

Plaintiffs allege that Defendants' policies and practices of solitary confinement subject the named Plaintiffs, and the putative class, to a substantial risk of serious harm in violation of the Eighth Amendment to the U.S. Constitution and constitute disability discrimination in violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. ECF 22 at 2-3. Plaintiffs have provided discovery responses that disclose significant medical and mental health information and education records dating from one to two years before their first experience in secure detention in the Department of Juvenile Justice (DJJ).¹ This information explains Plaintiffs' medical histories, medical conditions, history of inpatient and outpatient psychiatric hospitalizations, disabilities, educational needs, special education evaluations and services. It provides relevant facts about each Plaintiff's risk of harm at the time Defendants subjected them to solitary confinement in a secure DJJ juvenile detention facility. In contrast, Plaintiffs' medical, mental health, and education records sought by Defendants are too distant in time to be relevant to the claims and defenses in this action, nor are these records proportional to the needs of this case.

¹ Only Plaintiff G.H. provided this information from two years prior to his first experience in secure detention in the Department of Juvenile Justice (DJJ) because Plaintiffs alleged that he received treatment in a Statewide Inpatient Psychiatric Program for adolescents two years prior to the first time he was in DJJ secure detention. ECF 2 at ¶ 14. Plaintiffs R.L and B.W. provided this information from one year prior to their first experience in DJJ secure detention.

Defendants are engaged in a fishing expedition through overbroad subpoenas that serve only to harass and embarrass the minor Plaintiffs (who are 15 or 16 years old) by requiring the disclosure of irrelevant information going back to their infancy. This is not a damages action where Defendants need evidence to dispute the cause of any injury and minimize compensation for damages. In addition, the relevant information here, which is limited in time, can be more conveniently obtained from Plaintiffs who have (or are obtaining) these records.

As grounds for this motion, Plaintiffs state as follows:

BACKGROUND

1. This is a civil rights case arising from Defendants' statewide policies and practices of isolating children in solitary confinement. ECF 22 at 2-3. Defendants repeatedly isolate children in solitary confinement for days on end, with no time limit, in locked cells. *Id.* at 3. In isolation, children suffer conditions including a lack of meaningful social interaction, environmental stimulation, outdoor recreation, education, sanitation, and access to personal property. *Id.* Defendants, through the use of isolation, subject the named Plaintiffs, and over 4,000 children placed in isolation every year, to a substantial risk of serious harm to their psychological and physical health and safety in violation of the Eighth Amendment. *Id.* DJJ policymakers have exhibited deliberate indifference towards

these risks. *Id.* Plaintiffs also challenge Defendants' solitary confinement policy and practice as discriminatory against children with disabilities. *Id.*

2. On January 15, and 17, 2020, Plaintiffs G.H., R.L., and B.W. served responses and objections to Defendants' First Set of Interrogatories to each of them. Four of these Interrogatories (nos. 4, 6, 14, and 15) requested information related to all schools each Plaintiff had ever attended, and all mental health treatment, medical treatment, physicians, and mental health professionals that had ever seen, treated, assessed, examined, or provided any service to each Plaintiff. These Interrogatories either had no temporal limit (nos. 4, 6, and 14) asked for ten years of information (no. 15).

3. On January 15, and 17, 2020, Plaintiffs G.H., R.L., and B.W. served responses and objections to Defendants' First Request to Produce which Defendants had addressed to each Plaintiff's parent and legal guardian. Plaintiffs objected to these requests because their guardians or parents are not the real parties in interest and cannot be served with discovery under Rule 34 of the Federal Rules of Civil Procedure.

4. The relevant Requests for Production from Defendants are as follows:

Request No. 1: Any and all documents of any kind or nature concerning Plaintiff's medical or mental health evaluation or treatment for the past ten (10) years.

Request No. 2: Any and all documents, including, but not limited to, medical reports executed by all treating and

handwritten notes, office notes, correspondence, admission and discharge records, diagnosis and prognosis, treatment, evaluation, counseling, drug or alcohol treatment, disciplinary records, conditions, applications, aptitude tests, attendance records, exams, scholastic performance, and grades.

