IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

JANE DOE, a minor child, by and through her next friends, MARY DOE and JOHN DOE; Plaintiff,	§	
	§	Civil Action No. 6:23-cv-00566-ADA-JCM
v.	§	
LORENA INDEPENDENT SCHOOL DISTRICT and APRIL JEWELL, Defendants.	§	

DEFENDANT APRIL JEWELL'S REPLY IN SUPPORT OF HER RULE 45(d) MOTION TO QUASH PLAINTIFF'S SUBPOENA TO THE TEXAS EDUCATION AGENCY AND RULE 26(c) MOTION FOR PROTECTIVE ORDER

Defendant April Jewell ("Defendant Jewell") files this, her *Reply in Support of her Rule 45(d) Motion to Quash Plaintiff's Subpoena to the Texas Education Agency* (the "TEA") *and Rule 26(c) Motion for Protective Order* (the "Reply"), as follows:

Introduction

Defendant Jewell's point is perfectly demonstrated by the first paragraph of Plaintiff's Response. Plaintiff misrepresents that these were findings of fact made by Justice Ho, rather than what they truly are: the Fifth Circuit presuming as true the **allegations of Plaintiff**, as required in an appeal of a Motion to Dismiss under Rule 12(b)(6).[1] Much like professing to the media to know about "disturbing" facts in Jewell's administrative proceeding, much like speciously professing to know that an Administrative Law Judge (ALJ) felt alleged act(s) by Jewell were "disturbing," the inflammatory, misleading, and prejudicial rhetoric directed at Jewell continues.[2]

[1] ECF No. 77 at 1.
[2] *Id*. at 8. Likewise, Plaintiff has never alleged any "propositioning" of students, much less that Jewell was aware of any "propositioning"; Jewell has never engaged in correspondence with TEA or anyone else as to whether an issue

I. RULE 45 MOTION TO QUASH

A. Plaintiff's January 2026 Production Requests Under Rule 34.

Plaintiff has propounded 130 discovery requests on Defendant Jewell alone, many with 15-20 subparts each, in which Plaintiff requested all documents related to Jewell's TEA proceedings under Rule 34, and Jewell timely objected on the bases set forth in her Motion. According to the courts in this Circuit, "[Federal Rule of Civil Procedure] 45 subpoenas are not meant to circumvent the regular discovery process under [Federal Rules of Civil Procedure] 34 and 26."[3] Here, Plaintiff circumvented Jewell's rights to raise her objections to production requests under Rule 34 and simply issued a third-party subpoena to TEA for the same information, claiming that Jewell has no third-party rights to challenge the subpoena of **her** administrative hearing documents. Yet circumventing the discovery rules under Rule 34 by merely issuing a third party Rule 45 subpoena is not permitted.[4] Defendant Jewell is permitted to "interpose whatever objections [she] believe[s] was appropriate" and allow the Court the opportunity to determine if compelling production is appropriate.[5] The Court should decline to allow this discovery abuse.

B. Jewell's due process right to her certificate.

Again, a third party has standing if that party has "a personal right or privilege **with respect to the documents sought**."[6] Plaintiff is wrong that to claim a right or privilege **with respect to the documents** that Defendant Jewell must prove a federal "substantive due process right would

involves Title IX and sexual harassment; and no wrongdoing by Jewell as to any alleged fourth victim has ever been claimed in the almost two year history of this case. *Id.* at 3, 5.

[3] *Sana Healthcare Carrollton, LLC v. Dep't of HHS*, 2024 U.S. Dist. LEXIS 94353, *28 (E.D. Tex. May 28, 2024) (quoting *United States v. Cabelka*, No. 7:16-CV-00126, 2017 U.S. Dist. LEXIS 239021, 2017 WL 11814622, at *2 (N.D. Tex. Oct. 5, 2017) (citing *Ntakirutimana v. CHS/Cmty. Health Sys. Inc.*, No. L-09-114, 2011 U.S. Dist. LEXIS 167012, 2011 WL 13135608, at *2 (S.D. Tex. June 29, 2011)). "

[4] *Ntakirutimana v. CHS/Cmty. Health Sys*., 2011 U.S. Dist. LEXIS 167012, *8-9 (S.D. Tex. June 28, 2011).

