

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO EASTERN
DIVISION**

John Doe, et al.,	:	Case No.: 2:91-cv-00464
	:	
Plaintiffs,	:	Judge Michael H. Watson
	:	
vs.,	:	Magistrate Judge Kemp
	:	
State of Ohio, et al.	:	
	:	
Defendants.	:	

**MODIFICATION OF PROTECTIVE ORDER FOR INFORMATION FROM
PLAINTIFFS TO INCLUDE EMIS DATA FROM DEFENDANTS**

The matter before the Court is the continued protection of confidential information that will be produced through informal discovery and discovery requests and responses that Defendants have served or will serve upon Plaintiffs and that Plaintiffs have served or will serve upon Defendants in this action. On April 7, 2014, the Court signed and filed a Protective Order for Information from Plaintiffs (Doc 268), which was agreed to and signed by counsel for the parties (“Protective Order”). The Protective Order defines “Confidential Information” and serves to protect and prevent unauthorized disclosure of any Confidential Information. It also stated that, “Nothing in this Order shall prevent any party from seeking amendments broadening or restricting the rights of access to or the use of the Confidential Information or any other modification of this Protective Order” (*Id.* at Item 10).

Plaintiffs have requested and the Court has ordered Defendants to provide Plaintiffs access to certain electronic information maintained by the Ohio Department of Education (“ODE”), as part of its Educational Management Information System (“EMIS”) and to provide sufficient notice to persons whose EMIS data will be disclosed and the opportunity to object to

the disclosure (Doc 275). The objection period ended on September 12, 2014 and the parties are currently in the process of providing any information they wish for the Court to consider when reviewing and ruling on any objections filed regarding the disclosure.

The parties have requested that the current Protective Order be modified to include a complete copy of all EMIS data for the 2013/2014 school year in the definition of “Confidential Information” and to specify restrictions particular to the use and disclosure of the EMIS data. The definitions and specifications already in place are incorporated herein and combined with these additional specifications shall constitute the “Modified Protective Order.”

For good cause shown and upon agreement of the parties, the Court hereby Orders the following:

1. The 2013/2014 EMIS will be provided directly to Plaintiffs’ counsel or their experts and consultants. It will not be provided or made available in any way to individually named Plaintiffs or individual class members. At all times, adequate data security shall be in place to prevent any unauthorized disclosure or use of the 2013/2014 EMIS data disclosed to Plaintiffs.
2. Before making any permitted re-disclosure of the 2013/2014 EMIS data to outside experts and consultants, the party making the disclosure must obtain an agreement from such person(s) that the information shall never be disclosed to any other party and that adequate data security shall be in place to prevent any unauthorized disclosure or use of the information.
3. Parties or their experts shall not use the 2013/2014 EMIS data for any purpose other than the prosecution of this case.

4. Any documents prepared from the 2013/2014 EMIS data and filed with the Court that makes identifiable the student or students involved, shall be filed under seal and this order constitutes the order authorizing such filings for the purpose of S.D. Ohio L. R. 79.3(c). The parties are hereby given leave to make any such filings manually. Such documents will be identified as confidential and may be shared with witnesses or other necessary parties as agreed upon by the counsel for Plaintiffs and Defendants or as ordered by the Court.

5. Reports that aggregate the data or make findings from the data that do not identify an individual student do not need to be filed under seal and may be shared without limitation.

6. If one party has reason to believe that a person to whom 2013/2014 EMIS data has been disclosed has disclosed confidential information, the party shall provide a signed statement setting forth the basis for such belief. The parties will then make a good faith effort to resolve the dispute. If the parties cannot resolve the dispute, it shall be resolved by the Court pursuant to the Federal Rules of Civil Procedure.

7. Throughout, and after the conclusion of, this litigation (including any appeals), the restrictions set forth herein shall continue to be binding upon the parties and all other individuals subject to the terms of the current Protective Order and this Modified Protective Order.

8. Plaintiffs' counsel agree to return the 2013/2014 EMIS data to ODE or destroy all copies and records of the 2013/2014 EMIS data at the end of the litigation including any appeals.

9. Nothing in this Order shall prevent any party from seeking amendments broadening or restricting the rights of access to or the use of the 2013/2014 EMIS data.

IT IS SO ORDERED.

/s/ Terence P. Kemp
UNITED STATES MAGISTRATE JUDGE

AGREED TO BY:

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* signed by Kerstin Sjoberg-Witt per email authorization dated September 18, 2014.