

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**DAWN TURNIPSEED,
et al.**

Plaintiffs,

v.

Case No. 24-cv-1408

**ST. FRANCIS SCHOOL DISTRICT
et al.,**

Defendants.

DECISION AND ORDER

Plaintiffs bring this action against defendants alleging discrimination in violation of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and retaliation in violation of First Amendment rights. Plaintiffs K.T. and J.T. are former students of defendant St. Francis School District (“the district”), and plaintiff Dawn Turnipseed is K.T. and J.T.’s mother. In addition to the district, plaintiffs named four school officials, sued in their individual capacity. Before me are three discovery-related motions: two motions to compel and one motion for a protective order. I resolve those motions here.

I. BACKGROUND

J.T. and K.T. are the adoptive daughters of Turnipseed. ECF No. 14 at ¶ 8. The children are not the same age, but they each came into Turnipseed’s care at three weeks old and were formally adopted at three years old. *Id.* at ¶¶ 19, 21–22, 74–75. As a result of traumatic events occurring while the children were in utero and shortly after their birth, both have been diagnosed with a variety of psychological and neurological disabilities, including learning disabilities. *Id.* at ¶¶ 23–28, 76–83.

In the summer of 2022, Turnipseed moved with her daughters to St. Francis, Wisconsin. *Id.* at ¶ 14. The children were enrolled at St. Francis School District schools for the 2022–23 school year. *Id.* at ¶ 19. Because of J.T. and K.T.’s disabilities, the children sometimes “display unusual behaviors at school,” such as making inappropriate jokes and comments, sleeping in class, noncompliance, walking out of classrooms, and verbal aggression. *Id.* at ¶¶ 1, 26, 80. According to plaintiffs, this generally occurs when they are “dysregulated.” *Id.* at ¶¶ 80–81. Both children have received special education since early elementary school and have Individualized Education Plans (“IEPs”). *Id.* at ¶¶ 31–32, 78, 85.

However, during the 2022–23 school year, plaintiffs allege that defendants “developed animus against J.T. and K.T. because of their disability-based behaviors,” leading to “a series of increasingly hostile and exclusionary actions . . . culminating with a coordinated effort to coerce Ms. Turnipseed to remove her children from the District.” *Id.* at ¶ 1. Plaintiffs aver that the district “declined” to use “research-based, trauma-informed strategies” to accommodate the children, frequently removing them from the classroom and suspending them. *Id.* at ¶¶ 44, 66, 150. These are the actions underlying the claims that the district and its staff violated the ADA.

In addition to the district, the plaintiffs have filed suit against Deborah Kerr, Superintendent to the St. Francis School District during the relevant time period; Ben Williams, Principal of Deer Creek Intermediate School during the relevant time period (K.T.’s school); Anna Paradowski, a special education teacher at St. Francis High School during the relevant time period (J.T.’s school); and Sarah Oudenhoven, the district’s Director of Special Education and Pupil Services during the relevant time period. *Id.* at ¶¶

10–13. Each are sued in their individual capacity and alleged to be acting under color of law. *Id.* Moreover, plaintiffs allege that that they caused or failed to intervene against the discriminatory actions, policies, practices, customs, and deprivations alleged in the complaint. *Id.*

Plaintiffs also bring a claim for retaliation against Turnipseed in violation of the First Amendment. According to them, Turnipseed continued to advocate for her children, “including by criticizing staff” for their failure to accommodate the children. *Id.* at ¶ 1. In response, plaintiffs allege that the staff pressed charges against J.T. “for a disability-based behavior,” made false and disparaging allegations against Turnipseed to Child Protective Services (“CPS”) and hired a private investigator to investigate the family. *Id.* at ¶ 2. Ultimately, they allege that they were “forced to relocate,” which was a “massive financial and emotional setback for the family.” *Id.* at ¶ 3.

Defendants answered an amended complaint on July 7, 2025, bringing the case into the discovery phase. Discovery was meant to close on November 14, 2025, with dispositive motions due the same day. However, on October 16, 2025, plaintiffs filed their first motion to compel, requesting that I require defendants to disclose information related to the CPS informer. On November 5, 2025, plaintiffs filed a second motion to compel, which asked me to require defendants to produce certain personnel records. Two days later, on November 7, 2025, plaintiffs filed a motion for a protective order asking that I deny defendants the opportunity to depose the minor plaintiffs or, in the alternative, set limitations to those depositions. Because these motions came in quick succession at the end of discovery, I granted defendant’s motion to extend the discovery and dispositive motion deadlines. I dispose of each motion below.

