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Of Counsel  
ROSEMARIE CIPPARULO  
ADAM M. GORDON

Counsel  
DAVID A. MINTZ\*

\* ADMITTED TO PRACTICE ONLY IN NEW YORK  
† ADMITTED TO PRACTICE ONLY IN PENNSYLVANIA



February 8, 2017

Via Overnight Mail

Civil Clerk's Office  
Superior Court of New Jersey  
Law Division, Mercer County  
175 South Broad Street - 1<sup>st</sup> floor  
PO Box 8068  
Trenton, NJ 08650-0068

Re: H.G., et al. v. Harrington, et al.  
Docket No. MER-L-2170-16  
Motion to Stay Discovery and in the Alternative Motion  
for a Protective Order

Dear Sir/Madam:

This firm represents the AFT Intervenor-Defendants in the above captioned matter. Enclosed for filing please find the following:

1. An original and two copies of a letter brief to the Honorable Mary C. Jacobson, A.J.S.C., in response to Plaintiffs' Motion to Compel Discovery and in Support of Motions to Stay Discovery and in the alternative for a Protective Order;
2. An original and two copies of a Notice of Motion on Short Notice to Stay Discovery and a Proposed Order; and
3. An original and two copies of a Notice of Motion on Short Notice for a Protective Order and a Proposed Order.

Also enclosed is a Certificate of Service. Please charge any filing fees to our account number 140552.

Very truly yours,



Steven P. Weissman

- c. Maximilian Cadmus (via email only)
- William Trousdale (via email only)
- Beth N. Shore (via email only)
- Charlotte Hitchcock (via email only)
- Flavio L. Komuves (via email only)
- Natalie Watson (via email only)

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February 8, 2017

## Via Overnight Mail

Hon. Mary C. Jacobson, A.J.S.C.  
New Criminal Courthouse  
400 South Warren Street, 4<sup>th</sup> Floor  
Trenton, NJ 08650

**Re: H.G., et al. v. Harrington, et al.  
Docket No. MER-L-2170-16  
Motion to Stay Discovery and in the Alternative  
Motion for a Protective Order**

Dear Judge Jacobson:

Please accept this letter on behalf of the AFT Intervenor-Defendants (AFT) in response to Plaintiffs' Motion to Compel Discovery from the Newark Public School District (District). As Your Honor is aware, pursuant to a Case Management Order dated February 1, 2017, Motions to Dismiss are due to be filed by the AFT and NJEA Intervenors on or before February 27, 2017. It is the position of the AFT that discovery should be stayed pending the disposition of Motions to Dismiss. Alternatively, the identity of individual teachers and information relating to confidential personnel matters should be subject to a

Protective Order to protect the privacy and confidentiality of teachers. Accordingly, an original and two copies of a Motion to Stay Discovery and alternatively, a Motion for a Protective Order have been filed with the Clerk of the Superior Court, Mercer County. Both Motions are filed on Short Notice to comply with the February 17, 2017, return date set by the February 1, 2017 Case Management Order. Please accept this letter brief in support of both motions. In addition, proposed Orders are enclosed for the Court's consideration.

Plaintiffs seek information about every teacher in the Newark Public School District with respect to absences, evaluation ratings, observations, the placement of "Educators without Placement Sites" pool and layoffs. Similarly comprehensive information is sought for every student in the District, including, sealed and raw State test scores, achievement levels, standardized scores, special education classifications, gifted/talented classifications, absences and suspensions.

**A. The Court Should Stay Discovery.**

**1. A Stay is in the Interests of Economy and Efficiency.**

New Jersey Court Rule 4:10-3 provides that the Court may limit discovery "for good cause shown." As the

Comments to R. 4:10-3 note, "this rule follows the text of Fed. R. Civ. P. 26(c)." Hammock v. Hoffman-LaRoche, 142 N.J. 356, 369 (1995) (noting that R. 4:10-3 "follows the text" of Fed. R. Civ. P. 26(c) and explaining that state courts may look to the applicable federal decisions and rules when interpreting the State's discovery rules). Pursuant to Fed. R. Civ. P. 26 (c), a court may stay discovery upon a showing of good cause. Actelion Pharma. Ltd. V. Apotex, Inc., 2013 WL 5524078, \*2 (D. New Jersey, Sept. 6, 2013).

