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Please Reply to Newark

February 8, 2017

Via UPS Overnight
The Honorable Mary C. Jacobson, A.J.S.C.
Superior Court Judge
Mercer County Superior Court
Criminal Court House
400 South Warren Street, P.O. Box 8068
Trenton, NJ 08650-0068

Re: H.G., et al. v. Harrington, et al.
Docket No.: MER-L-2170-16

Dear Judge Jacobson:

This firm represents Defendant-Intervenor New Jersey Education Association ("NJEA") in the above-referenced matter. Please accept this letter brief in lieu of a more formal brief in opposition to the motion to compel discovery from Defendant Newark Public School District filed by Plaintiffs on January 30, 2017. It is the NJEA's position that the discovery request, extensive in scope and intrusive of student and teacher confidentiality protections, should be denied pending the disposition of the motions to dismiss that are about to be filed. There is no need for the Court, at this incipient stage in the case, to compel the parties to engage in, or for the

Court to oversee and referee, a massive discovery request requiring enormous efforts and resources, implicating substantial issues of student and teacher confidentiality, while the Court resolves at least two motions to dismiss.

The background of this motion is as follows. On or about November 30, 2016, Plaintiffs served a document request on the Newark Public School District. See Trousdale Certification, Exhibit B. The document request seeks a variety of highly sensitive and confidential data on both Newark students and Newark teachers. See e.g. Document Request Nos. 1, 3, and 4. It further seeks information about not just employees, but even applicants for employment in the Newark schools. See e.g. Document Request No. 9. Although Plaintiffs' motion papers refer to efforts to de-identify or otherwise protect individuals' data, there does not seem to be any definitive resolution of those confidentiality issues at this time. Aside from the confidentiality issues, however, the scope of the request is staggering, and potentially includes thousands of record sets for Newark employees and far more record sets for Newark students.

As the Court is aware, both the NJEA represented by this firm, and the American Federation of Teachers, AFL-CIO, et al., represented by Weissman and Mintz, intend to file motions to dismiss in this case in accordance with the Court's recent scheduling order. These motions will urge that this case should be dismissed in its entirety, against all defendants. That is to say, if granted, these motions will terminate the case as to all issues and to all parties.

Under these circumstances, Plaintiffs' motion to compel discovery should be denied.

The Third Circuit has recognized[1] that when a defendant has filed a motion to dismiss which, if granted, will fully resolve the case, that motion "should be resolved before discovery begins." Mann v. Brenner, 375 F. App'x 232, 239 (3d Cir. 2010) (quotation omitted). Indeed, where a defendant challenges a complaint as legally insufficient, as the defendant-intervenors here are doing, that defendant is generally entitled to have that motion resolved without "needless discovery and fact finding." Id.; see also Levey v. Brownstone Investment Group, LLC, 590 F. App'x 132, 137 (3d Cir. 2014) (same).

Thus, where a stay of discovery is sought for a case "in its initial stages" and/or where the fact that the discovery sought to be stayed is particularly intrusive or costly, the equities generally favor staying, rather than allowing, discovery. Actelion Pharmaceuticals Limited v. Apotex Limited, 2013 U.S. Dist. LEXIS 135524 at *21 (D.N.J. Sept. 6, 2013) (Donio, J.); see also Ever Win International Corp. v. Radio Shack Corp., 902 F. Supp. 2d 503, 507 (D. Del. 2012) (the fact that a litigation "is in its very early stages" is a factor supporting a stay of discovery); Kaavo, Inc. v. Cognizant Technology Solutions Corp., 2015 U.S. Dist. LEXIS 46334 (D. Del. April 9, 2015) (granting a stay of discovery while a motion to dismiss is pending); North American Communications Inc. v. Info Prints Solutions Company, LLC, 2011 U.S. Dist. LEXIS 118388 (W.D. Pa. July 13, 2011) (granting stay of discovery pending motion to dismiss where discovery was at a very early stage).

Here, if the Defendant-Intervenors' forthcoming motions to dismiss are granted, there will be no need for any party, including any of the parties who are public officials or public

[1] Due to "similarities between" the language and purpose of R. 4:6-2(e) and its federal analogue, Fed. R. Civ. P. 12(b), it is appropriate to consider federal jurisprudence in interpreting the meaning of that rule. See DEG, LLC v. Township of Fairfield, 198 N.J. 242, 266 (2009).

entities, to engage in costly and burdensome data collection to respond to discovery demands that are both extensive and intrusive. In an exercise of discretion, see R. 4:10-2, this Court should deny the Plaintiffs' motion to compel any discovery until the anticipated motions to dismiss are decided.

Respectfully submitted,

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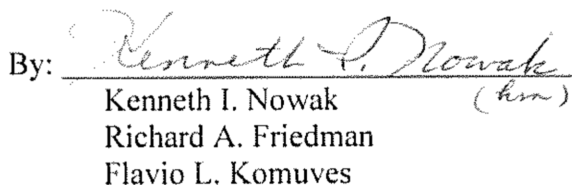
By: 
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