II. MOTION TO COMPEL: PERSONNEL RECORDS

Plaintiffs have filed a motion to compel production of certain portions of personnel files. More specifically, plaintiffs seek “materials from the Williams and Paradowski personnel files that relate to the provision of services and accommodations to students with emotional and behavioral disabilities” and “materials from Sarah Oudenhoven’s personnel file related to complaints about the districts’ provision of special education services and accommodations under her leadership.” ECF No. 33 at 3. Plaintiffs claim that although defendants twice agreed to produce records responsive to that request, none were produced. *Id.* Defendants counter that although they did search for responsive materials, no responsive documents were identified and “[t]here is nothing to produce.” ECF No. 43 at 1; *see also* ECF No. 45, Decl. of Rachel Schuler.

I agree with plaintiffs that, if such materials or documents existed, they would be relevant and appropriate for discovery. *See* Fed. R. Civ. P. 26(b)(1). However, defendants correctly note that I cannot compel them to produce something that does not exist. I must take them at their word (which was declared under penalty of perjury) that there is nothing more they can turn over. ECF No. 45. Therefore, I must deny this motion.

III. MOTION TO COMPEL: CPS INFORMER

According to plaintiffs, on May 8, 2023, a district employee called Milwaukee Child Protective Services (“CPS”) regarding allegations that Turnipseed was neglecting her children, J.T. and K.T. ECF No. 28 at 2. Ultimately, CPS determined that the allegations were unsubstantiated. ECF No. 30-11 at 19. Plaintiffs maintain that this “is a key event” to both the discrimination and retaliation claims, demonstrative of the school district’s animus and its attempts to coerce the family into leaving the district. ECF No. 28 at 2–3.

Thus, plaintiffs ask me to compel defendants to answer interrogatories and produce records relating to communications with CPS, including by identifying who made the initial contact with CPS on behalf of the school district. ECF No. 28 at 1, 4. Defendants counter that the reports of suspected abuse and neglect are privileged and thus they object to providing such information. ECF No. 32 at 1.

A. Factual Background

In Wisconsin, certain persons, including school teachers, administrators, counselors, or other school employees, who have “reasonable cause to suspect” the abuse or neglect of a child seen “in the course of professional duties” are required to “immediately inform, by telephone or personally” a child welfare agency of the suspected abuse or neglect. Wis. Stat. § 48.981(2), (3)(a). “Abuse” is defined to include physical injury and emotional damage. Wis. Stat. § 48.02(1)(a), (gm). “Neglect” means “failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide,” *inter alia*, “necessary” care and food “so as to seriously endanger the physical health of the child.” Wis. Stat. § 48.02(12g). Once a child welfare agency learns of suspected child abuse, it begins an investigation. Wis. Stat. § 48.981(3)(c)1.a. It must then make a determination, by a preponderance of the evidence, as to whether abuse or neglect has occurred or is likely to occur. Wis. Stat. § 48.981(3)(c)4. The investigation results in a determination that the abuse or neglect is substantiated, unsubstantiated, or unsubstantiated/unable to locate. Wis. Dep’t of Children and Families, *Child Protective Services Access & Initial Assessment Standards, Division of Safety and Performance*, 73

(September 2025) [hereinafter “AIAS”].¹ Therefore, “unsubstantiated” does not mean that abuse or neglect had not occurred, but that there was insufficient evidence to determine, by a preponderance of the evidence, that it had occurred.

I have been provided with a redacted version of the CPS report that resulted from the call on May 8, 2023, which is what Turnipseed received following a records request. The redacted CPS report includes a narrative of the reporter’s allegations. Several of those allegations easily fall under the definition of abuse or neglect if true. For example, the reporter stated that J.T. reported feeling unsafe around K.T. who “threatens to kill her daily” and had “hit her in the back of the head and ran after her with a knife.” ECF No. 30-11 at 11.² The narrative further includes evidence from the reporter that this could be true, including a change in J.T.’s demeanor, a difference in the shape of her head, her insistence on keeping her hood on throughout the day, and a message from her mother that J.T. “will need to speak to someone this morning.” *Id.* J.T. had also reported that her mother slept when home or went out to get drunk. *Id.* at 12. Lastly, J.T. reported “numerous times” that there was little to no food in the home and she sometimes goes hungry. *Id.* Importantly, “[p]er the caller, [J.T.] has been known to lie and make up stories. As for the concerns this morning regarding [K.T.] chasing her with a knife, this seemed genuine as her behaviors were also different.” *Id.*

¹ Available at <https://dcf.wisconsin.gov/files/cwportal/policy/pdf/access-ia-standards.pdf>. Courts may take judicial notice of official publications on government websites. *Qiu Yun Chen v. Holder*, 715 F.3d 207, 2012 (7th Cir. 2013).