The federal courts recognize that "in certain circumstances it may be appropriate to stay discovery while evaluating a motion to dismiss where" resolution of the motion would render discovery "futile." Mann v. Brenner, 375 F. App'x 232, 239 (3d Cir. 2010). Indeed, "[a] stay of discovery pending the determination of a dispositive motion is an eminently logical means to prevent wasting the time and effort of all concerned, and to make the most efficient use of judicial resources." Chavous v. Dist. Of Columbia Fin. Responsibility & Mgmt. Assistance Auth., 201 F.R.D. 1, 3 (D.D.C. 2001). While a pending motion to dismiss does not automatically stay discovery, a stay is appropriate when the motion may result in a narrowing or outright dismissal

of the action. Weisman v. Mediq, Inc., 1995 WL 273678, \*2 (E.D. Pa., May 3, 1995).

Here, the AFT and NJEA Intervenors will be filing motions to dismiss the complaint in its entirety, which if granted will obviate the need for any discovery.

**2. A balancing of the interests and potential hardships to the parties weigh in favor of a stay.**

Courts will weigh a number of factors when determining whether to grant a stay of discovery:

- 1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party;
- 2) whether denial of the stay would create a clear case of hardship or inequity for the moving party;
- 3) whether a stay would simplify the issues and the trial of the case;
- and 4) whether discovery is complete or a trial date as been set.

Acetelion, at \*7-8 (internal quotations and citations omitted). The first two factors essentially require the court to balance the prejudice to the plaintiffs and the hardship to the party seeking the stay. Here, ongoing discovery undoubtedly will be burdensome to all parties involved. Plaintiffs, however, will not be prejudiced if discovery is stayed while the motions to dismiss are decided. Moreover, discovery may be unnecessary or severely limited depending upon the outcome of the motions to dismiss. A balancing of the hardships weighs in favor of a stay.

Likewise, with respect to the third factor, the motions to dismiss may likely obviate the need for discovery or limit the need for discovery depending upon the claims that may survive the motion. Spencer Trask Software & Info. Servs., LLC v. RPost Int'l Ltd. 206 F.R.D. 367, 368 (S.D.N.Y. 2002) ("A stay pending determination of a dispositive motion that potentially eliminates the entire action will neither substantially nor unduly delay the action, should it continue."). Finally, the fourth factor also weighs in favor of a stay, as discovery has just begun and no trial date has been set.

**B. In the Alternative if Discovery is not Stayed, a Protective Order Should Issue**

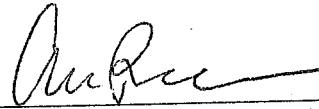
In their request for the production of documents Plaintiffs define the term "Teacher ID" as not including "any personally identifiable information that would result in the discovery of a teacher's identity." (Emphasis added). Further, in their letter brief in support of the Motion to Compel Discovery, Plaintiffs indicate that they have no objection to entering into a protective order and invited the School District to provide a draft order. However, to date, the District has not provided a draft of an order.

AFT's Motion for a Protective Order is limited to protecting from disclosure the identity of individual teachers and to protecting the privacy and confidentiality of sensitive personnel records, such as teacher evaluation ratings and observations.

**Conclusion**

For the reasons set forth above, discovery should be stayed pending this Court's disposition of motions to dismiss to be filed by the AFT and NJEA on or before February 27, 2017. Alternatively, discovery should be conducted pursuant to a Protective Order.

Respectfully submitted,



Annmarie Pinarski, Esq.

c: Maximilian Cadmus (via email only)  
William Trousdale (via email only)  
Beth N. Shore (via email only)  
Charlotte Hitchcock (via email only)  
Flavio L. Komuves (via email only)  
Natalie Watson (via email only)



Steven P. Weissman, Esq.  
Annmarie Pinarski, Esq.  
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One Executive Drive, Suite 200  
Somerset, NJ 08844  
Attorneys for Intervenor-Defendant AFT

H.G., a minor, through her guardian TANISHA GARNER; F.G., a minor, through her guardian TANISHA GARNER; E.P., a minor, through his guardian NOEMI VAZQUEZ; M.P., a minor, through her guardian NOEMI VAZQUEZ; F.D., a minor, through her guardian NOEMI VAZQUEZ; W.H., a minor, through his guardian FAREEAH HARRIS; N.H., a minor, through her guardian FAREEAH HARRIS; J.H., a minor, through his guardian SHONDA ALLEN; O.J., a minor, through his guardian IRIS SMITH; M.R., a minor, through her guardian WENDY SOTO; D.S., a minor, through his guardian WENDY SOTO;

Plaintiffs,

v.

