally identifiable information and they seek to avoid the disclosure of such information to the public. On September 22, 2017, the Court entered a Protective Order [Doc. 108] which was agreed to and submitted for approval by the parties. The Protective Order allows a party to designate information as "Confidential" to protect its disclosure to third parties. The Board's counsel should have, and are now directed to, produce the documents Bates-stamped 326-331 under the appropriate provision in the Protective Order [Doc. 108].

To summarize, all of the documents submitted to the Court by the Board's counsel for *in camera* review should have been produced to Plaintiffs' counsel in response to the Court's previous Memorandum Order [Doc. 144]. The Board's attorneys wasted the Court's time by requesting an *in camera* inspection of a combination of documents that had already been produced to Plaintiffs' counsel and documents that were clearly discoverable pursuant to the guidance already provided to the Board's counsel by the Court.

For the foregoing reasons, it is hereby **ORDERED** that:

1. By **Friday, February 2, 2018**, the Board shall provide to Plaintiffs' counsel the documents Bates-stamped 272-280; 106-108; 038-046; 064-066; 270-271; and 326-331.
2. Plaintiff's Second Joint Motion to Compel Documents [Doc. 145] is **DISMISSED AS MOOT**. Anticipating that the Board would withhold some documents from discovery, the Court preemptively established a procedure for *in camera* review. Plaintiffs' Motion to Compel was unnecessary given the fact that a review of, and decision with respect to the remaining documents was already before the Court.

ENTER.

/s/ Christopher H. Steger
UNITED STATES MAGISTRATE JUDGE