² I appreciate that this narrative includes sensitive material. However, this has already been quoted at length in the publicly available briefings.

As a result of the report, an investigator was dispatched who interviewed J.T., K.T., and Turnipseed, finding the neglect and abuse “unsubstantiated.” In her interview, J.T. stated that she was “joking” and the school officials “misunderstood what [she] was saying and meant.” *Id.* at 13. J.T. further explained that she did not sleep with a frying pan, stating multiple times that it was a “joke” derived from a movie scene. *Id.* at 13–14. As for the lack of food, she stated she “was being dramatic because there was no other pizza left” since she is very picky about her food. *Id.* at 14. Still, J.T. admitted to and agreed that she had made several of the reported statements and that J.T. and K.T. had a difficult relationship. *Id.*

B. Relevance

Parties to a federal lawsuit are entitled to “any nonprivileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). There is no question that the information is plainly relevant to the matter at hand. Plaintiffs allege that the CPS report was part of a coordinated effort by the school district to exclude the children, force the family to move, and retaliate against Turnipseed for advocating for her daughters. Communications between CPS and school district staff might corroborate this story. Indeed, it does not appear that defendants dispute the information’s relevance. Rather, the issue is whether the requested information is otherwise privileged.

C. Federal Informer’s Privilege

Defendants contend that the information sought is privileged, pointing to the federal informer’s privilege and Wisconsin Statute § 48.981(7), which keeps the identity of a reporter confidential. Because this is an action involving questions of federal law and not a diversity suit, I must apply federal privilege law. *Memorial Hosp. for McHenry County*

v. Shadur, 664 F.2d 1058, 1061 (7th Cir. 1981). Therefore, I begin with defendants' assertion of the federal informer's privilege.

The federal informer's privilege is "the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law." *Roviaro v. United States*, 353 U.S. 53, 59–62 (1957). Much could be said about this privilege (and many courts have), but it is not necessary here because the district does not hold this privilege. True, the district is being sued pursuant to 42 U.S.C. § 1983 for allegedly violating Turnipseed's First Amendment rights as a government actor acting under color of law. ECF No. 14 at ¶¶ 291–304. However, the federal informer's privilege has generally applied in instances where the government actor is *receiving* the information, rather than *providing* the information. Most deal with police informants, see, e.g., *Wade v. Ramos*, 26 F.4th 440 (7th Cir. 2022); *Guzman v. City of Chicago*, 242 F.R.D. 443 (N.D. Ill. 2007); or informants to the Department of Labor, see, e.g., *Walsh v. McDevitt*, 654 F.Supp.3d 744 (C.D. Ill. 2023); *Dole v. Loc. 1942, Int'l Bhd. Of Elec. Workers, AFL-CIO*, 870 F.2d 368 (7th Cir. 1989). In this case, it appears the reporter was a school district employee and the information was relayed to CPS. Therefore, CPS could invoke this privilege, not the district. Because privileges "are not lightly created nor expansively construed," I will not expand this privilege beyond what the Seventh Circuit has generally recognized. *United States v. Nixon*, 418 U.S. 683, 710 (1974). The federal informer's privilege does not apply because the district would not be the appropriate entity to assert it.³

³ Defendants vaguely assert that they are the appropriate holder and invoker of the federal informer's privilege. ECF No. 32 at 14–15. However, the two cases cited for that

D. Wis. Stat. § 48.981(7)

Defendants also argue that they are not required to produce the name of the informant under Wis. Stat. § 48.981(7). “Because state law does not supply the rule of decision as to this claim, [I am] not required to apply state law in determining whether the material sought . . . is privileged.” *Shadur*, 664 F.2d at 1061. But “[t]his does not mean . . . that [I] should not consider the law of the state in which the case arises in determining whether a privilege should be recognized as a matter of federal law.” *Id.* Indeed, I should recognize state privileges if it “can be accomplished at no substantial cost to federal substantive and procedural policy” because of the “strong policy of comity between state and federal sovereignties.” *Id.*