7. Plaintiffs seek no damages in this action related to physical injury, emotional distress, medical needs, or otherwise.

8. Plaintiff G.H.'s first experience with any DJJ secure detention facility was in January 2019. Plaintiff R.L.'s first experience with any DJJ secure detention facility was in November 2017. Plaintiff B.W.'s first experience with any DJJ secure detention facility was in January 2017.

9. Plaintiffs' medical and mental health conditions, treatments, evaluations, and provider notes dating back several years prior to their experience at any DJJ secure detention facility are irrelevant to their constitutional and disability discrimination claims. Plaintiffs challenge conditions of confinement during the time that each child was subject to solitary confinement based on the Defendants' policies and practices.

10. **Certificate of Attorney Conference:** Pursuan

agreement as to the relevant scope of permissible discovery as to Plaintiffs' medical, mental health, and education records in this action.

11. **Certificate of Word Limit**: Pursuant to N.D. Local Rule 7.1(F), the undersigned counsel hereby certify that this motion contains 3,763 words.

WHEREFORE, Plaintiffs respectfully request that the Court grant their Motion to Quash Non-Party Subpoenas and issue a Protective Order precluding Defendants from any further discovery through subpoenas into subjects of Plaintiffs' medical records and information, mental health records and information, substance abuse treatment records, and any related information, diagnoses, and treatment history from any medical and mental health provider and educational agency for the time period prior to January 1, 2017 for Plaintiff G.H., prior to January 1, 2018 for Plaintiff R.L., and prior to January 1, 2016 for Plaintiff B.W.

documents sought. *See Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir.1979);² *see also Russell v. City of Tampa*, No: 8:16-cv-912-T-30JSS, 2017 WL 2869518, at *2 (M.D. Fla. July 5, 2017) (party has standing to challenge subpoena for their medical records). The moving party bears the burden of establishing that the subpoena must be quashed. *Rodgers v. Herbalife Int’l of Am., Inc.*, 8:19-MC-115-T-35AAS, 2020 WL 263667, at *1 (M.D. Fla. Jan. 17, 2020).

The scope of discovery pursuant to a subpoena is limited subject to the requirements of Rules 26(b) and 34 of the Federal Rules of Civil Procedure. *Jordan v. Comm’r, Mississippi Dep’t of Corr.*, 947 F.3d 1322, 1329 (11th Cir. 2020) (citations omitted). Therefore, a subpoena should be quashed if it seeks irrelevant information or is overly broad. *See Russell*, 2017 WL 2869518, at *2-3. Similarly, a subpoena is limited to discovery on “any non-privileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). When the relevance of soughence of (2g7k-y1)2 e r,b8(e)4(oun)8(t i)9(n)JTJ T

A. Defendants' Subpoenas Are Overly Broad and Seek Information Too Remote in Time to be Relevant to the Claims and Defenses

Defendants seek information that is irrelevant and not proportional to the claims and defenses in this case because the subpoenas have no limit as to

temporal scope and content.

“Second, the prisoner must show that the defendant prison officials

irrelevant medical information from the minor Plaintiffs' medical records that involve treatment, provider notes, and other private information with no logical relationship to the claims and defenses in this action. *See, e.g., Cameron v. Supermedia, LLC*, No. 4:15CV315–MW/CAS, 2016 WL 1572952, at *3 (N.D. Fla. Apr. 19, 2016) (internal citations and quotations omitted) (even in a claim for emotional distress damages, medical records must have “a logical connection to the plaintiff’s claims of injury.”). They should not be permitted to do so.

The information that Defendants seek through subpoena is also not proportional to the needs of this case. 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. One to two years of such records provides ample relevant information that is proportional to the needs of the case. Allowing Defendants to rummage through the backgrounds of minors without legal justification only serves to embarrass Plaintiffs.