KIMBERLY HARRINGTON, in her official capacity as Acting Commissioner of the New Jersey Department of Education; NEW JERSEY STATE BOARD OF EDUCATION; nominal defendant NEWARK PUBLIC SCHOOL DISTRICT; and nominal defendant CHRISTOPHER CERF, in his official capacity as Superintendent of the Newark School District;

Defendants,

SUPERIOR COURT OF THE STATE OF  
NEW JERSEY  
LAW DIVISION: MERCER COUNTY

DOCKET NO. MER-L-2170-16

CIVIL ACTION  
NOTICE OF MOTION  
ON SHORT NOTICE  
TO STAY  
DISCOVERY

AMERICAN FEDERATION OF  
TEACHERS, AFL-CIO; NEW JERSEY  
STATE FEDERATION OF TEACHERS;  
NEWARK TEACHERS UNION; NEW  
JERSEY EDUCATION ASSOCIATION;

Defendant-Intervenors.

To: Clerk, Superior Court of New Jersey  
Civil Courthouse  
175 S. Broad Street  
Trenton, New Jersey 08650-0068

William H. Trousdale, Esq.  
Wachenfeld & Barry LLP  
3 Becker Farm Road  
Suite 404  
Roseland, New Jersey 07068  
Attorneys for Plaintiffs

Christopher S. Porrino  
Attorney General of New Jersey  
Hughes Justice Complex  
P.O. Box 112  
Trenton, New Jersey 08625-0112  
Attorneys for Defendants Harrington and New Jersey State  
Board of Education

Charlotte Hitchcock, Chief General Counsel  
Newark Public Schools  
2 Cedar Street, Rm 1003  
Newark, New Jersey 07102  
Attorney for Defendants Cerf and Newark Public Schools

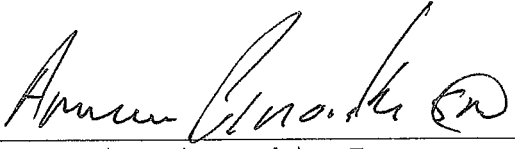
Flavio L. Komuves, Esq.  
Zazzali, Fagella, Nowak, Kleinbaum & Friedman  
One Riverfront Plaza, Suite 320  
Newark, New Jersey 07102

PLEASE TAKE NOTICE that on February 17, 2016, or as soon  
thereafter as Intervenor-Defendant AFT may be heard, Defendant-  
Intervenor AFT will apply to the Superior Court, Law Division,

Mercer County, for an Order to Stay Discovery in the above-captioned matter. Defendant-Intervenor requests oral argument.

Respectfully submitted,

**Weissman & Mintz LLC**

By:   
Anmarie Pinarski, Esq.

Dated: February 8, 2017

Steven P. Weissman, Esq.  
Annmarie Pinarski, Esq.  
Weissman & Mintz, LLC  
One Executive Drive, Suite 200  
Somerset, NJ 08844  
Attorneys for Intervenor-Defendant AFT

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Plaintiffs,

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Defendants,

SUPERIOR COURT OF THE STATE OF  
NEW JERSEY  
LAW DIVISION: MERCER COUNTY

DOCKET NO. MER-L-2170-16

CIVIL ACTION  
ORDER GRANTING A  
STAY OF DISCOVERY

AMERICAN FEDERATION OF  
TEACHERS, AFL-CIO; NEW JERSEY  
STATE FEDERATION OF TEACHERS;  
NEWARK TEACHERS UNION; NEW  
JERSEY EDUCATION ASSOCIATION,

Defendant-Interveners.

THIS MATTER having been opened to the Court by Annmarie Pinarski, Esq. and Steven P. Weissman, Esq., Weissman & Mintz, LLC, attorneys for Defendant-Intervenor AFT; and

THE COURT having considered the written submissions and the oral arguments of counsel for all parties; and

THE COURT having found that a stay of discovery is warranted and for other good cause shown;

IT IS on this \_\_\_\_ day of \_\_\_\_\_, 2017

ORDERED that the Motion of Defendant-Intervenor AFT for Stay of Discovery is GRANTED; and

---

Hon. Mary C. Jacobson, A.J.S.C.