This district has twice applied this test to medical peer review materials, which are privileged under Wis. Stat. § 146.38(2). *Johnson v. Sprung*, No. 14-cv-1408, 2016 WL 11663763 (E.D. Wis. May 19, 2016); *Est. of Swayzer v. Clarke*, No. 16-CV-1703-PP, 2017 WL 4990585 (E.D. Wis. Oct. 30, 2017).⁴ No district or circuit court has ever considered the application of the test to this specific Wisconsin statute, and analysis of analogous state statutes is rare. Still, in the few cases I have found, district courts applying federal law have uniformly upheld the privilege, keeping confidential the identity of those reporting

proposition, *Deleon v. Punnam Valley Bd. of Educ.*, 228 F.R.D. 213 (S.D.N.Y. 2005), and *Oglesby v. Eikszta*, No. 1:07-CV-51 (NPM/RFT), 2008 WL 11504717 (N.D.N.Y., Sept. 30, 2008), deal with application of *state* privileges in federal courts, not application of the *federal* informer’s privilege.

⁴ The Court also discussed this test in *Doe v. Galster*, when it considered a privilege under Wis. Stat. § 118.125 pertaining to the confidentiality of school records. No. 09-C-1089, 2011 WL 2784159 (E.D. Wis. July 14, 2011). However, that was ultimately resolved using only federal laws.

child abuse and neglect. See, e.g., *Breitweiser v. Indiana Dep't of Child Servs.*, No. 115CV01687TWPMJD, 2016 WL 5394405, at *1 (S.D. Ind. Sept. 27, 2016); *DeLeon v. Putnam Valley Bd. of Educ.*, 228 F.R.D. 213, 217–221 (S.D.N.Y. 2005); *Oglesby v. Eikszta*, No. 1:07-CV-51 (NPM/RFT), 2008 WL 11504717 (N.D.N.Y., Sept. 30, 2008). Although this counsels in favor of holding that the defendants may assert this state law privilege, it is not conclusory.

Moreover, even the federal informer's privilege "must give way" when the information at issue is "essential to a fair determination" of the case. *Roviaro*, 353 U.S. at 60. In determining whether I should recognize a state statute as the basis for a privilege in federal court, the Seventh Circuit instructs me to "weigh the need for truth against the importance of the relationship or policy sought to be furthered by the privilege and the likelihood that recognition of the privilege will in fact protect that relationship in the factual setting of the case." *Shadur*, 664 F.2d at 1061.

1. The Policy

Wis. Stat. § 48.981(7) provides that "all reports made under this section . . . shall be confidential." Even when certain individuals, such as the subject of a report or a child's parent, are permitted to obtain copies of the report, the confidentiality of the reporter must be maintained. *Id.* In fact, every state has similar laws that maintain the confidentiality of records related to child abuse. *DeLeon*, 228 F.R.D. at 217 (citing *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 n.17 (1987) ("The importance of the public interest at issue in this case is evidenced by the fact that all 50 States and the District of Columbia have statutes that protect their official records concerning child abuse.")). Plainly, this issue is of great public importance not only in Wisconsin but across the country.

The anonymity of the reporter is meant to encourage participation in reporting suspected child abuse and neglect to the state. In this case, it is possible that the confidentiality of the reporter's identity may have played a role in their decision to report. Setting aside the animus between the Turnipseed family and the district and its employees, any school official who receives information from a child such as that provided by J.T. would clearly be required to report this information under Wisconsin statute. Those actions, if true, constitute child abuse and neglect. Although reporting under these circumstances is technically mandatory, individuals still have to decide whether or not to make reports.

In this case, in their initial call, the reporter differentiated between elements they believed might not be true (due to J.T.'s alleged propensity for lying) and those they believed could be true (based on other physical evidence). This suggests the reporter felt compelled to inform CPS of the entire conversation (or series of conversations), despite feeling that some of it might not be true. The reporter's decision to report all of the information, including allegations they felt might be false, could have been premised on the belief that their identity would not become public.⁵ This cuts both ways. On one hand, a reporter might feel enabled to make blatantly false or harassing reports based on anonymity. On the other hand, the state may prefer to receive tips that might not be true if there is a possibility that there is truth to the matter. After all, mandatory reporters are not equipped to determine conclusively whether a child is abused or neglected. That is

⁵ Reporters are immune from civil and criminal liability. Wis. Stat. § 48.981(4). Nonetheless, non-legal repercussions could accrue through other means, including social ramifications in the community or professional consequences.

the purpose of child welfare agencies. Moreover, even children who have a propensity to lie could sometimes be telling the truth about abuse or neglect in the home. In this case, the caller's transparency about which allegations they believed might be false versus those they believed were true suggests that this caller was not presenting false information for the purpose of harassment, but rather to be thorough in their mandatory reporting duties.