Defendants also do not need all of Plaintiffs' private medical and education records to defend their case. Defendants' deliberate indifference to a known risk of harm is based on their policy and practice of solitary confinement. *See* ECF 22 at 12, 14. For example, although Plaintiffs dispute that Defendants follow their own written confinement policy, *assuming arguendo* that they do, Defendants can only

isolate a child in confinement “during volatile situations in which a youth’s sudden or unforeseen onset of behavior imminently and substantially threatens the physical safety of others or himself.” *See* Fla. Admin. Code R. 63G-2.014(7). This Court can discern the actual reasons why Defendants placed Plaintiffs in confinement from contemporaneous records concerning Plaintiffs’ detention and confinement. Plaintiffs’ private medical and educational records from years prior to their first experience with DJJ secure detention have no bearing on this determination.

Defendants are not automatically entitled to unfettered access to Plaintiffs’ medical, mental health, and education records because some allegation of harm may be at issue in this case. *See Cameron*, 2016 WL 1572952, at *3 (examining how “[w]hat’s discoverable depends on what’s claimed”) (internal citations and quotations omitted). Although Plaintiffs make no claim for damages in this case, Defendants are treating it like a damages action. Instead, Defendants must tailor their discovery requests to the actual claims and defenses raised. Even where a plaintiff seeks economic and non-economic damages for emotional pain, suffering, and loss of enjoyment of life, courts have not permitted unlimited access to medical information that is irrelevant to the claims, lacking any temporal limit, and not proportional to the needs of the case. *See, e.g., Valentine Ge. v. Dun & Bradstreet, Inc.*, No: 6:15-cv-1029-Orl-41GJK, 2016 WL 11464651, at *4 (M.D.

Fla. July 15, 2016) (limiting discovery request for unlimited health care provider records in employment discrimination action based on gender identity).

Defendants' subpoenas, which seek records very remote in time, illustrate their fundamental misunderstanding of Plaintiffs' Eighth Amendment claim.

Although Plaintiffs allege actual harm based on Defendants' solitary confinement policies and practices, actual harm is not required to establish an Eighth

Amendment claim. ECF 22 at 9-12. Rather, Plaintiffs can show, and do allege

here, that Defendants' solitary confinement policies and practices subject them,

and putative class members, to a substantial risk of serious harm. *Id.* at 5-6. The

records that Defendants seek are not relevant or necessary to a determination of

B. The Subpoenas Are Overly Broad and Intrude on Significant Privacy Interests in Education Records

Defendants also seek all of Plaintiffs' records from any education agency identified in Plaintiffs' responses to Interrogatories. These requests are overly broad, seek irrelevant information, and infringe on significant privacy interests.

Courts have recognized privacy interests in education records as significant considerations in a motion to quash such subpoenas for this information. *See Alig-Mielcarek v. Jackson*, 286 F.R.D. 521, 526–27 (N.D. Ga. Aug. 6, 2012) (quashing a plaintiff's request for non-party educational records based in part on the privacy rights protected by the Family Educational Rights and Privacy Act of 1974 which protects the confidentiality of educational records). Discovery is permitted only when the party requesting disclosure of educational records has met a "significantly heavier burden" to show that its interests in obtaining the records outweighs the significant privacy interest of the student. *See id.* (citation omitted). Defendants cannot meet this burden.

The subpoenas for each Plaintiff's education records seek: "Any and all school records, including but not limited to, applications, aptitude tests, attendance records, medical records or exams, counseling and mental health records, records of drug or alcohol treatment, discipline records, and records related to scholastic performance and grades. The transcripts and records are requested from the inception of your records to the present date."

These overly broad requests for the entirety of each Plaintiff's academic, disciplinary, attendance, and school performance records from years prior have absolutely no bearing on the Eighth Amendment or disability discrimination claims which relate to their conditions of confinement in DJJ secure detention. *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 which sought every record from each school that plaintiffs attended or currently attend as overly broad rather than limiting records and time period closer to vehicle accident date and reasonable period after); *see also N.D. ex rel. Dorman v. Golden*, No. 2:13CV540-

Dated: March 5, 2020

Respectfully submitted,

By: s/ Andrea Costello

Andrea Costello

Fla. Bar No. 532991

Christopher M. Jones

Fla. Bar No. 994642

Aimee Lim

Fla Bar No. 116209

Jennifer Painter

Texas Bar No. 24054454
Southern Poverty Law Center
201 St. Charles Avenue, Suite 2000
New Orleans, LA 70170
Telephone: (334) 549-0498