{ } opposed

{ } unopposed

Steven P. Weissman, Esq.  
Annmarie Pinarski, Esq.  
Weissman & Mintz, LLC  
One Executive Drive, Suite 200  
Somerset, NJ 08844  
Attorneys for Intervenor-Defendant AFT

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LAW DIVISION: MERCER COUNTY

DOCKET NO. MER-L-2170-16

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NOTICE OF MOTION  
ON SHORT NOTICE  
FOR A PROTECTIVE  
ORDER

AMERICAN FEDERATION OF  
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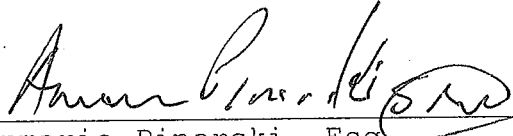
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PLEASE TAKE NOTICE that on February 17, 2016, or as soon  
thereafter as Intervenor-Defendant AFT may be heard, Defendant-  
Intervenor AFT will apply to the Superior Court, Law Division,

Mercer County, for a Protective Order in the above-captioned matter. Defendant-Intervenor requests oral argument.

Respectfully submitted,

**Weissman & Mintz LLC**

By:   
Anmarie Pinarski, Esq.

Dated: February 8, 2017



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Annmarie Pinarski, Esq.  
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Defendants,

SUPERIOR COURT OF THE STATE OF  
NEW JERSEY  
LAW DIVISION: MERCER COUNTY

DOCKET NO. MER-L-2170-16

CIVIL ACTION  
PROTECTIVE ORDER

AMERICAN FEDERATION OF  
TEACHERS, AFL-CIO; NEW JERSEY  
STATE FEDERATION OF TEACHERS;  
NEWARK TEACHERS UNION; NEW  
JERSEY EDUCATION ASSOCIATION;

Defendant-Interveners.

THIS MATTER having been opened to the Court by Annmarie Pinarski, Esq. and Steven P. Weissman, Esq., Weissman & Mintz, LLC, attorneys for Defendant-Intervenor AFT; and

THE COURT having considered the written submissions and the oral arguments of counsel for all parties; and

THE COURT having found that the issuance of a Protective Order is warranted and for other good cause shown;

IT IS on this \_\_\_\_ day of \_\_\_\_\_, 2017

ORDERED that any person subject to this Order, including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order shall adhere to the following terms:

1. No information shall be disclosed that could (a) result in the disclosure of the identity of a teacher or any other person employed by the Newark Public School District

(District), or (b) permit confidential personnel information (the phrase "confidential personnel information," includes, but is not limited to, evaluations and/or performance ratings, observations, placement in the "Educators without Placement Sites" poll or absences) to be identified with a specific teacher.

2. In disclosing information pursuant to a discovery request, all parties to this litigation shall use methodologies that protect the identities of individual teachers and other persons employed by the District and that protect from disclosure confidential personnel information about teachers or other persons employed by the District.

3. Any "Discovery Material" (i.e., information of any kind provided in the course of discovery by any party to this litigation) that in any manner relates to confidential personnel information about any teacher or other person employed by the District shall be designated as "Confidential." The person producing any given Discovery Material shall designate as Confidential such portions of such material as consists of: (a) any information pertaining to the identity of individual teachers or other persons employed by the District; (b) confidential personnel information about individual teachers or any other person employed by the District, including, but not

limited to, evaluations and/or performance ratings, observations, placement in the "Educators without Placement Sites" poll or absences; or (c) any other category of information deemed confidential by the Court.

4. Any person subject to this Order who receives from any other person any "Discovery Material" that is designated as "Confidential" pursuant to the terms of this Order shall not disclose such Confidential Discovery Material to anyone else except as expressly permitted under the terms of this Order.

5. With respect to the Confidential portion of any Discovery Material other than deposition transcripts and exhibits, the producing person or that person's counsel shall designate such portion as "Confidential" by stamping or otherwise clearly marking as "Confidential" the protected portion in a manner that will not interfere with legibility or audibility. With respect to deposition transcripts and exhibits, a producing person or that person's counsel may indicate on the record that a question calls for Confidential information, in which case the transcript of the designated testimony shall be bound in a separate volume and marked "Confidential Information Governed by Protective Order" by the reporter.

6. If at any time prior to the trial of this action, a producing person realizes that some portion[s] of Discovery Material that that person previously produced without limitation should be designated as Confidential, he/she may so designate by so apprising all parties in writing, and such designated portion[s] of the Discovery Material will thereafter be treated as Confidential under the terms of this Order.