2. The Need for Truth

Plaintiffs believe that this CPS call was part of the district's alleged scheme to expel the family from the district. However, whether the requested information is likely to yield evidence to support this theory turns on the extent to which there is existing evidence of such. See, e.g., *Oglesby*, 2008 WL 11504717 at *4 (denying plaintiffs' request to compel identification of a CPS mandated reporter, but permitting "substantive information related to the basis of the submission of the report to CPS"). Recognizing this, the plaintiffs point to a body of evidence that "personnel were seeking a way to exclude J.T. and K.T. from the school district" and "were disparaging [Turnipseed] for her advocacy for her daughters and seeking to limit her speech." ECF No. 28 at 8. This includes statements from school officials suggesting animus towards the family and criticism of Turnipseed's parenting.⁶ See ECF No. 30 and exhibits. While this evidence certainly bears on the plaintiffs' broader allegations about discrimination, exclusion, and retaliation, it does little to suggest that the

⁶ For example, plaintiffs provided evidence that school officials discussed displeasure at having the children in the school district, sought ways to send the children home, and considered hiring a private investigator to determine the family's residency. There are also statements in the record, including in the redacted CPS report, that school officials believed that Turnipseed was "making excuses" for her children.

CPS call was part of that effort. Moreover, the redacted CPS report bears indicia that the reporter was not acting in bad faith.

Plaintiffs correctly claim that the allegations were determined to be unsubstantiated. ECF No. 28 at 8. But just because abuse or neglect are found unlikely to have occurred does not mean that the reporter *knew* that the abuse or neglect had not occurred. Plaintiffs also state that “the children denied making statements that the informer cited as the basis for the call to CPS.” *Id.* This is not true. With respect to sleeping with the frying pan, J.T. stated that she didn’t *remember* telling school officials this, but if she did she “was joking and the[y] misunderstood what [she] was saying and meant.” ECF No. 30-11 at 13. She then said she “was making a joke to change the topic, to change the mood,” and that the “frying pan comment was something she saw in a movie.” *Id.* Taken together, these suggest that J.T. *did* make this statement. Moreover, the CPS report explicitly states that J.T. “did make that statement [to school officials],” referring to J.T. not feeling safe at home. *Id.* at 14. Finally, J.T. admitted that when she said “there was no food in the home,” she “was being dramatic.” *Id.* In fact, in the CPS report concludes that J.T. “has reported there being no food” despite the presence of food, “when her favorite items are gone.” *Id.* at 15. J.T. did not deny making any of these statements, but rather stated that school officials had misunderstood her meaning, taking her seriously when she was either joking or “being dramatic.”

The person who ultimately made the report was also transparent about the possibility that the claims were not true, differentiating between the claims they felt were likely lies and those that “seemed to be genuine.” *Id.* at 12. While there is some evidence that the district may not have acted with the best intentions generally around that time, I

do not see evidence that the CPS report itself was made in bad faith or as part of the scheme alleged by plaintiffs. Put another way, regardless of whether there is evidence of other elements of the scheme, it is not clear that the CPS call was a part of it. There is an important difference between a report later found to be false and a false report made knowingly for the purpose of harassment. This appears more likely to fit into the former category. I do not think that violating the strong and legitimate policy underpinning the Wisconsin Statute by compelling defendants to produce the name of the CPS reporter would therefore yield useful information.

Briefly, I will also address the *Shadur* case, which the plaintiffs heavily rely on. In that case, the Seventh Circuit ultimately permitted discovery of documents from in-hospital peer group review committees which were protected under Wisconsin law. *Shadur*, 664 F.2d 1058. However, that case is substantially different for one very important reason. In that case, the Seventh Circuit found that denying the movant “access to [that] information may very well prevent him from bringing his action altogether.” *Id.* at 1063. That is not the case here. As evidenced by the substantial documentation already submitted by the plaintiffs, they already have access to significant discovery supporting their claims.

