

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

DAVID J. BLOCH,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 2:23-CV-00209
)	
HEATHER BOUCHEY, in her official capacity)	
as Interim Secretary of the Vermont Agency of)	
Education,)	
)	
JAY NICHOLS, in his official capacity as)	
Executive Director of the Vermont Principals’)	
Association,)	
)	
WINDSOR CENTRAL SUPERVISORY)	
UNION BOARD, and)	
)	
SHERRY SOUSA, in her official and individual)	
capacities as Superintendent of Windsor Central)	
Supervisory Union,)	
)	
)	
Defendants.)	

DEFENDANT HEATHER BOUCHEY’S STIPULATED MOTION TO SEAL

Defendant Heather Bouchey hereby moves with the consent of all parties for an order (1) sealing the transcript of the hearing on September 25, 2023 and any exhibits filed that mention the names of non-party students and (2) for a publicly available version of the transcript and exhibits to redact or use initials for non-party students. In support, Secretary Bouchey submits the following memorandum of law.

MEMORANDUM OF LAW

This motion to seal is required because the names of and personal information regarding several non-party students, presumed to be minors, were mentioned during the preliminary injunction hearing on September 25, 2023 in this matter.

Motions to seal are subject to a three-step analysis that considers: (1) “whether the documents are ‘judicial documents,’ to which the public has a presumptive right of access,” (2) “if the documents are . . . judicial documents” “the weight of th[e] presumption,” (3) and “competing considerations” balancing against the presumption. *Ciccotelli v. Deutsche Bank AG*, No. 2:15-cv-105, 2016 WL 2588169, *8 (D.Vt. May 4, 2016) (quoting *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006)).

In this matter, the State requests that the September 25, 2023 hearing transcript and any exhibits mentioning the identities of non-party students be sealed, and that the transcript and exhibits be made publicly available with the identifying information of non-party students replaced with initials or redacted. The public has a presumptive right of access to these records as they are judicial records, but that presumptive right must be balanced against any competing considerations.

In this matter, the privacy interests of several non-party students are a strong competing consideration that overcomes the presumption of access. Courts have long considered the privacy interests of non-parties and redacted judicial documents to protect those privacy interests. *See, e.g., United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir., 1995) (The privacy interests of innocent third parties “are a venerable common law exception to the presumption of access.”); *Application of Newsday, Inc.*, 895 F.2d 74, 79-80 (2d Cir 1990); *Sec. and Exch. Comm’n v. Ripple Labs, Inc.*, 20 Civ. 10832, 2023 WL 2477552, *3 (S.D.N.Y. May 16, 2023).

Courts first consider the “degree to which the subject matter is traditionally considered private rather than public.” *Amodeo*, 71 F.3d at 1050. Personally identifiable information regarding minors or students is private in many legal contexts. *See, e.g.*, Fed. R. Civ. P. 5.2(a) (filings containing the name of an individual known to be a minor may include only minor’s initials); 20 U.S.C. § 1232g(b)(1) (Family Educational Rights Privacy Act (FERPA) protects against the release of educational records, including the personally identifiable information of students, without parental consent); 33 V.S.A. § 51171(d) (Court records related to juvenile proceedings before the Family Division “shall not be open to public inspection nor their contents disclosed to the public by any person.”). In addition, here, the gender identities of some of the non-party students have been discussed in testimony and revealed in exhibits before this Court. Gender identity is a personal matter and one which, if made public, could subject those students to unnecessary and inappropriate scrutiny and abuse.

Entering the requested order would not render the transcript and/or exhibits unintelligible. The redactions and/or initials would be minimal and would cover only the non-party students’ names. This order would not interfere with the public’s understanding of the testimony and exhibits before the Court.

As required by Local Rule 7(a)(7), counsel for Secretary Bouchey made a good faith attempt to obtain all Parties' agreement to this motion. All parties consented to this relief.

DATED at Montpelier, Vermont, this 27th day of September 2023.

STATE OF VERMONT

CHARITY R. CLARK
ATTORNEY GENERAL

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