7. No person subject to this Order other than the producing person shall disclose any of the Discovery Material designated by the producing person as Confidential to any other person whomsoever, except to:

(a) the parties to this action;

(b) counsel retained specifically for this action, including any paralegal, clerical and other assistant employed by such counsel and assigned to this matter;

(c) any witness, who counsel for a party in good faith believes may be called to testify at trial or deposition in this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;

(d) any person retained by a party to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first

executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;

(e) stenographers engaged to transcribe depositions conducted in this action; and

(f) the Court and its support personnel.

8. Prior to any disclosure of any Confidential Discovery Material to any person referred to in subparagraphs 8(a) through 8(d) above, such person shall be provided by counsel with a copy of this Protective Order and shall sign a Non-Disclosure Agreement in the form annexed as an Exhibit hereto stating that that person has read this Order and agrees to be bound by its terms. Said counsel shall retain each signed Non-Disclosure Agreement, hold it in escrow, and produce it to opposing counsel either prior to such person being permitted to testify (at deposition or trial) or at the conclusion of the case, whichever comes first.

9. All Confidential Discovery Material filed with the Court, and all portions of pleadings, motions or other papers filed with the Court that disclose such Confidential Discovery Material, shall be filed under seal with the Clerk of the Court and kept under seal until further order of the Court. The parties will use their best efforts to minimize such sealing.

10. Any party who either objects to any designation of confidentiality, or who, by contrast, requests still further limits on disclosure (such as "attorneys' eyes only" in extraordinary circumstances), may at any time prior to the trial of this action serve upon counsel for the designating person a written notice stating with particularity the grounds of the objection or request. If agreement cannot be reached promptly, counsel for all affected persons will convene a joint telephone call with the Court to obtain a ruling.

11. Each person who has access to Discovery Material that has been designated as Confidential shall take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

12. If a disclosing party makes a claim of inadvertent disclosure, the receiving party shall, within five business days, return or destroy all copies of the Inadvertently Disclosed Information, and provide a certification of counsel that all such information has been returned or destroyed.

13. This Protective Order shall survive the termination of the litigation. Within 30 days of the final disposition of this action, all Discovery Material designated as "Confidential," and all copies thereof, shall be promptly returned to the producing person, or, upon permission of the producing person, destroyed.

14. This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

---

Hon. Mary C. Jacobson, A.J.S.C.

{ } opposed

{ } unopposed



NON-DISCLOSURE AGREEMENT

I, \_\_\_\_\_, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Discovery Material that have been designated as Confidential. I agree that I will not disclose such Confidential Discovery Material to anyone other than for purposes of this litigation and that at the conclusion of the litigation I will return all discovery information to the party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the Superior Court of New Jersey, Mercer County for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

\_\_\_\_\_  
Dated: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, Annmarie Pinarski, hereby certify that:

On February 8, 2017, an original and two copies of the following documents were sent via overnight delivery to the Clerk, Superior Court of New Jersey, Mercer County Courthouse, 175 S. Broad Street, Trenton, New Jersey 08650:

1. Letter brief in Response to Plaintiff's Motion to Compel Discovery and In Support of Motions to Stay Discovery and in the alternative for a Protective Order;
2. Notice of Motion on Short Notice to Stay Discovery and a Proposed Order; and
3. Notice of Motion on Short Notice for a Protective Order and Proposed Order.

On February 8, 2017 two copies of the above documents were sent via overnight delivery to the Honorable Mary C. Jacobson, A.J.S.C, at the Mercer County Criminal Courthouse, 400 S. Warren Street, Trenton, New Jersey 08650;

On February 8, 2017, two copies of the above documents were sent via regular mail and electronic copy to the following:

William H. Trousdale, Esq.  
Wachenfeld & Barry LLP  
3 Becker Farm Road


Suite 404  
Roseland, New Jersey 07068  
Attorneys for Plaintiffs

Christopher S. Porrino  
Attorney General of New Jersey  
Hughes Justice Complex  
P.O. Box 112  
Trenton, New Jersey 08625-0112  
Attorneys for Defendants Harrington and New Jersey  
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Charlotte Hitchcock, Chief General Counsel  
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2 Cedar Street, Rm 1003  
Newark, New Jersey 07102  
Attorney for Defendants Cerf and Newark Public Schools

Flavio L. Komuves, Esq.  
Zazzali, Fagella, Nowak, Kleinbaum & Friedman  
One Riverfront Plaza, Suite 320  
Newark, New Jersey 07102

I hereby certify that the foregoing statements made by  
me are true. I am aware that if any of the foregoing  
statements made by me are knowingly false I am subject to  
punishment.



Annmarie Pinarski, Esq.

Dated: February 8, 2017