IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

G.H., a minor, by and through his parent and legal guardian, Gregory Henry, et al.,

***Plaintiffs*,**

v. **CASE NO.: 4:19cv431-MW/CAS**

SIMONE MARSTILLER, in her official capacity as Secretary of the Florida Department of Juvenile Justice, et al.,

***Defendants*.**
_____/

ORDER ON PLAINTIFFS' MOTION TO QUASH SUBPOENA AND MOTION FOR A PROTECTIVE ORDER

This Court has considered, without hearing, Plaintiffs' Motion to Quash Non-Party Subpoenas and Motion for a Protective Order. ECF No. 37. At issue are twenty-eight non-party subpoenas issued by Defendants requesting all medical, mental health, and school records. *See, e.g.*, ECF No. 37-6, at 4. The requests lack any temporal limit. For the reasons provided below, Plaintiffs' motion is **GRANTED IN PART AND DENIED IN PART**.

I

This is a civil rights case arising from statewide policies and practices of isolating children in solitary confinement. Plaintiffs allege that Defendants

reports executed by all treating and evaluating physicians or mental health professionals regarding any medical or mental health treatment or evaluation of Plaintiffs for the past ten years. ECF No. 37, at 4–5. Plaintiffs objected to these requests as overbroad, unduly burdensome, too remote in time to be relevant, and in violation of Plaintiffs' right to privacy. Plaintiffs provided discovery responses that disclose medical and mental health information, as well as education histories dating from one to two years before their first experience in secure detention in the Department of Juvenile Justice ("DJJ"). ECF No. 37, at 2; ECF No. 39, at 2.[1]

Because Defendants sought more extensive discovery than Plaintiffs provided, Defendants served notices of intent to serve twenty-eight non-party subpoenas with the accompanying subpoenas. *See* ECF No. 37-1 to ECF No. 37-28. The subpoenas seek any and all school, medical, and mental health records without any temporal limit. *See, e.g.*, ECF No. 37-6, at 4. Plaintiffs move to quash the subpoenas and ask this Court to enter a protective order.

II

As a preliminary matter, this Court must determine whether Plaintiffs have standing to quash the non-party subpoenas. A party has standing to challenge a subpoena to a non-party if the party alleges a "personal right or privilege" with

[1] Only Plaintiff G.H. provided this information from two years before his first experience in secure detention in DJJ. Two other Plaintiffs, R.L. and B.W., provided information dating back one year from their first experience in DJJ secure detention.

respect to the subpoenas. *See Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979).[2] Plaintiffs' allegations clearly fit the bill. Defendants seek medical and education records, both of which invoke a personal right or privilege. *See Black v. Kyle-Reno*, No. 1:12-cv-503, 2014 WL 667788, at *1 n.1 (S.D. Ohio Feb. 20, 2014) (concluding that the plaintiff had standing to quash a third-party subpoena for her educational records based on privacy interest under the Family Educational Rights and Privacy Act of 1974); *Primrose v. Castle Branch, Inc.*, No. 7:14-cv-235-D, 2016 WL 917318, at *5–6 (E.D.N.C. Mar. 8, 2016)8Tj 0.504 0 T7Tj 0.504 0 T7Tsp1 Tc -0.0(rbr/2.4 (r)-

III

Having determined that Plaintiffs have standing to challenge the non-party subpoenas, the next issue is whether quashing the subpoenas is appropriate. This

records. ECF No. 37, at 12 ("Plaintiffs' agree that they need to provide medical, mental health, and education records to substantiate their disabilities, their mental health needs, and the risk of harm to their future health or safety."); ECF No. 37, at 16 ("Plaintiffs also concede that information in [Plaintiffs'] education records . . . is relevant to their claims."); ECF No. 37, at 17 ("Plaintiffs' discovery responses state that they will produce such relevant information within a limited time period of one or two years or Defendants may subpoena these records for this period."). The issue is whether certain records Defendants seek are too distant in time to be relevant or proportional to the needs of the case.[3] Relying on their retained expert's affidavit, ECF No. 39-2, Defendants argue that the more information, the merrier, because access to a plethora of information may assist them in accurately refuting Plaintiffs' claims. On the other hand, Plaintiffs argue that one or two years of information is sufficient, and anything more is just a fishing expedition.

Courts regularly narrow the scope of records requests that have no temporal limit or when the requested time period is too distant from the events giving rise to a plaintiff's claims. *See, e.g.*, *Cafra v. RLI Ins. Co.*, No. 8:14-cv-843-T-17EAJ, 2015 WL 12844288, at *2 (M.D. Fla. Feb. 5, 2015) (quashing subpoenas because the

[3] It is unclear whether Plaintiffs argue that the substantive scope of Defendants' subpoenas is irrelevant or not proportional to the needs of this case. This Court does not construe Plaintiffs' motion as challenging the substantive scope of the subpoenas; rather it construes Plaintiffs' motion as challenging only the temporal scope of the subpoenas. As such, this Order deals only with the temporal scope of the subpoenas.

requires review of more, not less information." ECF No. 39-2, ¶ 4. Defendants' expert further states, without any explanation, that the records would help him determine "whether [the] . . . diagnosis alter and effect the individual in their daily activities, appropriate treatment for said conditions and what if any level of behavioral and/or social interactions enhances and/or deteriorates any metal [sic] health conditions." These statements still beg the question—why are the medical, mental health, and education records from Plaintiffs' early childhood relevant to the issues presented in this case? How does a child's mental state when she was four

so. Reasonable limits must be placed on the scope of discovery if the relevance and proportionality requirements of Rule 26 mean something.

The information Defendants seek can be obtained by placing a reasonable limitation on the temporal scope of discovery. This Court finds the appropriate scope to be five years preceding each Plaintiffs' detention. Plaintiffs, in this case, are fifteen or sixteen years old. Records from the time Plaintiffs reached the adolescent age should provide Defendants sufficient information to rebut Plaintiffs' claims effectively. The five-year time period also strikes the right balance between proportionality and relevance. For Plaintiff G.H., Defendants may subpoena records from January 1, 2014; for Plaintiff R.L., Defendants may subpoena records from November 1, 2012; and for Plaintiff B.W., Defendants may subpoena records from January 1, 2012. This Court, therefore, quashes the subpoenas to the extent they seek information outside the five-year period preceding each Plaintiff's detention. Defendants may serve modified subpoenas with the temporal scope described in this Order.

IV

This Court may, for good cause, issue a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Fed. R. Civ. P. 26(c). Under Rule 26(c), a "party seeking a protective order has the burden to demonstrate good cause, and must make 'a particular and specific

demonstration of fact as distinguished from stereotyped and conclusory statements' supporting the need for a protective order." *Auto-Owners Ins. Co. v. Se. Floating Docks, Inc.*, 231 F.R.D. 427, 429–30 (M.D. Fla. 2005). In determining whether good cause exists, a court should balance the interests of the parties. *See Chicago Tribune Co. v. Bridgestone/Firestone*, 263 F.3d 1304, 1313 (11th Cir. 2001).

For the reasons provided *supra* Section III, this Court finds that Plaintiffs have shown good cause supporting the need for a protective order. Defendants' request for all medical, mental he12.1 (l,)6.1 (w8)3.6 (s ha)2( )Tj 0.004 .2 (e)126 ()8. die for.at (xi)8.