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16 *the Agassi Campus, Democracy Prep Nevada LLC, School*
17 *Board of Democracy Prep at the Agassi Campus, Natasha*
Trivers, Adam Johnson, Kathryn Bass, Joseph Morgan,
PhD, and Kimberly Wall

18
19 **UNITED STATES DISTRICT COURT**
20 **DISTRICT OF NEVADA**

21 GABRIELLE CLARK, individually and as parent
and guardian of WILLIAM CLARK, and
22 WILLIAM CLARK, individually,

23 Plaintiffs,

24 vs.

25 STATE PUBLIC CHARTER SCHOOL
AUTHORITY, DEMOCRACY PREP PUBLIC
26 SCHOOLS, DEMOCRACY PREP PUBLIC
SCHOOLS, INC., DEMOCRACY PREP at the
27 AGASSI CAMPUS, DEMOCRACY PREP
NEVADA LLC, SCHOOL BOARD of Democracy
28 Prep at the Agassi Campus, NATASHA TRIVERS,

CASE NO.: 2:20-cv-02324-APG-VCF

REQUEST FOR HEARING

Hearing Date:

Hearing Time:

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1 individually and in her official capacity as
2 Superintendent and CEO, ADAM JOHNSON,
3 individually and in his official capacity as Executive
4 Director and Principal, KATHRYN BASS,
5 individually and in her capacity as Teacher,
6 JOSEPH MORGAN, individually and in his official
7 capacity as Board Chair, KIMBERLY WALL,
8 individually and in her capacity as assistant
9 superintendent, and John & Jane Does 1-20,

Defendants.

10 Defendants Democracy Prep Public Schools, Democracy Prep Public Schools, Inc., Democracy
11 Prep at the Agassi Campus, Democracy Prep Nevada LLC, School Board of Democracy Prep at the Agassi
12 Campus, Natasha Trivers, Adam Johnson, Kathryn Bass, Joseph Morgan, PhD, and Kimberly Wall (the
13 “Defendants”), by and through their counsel, GREENBERG TRAUERIG, LLP, and WILMER CUTLER
14 PICKERING HALE AND DORR LLP, hereby submit their Request for a Hearing regarding classroom
15 video recordings that are likely protected from disclosure pursuant to Family Educational Rights and
16 Privacy Act (“FERPA”), 20 U.S.C. § 1232g(b)(2).

17 1. In responding to Plaintiffs’ requests for production of documents, Defendants informed
18 Plaintiffs that it identified video recordings of certain sessions of the Sociology of Change course at
19 issue in this case. Defendants explained that these recordings likely contained information covered by
20 the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g(b)(2), and that under
21 the statute, they could not produce the recordings without a court order and notice to the students whose
22 personally identifiable information is likely contained in most, if not all, of the videos.¹

23 ¹ Certain Zoom sessions of the Sociology of Change course were recorded in order to ensure the accessibility of
24 course materials to students during the pandemic. The video recordings generally show student faces and capture
25 classroom discussions where student names are announced. Thus, the recordings likely include student
26 information subject to FERPA. See 20 U.S.C. 1232g(a)(4)(A) (“Educational records” are “those records, files,
27 documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained
28 by an educational agency or institution ...”); 34 CFR § 99.3 (providing that records stored in any format or
medium—including video imaging—are subject to this requirement); *Beaty v. Kansas Athletics, Inc.*, 2020 WL
2036713, at *2 (D. Kan. Apr. 28, 2020) (raw video footage of student athletes “may contain information about
students whose information is protected by” FERPA, requiring counsel to revise protective order to include an
outlined process for disclosure of FERPA-protected information and an “attorneys’ eyes only” designation for
highly sensitive information); *Bryner v. Canyons Sch. Dist.*, 351 P.3d 852, 856-859, 861 (Utah 2015) (surveillance
video of students was protected from disclosure by FERPA because other students’ images were visible in the
recording and requiring the defendant to prepare a redacted video at the plaintiff’s cost). Accordingly, those
recordings are prohibited from disclosure without (1) a court order and (2) notice to the students to whom the
information pertains. 34 C.F.R. § 99.31(a)(9)(ii) (explaining that an educational agency or institution may

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1 2. On March 24, 2021, before the parties’ stipulated deadline to produce documents,
2 Defendants notified Plaintiffs that for the videos to be produced, they would need to seek a court order,
3 as required by FERPA. Five days later, on March 29, 2021, Plaintiffs again reiterated their demand for
4 the videos; in the meantime, they took no further action consistent with FERPA’s requirements.

5 3. Defendants have attempted in good faith to address Plaintiffs’ request for these videos,
6 while at the same time respecting the serious privacy interests implicated by their potential production.
7 Specifically, on March 31, 2021, Defendants proposed to retain a third party transcription service to
8 produce transcripts of all available recordings from the start of the academic calendar year through
9 September 17, 2020—the last date Democracy Prep records indicate that William Clark attended the
10 class. Defendants further proposed that the transcripts would anonymize the identities of the other
11 students captured in the recordings, but reproduce all statements in full. These materials would allow
12 Plaintiffs to learn precisely what was said by the course instructor and other students during the sessions
13 at issue. Plaintiffs have refused to accept that compromise offer, insisting that the transcripts do not
14 adequately reveal classroom participants’ tone or emotion.

15 4. Defendants now respectfully request this Court’s guidance regarding production,
16 possession, and use of these materials during the span of this litigation. To that end, Defendants
17 respectfully request that the Court enter the proposed order—attached here as Exhibit A—authorizing
18 Defendants to produce written transcriptions of the video recordings in satisfaction of Plaintiffs’
19 discovery requests.

20 5. Whatever the Court ultimately determines, Defendants request that the Court’s order
21 include additional requirements to safeguard the confidentiality of private student information. These
22 measures are particularly warranted in this case, given Plaintiffs’ counsel’s cavalier approach to student
23 privacy. Two examples suffice to demonstrate the real and tangible concerns about Plaintiffs’ treatment
24 of confidential material to date. First, Plaintiffs have already once improperly filed unredacted private
25 information about a student on the Court’s public docket; the Court corrected Plaintiffs’ error by issuing
26 an order, directing the clerk of the court to seal the document immediately and ordering Plaintiffs to file a

27 _____
28 disclose information pursuant to court order “only if the agency or institution makes a reasonable effort to notify
the parent or eligible student of the order ... in advance of compliance”); *see also* 20 USC 1232g(b)(2)(B) (same).

1 properly redacted, publicly accessible version of the document. ECF Nos. 20-10, 27, 28. Second, in the
2 course of discovery, Plaintiffs have produced a significant number of FERPA-protected materials,
3 including non-party student report cards, without explanation for how they possessed such information
4 in the first instance. Despite Defendants’ repeated demands, Plaintiffs have refused to disclose any
5 additional information regarding their procurement or possession of those materials.

6 For the foregoing reasons, Defendants respectfully request this Court to enter the proposed order,
7 or schedule a hearing forthwith, in advance of the Court’s preliminary injunction hearing set for April 14,
8 2021.

9 DATED this 1st day of April, 2021.

10 **GREENBERG TRAUIG, LLP**

11
12 /s/Kara B. Hendricks

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