[5] *Id.* at 8.

[6] *Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979).

be violated."[7] This is the same as to Plaintiff's argument that confidential information cannot render standing. In fact, courts in this circuit have found that "[a] party has standing to challenge a subpoena issued to a non-party if the subpoena seeks **proprietary, confidential, or protected information sensitive to the party**."[8] In fact, according to the Fifth Circuit and this very Court, Defendant Jewell has standing because she is "in possession or control of the requested material" (indeed, the "requested material" has already been requested of her in discovery).[9] In any event, Jewell has a due process right in her teacher/administrator certificate, which gives her the requisite "personal right or privilege **with respect to the documents sought**," as contemplated by *Brown*.[10] Certainly, Jewell's due process interest in her certificate is directly related to the documents sought by Plaintiff (all documents relating to **her** administrative hearing). In fact, Plaintiff requested all such documents from Defendant Jewell in production **first** - further proving both that she is "in possession or control of the requested material" and has a right with respect to the documents.[11]

C. The ALJ's Orders.

This due process right includes Jewell's right to the procedures set out in Texas law—the administrative proceeding instituted by TEA. The ALJ in that proceeding issued the Protective Order, an Order Sealing Proceedings, and an Order closing the administrative hearing.[12] Those orders are now part and parcel of the due process proceeding to which Jewell is entitled.

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[7] ECF No. 77 at 8.
[8] *Richard v. Lufkin*, 2016 WL 11650897, at *3 (E.D. Tex. Apr. 14, 2016).
[9] *See Deitz v. Performance Food Grp., Inc*., 2021 U.S. Dist. LEXIS 125395, *1 (W.D. Tex. April 21, 2021)(holding, "For a party to have standing to quash a subpoena under Federal Rule of Civil Procedure 45(d), the movant must be **in possession or control of the requested material**, be the person to whom the subpoena is issued, **or** have a personal right or privilege in the subject matter of the subpoena."), emphasis added. *See also Brown*, 595 F.2d at 967.
[10] *Id., see also Bell v. Burson*, 402 U.S. 535, 539 (1971); see also *Marsh v. State Bd. for Educ. Cert.*, No. 03-05-00336-CV, 2006 Tex. App. LEXIS 6704, at *18 (Tex. App. July 28, 2006) ("[t]he parties agree that Marsh's teaching certificate is an interest entitled to due process protection, including a formal hearing [before SBEC]…").
[11] *Deitz*, 2021 U.S. Dist. LEXIS 125395, *1.
[12] While Plaintiff is correct that Defendant Jewell is not comfortable filing and sharing pleadings ordered sealed in the public record, if this Court so orders, of course Defendant Jewell will provide the same for in-camera review.

Specifically, with regard to the Hearing Officer's order orally rendered on April 13, 2026 closing the hearing, Defendant Jewell argued in part that publicity of her hearing would compromise Jewell's rights to fair proceedings. In granting this order, the ALJ (at a minimum) created rights of Jewell to enforce these orders as part of her due process rights to the proceeding. At the very least, the orders show that Jewell has a "personal right" "with regard to" the documents.[13]

II. RULE 26(c) MOTION FOR PROTECTIVE ORDER

Alternatively, the Court should issue a protective order.[14] Federal Rule of Civil Procedure 26(b)(1) states that parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case. "Yet Rule 26(b) 'has never been a license to engage in an unwieldy, burdensome, and speculative fishing expedition.' … We trust that district courts will guard against abusive discovery."[15] Under Rule 26(b), the Court "**must limit** the frequency or extent of discovery otherwise allowed by" the Federal Rules of Civil Procedure when (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).[16] **All three subsections apply here**, yet Plaintiff fails altogether to address any.[17] First, again, Jewell has already been served with 130 production requests under Rule 34, and the stay in this case was lifted as to Jewell in late 2025; thus, Plaintiff has had ample

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[13] *Brown*, 595 F.2d at 947. Plaintiff also turns a blind eye to the well-settled doctrine of comity between the federal and state systems, in place of inapposite decisions where an appeals court reviewed a *federal* district court's decision to seal records. ECF No. 77 at 6.
[14] *Kilmon v. Saulsbury Indus.*, No. MO:17-CV-99, 2018 U.S. Dist. LEXIS 237653, at *10 (W.D. Tex. Feb. 13, 2018).
[15] *Crosby v. La. Health Serv. & Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011).
[16] *Ruiz v. Home Depot U.S.A., Inc.*, Civil Action No. 3:22-CV-2266-D, 2024 U.S. Dist. LEXIS 105232, at *12 (N.D. Tex. June 13, 2024)(citing Rule 26(b)(2)(C)).
[17] It is unclear how correspondence not written by Jewell (or even regarding Jewell in most cases) are relevant in any way to this Motion. See ECF No. 77 at 9-10; 77-2; 77-3.

time to obtain discovery, this subpoena is the very essence of cumulative and duplicative, and courts in this Circuit hold that the parties are to address any disputes via a motion to compel, not by attempting to divest a party of standing by misusing a Rule 45 non-party subpoena.[18] Secondly, the subpoena is far outside the scope permitted by Rule 26(b)(1). Plaintiff fails to explain how "***[a]ll*** non-privileged documents, correspondence, and communications . . ." (1) concerning ***any*** Texas Education Agency ("TEA") investigation of or proceeding against Defendant; or (2) "concerning" the administrative proceeding are tied to the claims and defenses in this matter. This blanket request for "all …" without tailoring to claims and defenses is specifically prohibited by Rule 26.[19]

Further, while Plaintiff contends that the Protective Order in this matter will address any concerns with confidentiality and release of documents into the public domain, apparently it does not, as Plaintiff has already leaked sealed pleadings to the media from the administrative proceeding.[20] This Court's protective order extends to "education records," "protected health information," and only information that is "designated as 'Confidential' by any of the supplying or receiving persons."[21] Jewell therefore requests, in the alternative to quashing, a protective order limiting Plaintiff's subpoena to complaints directly related to the claims and defenses in this case. Jewell further requests a protective order governing usage of the information received from the subpoena, including but not limited to restrictions and consequences for Plaintiff's public disclosure (including sanctions).

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[18] *See infra.*

[19] *Ruiz v. Home Depot U.S.A., Inc.*, Civil Action No. 3:22-CV-2266-D, 2024 U.S. Dist. LEXIS 105232, at *12 (N.D. Tex. June 13, 2024); ECF No. 74-1; ECF No. 77 at 8-9. Plaintiff argued before the Fifth Circuit: "[T]he fact that Jewell has not been criminally charged **or sanctioned** by the Texas State Board for Educator Certification is **irrelevant** to the analysis here." *See* Br. of Appellees, *Doe v. Jewell*, No. 24-50480 at *35 (5th Cir. 2025), emphasis added.

[20] This Court should not accept Plaintiff's argument that because the pleadings were public for a period of time, that Plaintiff did not violate a judicial order by leaking sealed pleadings **a full month** after Plaintiff's entire legal team received the order notifying them of the sealing of the pleadings. *See* ECF No. 74-4.

[21] ECF No. 57, Confidentiality and Protective Order at 2, emphasis added.

Respectfully submitted,

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Certificate of Service

The undersigned certifies that a true and correct copy of this pleading was served through the Court's electronic filing system to all parties as required on May 1, 2026.

/s/ Andrea L. Mooney
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