3. Other Information Can be Compelled

Based on the foregoing analysis, I find that it is not appropriate to compel defendants to produce the name of the person who made the report to CPS. However, this is not the only evidence related to the CPS call that plaintiffs seek. Other information includes:

- the identity of “all individuals who participated in or were consulted regarding the decision to” make a report to CPS;
- any records maintained by the district relating to the CPS report;
- communications related to the plaintiffs and CPS; and
- communications that contain “Child Protective Services” or variations of “CPS.”

ECF No. 30 at 2–3.

Wis. Stat. § 48.981(7) provides that CPS reports are generally confidential. However, a copy of the report may be furnished to the parent of a child, except that it “may not disclose any information that would identify the reporter.” Wis. Stat. § 48.981(7). The policy underlying the statute, therefore, appears to focus on keeping the identity of the reporter confidential. This is also the policy advanced by refusing to compel defendants to produce the reporter’s name. However, this policy is not advanced by refusing to compel production of *other* materials requested by the plaintiffs. Therefore, I will order defendants to produce “substantive information related to the basis of the submission of the report to CPS.” *Oglesby*, 2008 WL 11504717 at *4. Defendants must produce the above information to the extent possible without revealing the identity of the reporter. If necessary, defendants may redact materials or seek guidance from me on doing so.

IV. MOTION FOR PROTECTIVE ORDER

Finally, plaintiffs have filed a motion for a protective order to prohibit defendants from deposing J.T. and K.T., or alternatively establishing limits on their depositions. Plaintiffs argue that a prohibition is appropriate because the children are minors with various mental health conditions, and a deposition would cause undue oppression and

burden. ECF No. 35 at 1. Defendants respond that the children, as parties to the lawsuit, are likely to have discoverable information, and the depositions are important to building their defense. ECF No. 47 at 1. Moreover, defendants note they have already offered plaintiffs several accommodations which were rejected. *Id.* at 2.

As previously noted, parties to a federal lawsuit are entitled to “any nonprivileged matter that is relevant to any party's claim or defense.” Fed. R. Civ. P. 26(b)(1). The issue here is not one of relevance. The children, though minors, are named plaintiffs and witnesses to the events alleged in the complaint and are likely to have relevant information. However, courts may issue protective orders “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c). Although these “are broad, they are not limitless.” *Antetokounmpo v. Maree, Inc.*, No. 23-CV-1389-JPS-JPS, 2024 WL 199141, at *2 (E.D. Wis. Jan. 18, 2024) (quoting 2 Federal Litigation Guide § 18.01). Generally, the party resisting discovery bears the burden to show that the court should intervene to block or modify a request. *Arassi v. Weber-Stephen Products, LLC*, No. 13-CV-684, 2014 WL 1385336, at *2 (E.D. Wis. Apr. 9, 2014).

Plaintiffs have not shown any “exceptional circumstance” that would justify prohibiting defendants from deposing the children. *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 993 (7th Cir. 2002). Other courts in this district have similarly rejected such requests, holding that minor children (including those younger than J.T. and K.T.), some of whom had diagnoses for emotional, mental, and psychological disabilities, could still be deposed. See *Mendez v. City of Chicago*, No. 18 CV 5560, 2020 WL 3510692, at *4 (N.D. Ill. June 29, 2020), *objections overruled*, No. 18 C 5560, 2021 WL 12318772 (N.D. Ill.

Feb. 24, 2021); *Arassi*, 2014 WL 1385336, at *3; *Sauer v. Exelon Generation Co., LLC*, 280 F.R.D. 404, 408 (N.D. Ill. 2012). Indeed, “[i]t is very unusual for a court to prohibit the taking of a deposition altogether and absent extraordinary circumstances, such an order would likely be in error.” *Mendez*, 2020 WL 3510692, at *2 (quoting *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979)).

Plaintiffs’ arguments mirror those of the plaintiffs in *Mendez*. In that case, defendants moved to depose an eight-year-old named plaintiff to a civil rights action. *Mendez*, 2020 WL 3510692, at *1. Plaintiffs asserted that the child’s deposition would be cumulative, his verbal and mental impairments rendered him incompetent, and he would likely be re-traumatized by the deposition. *Id.* at *2–3 The court rejected each of these. First, citing *Arassi*, it found the deposition was not cumulative because of the child’s unique perspective on the events alleged. *Id.* at *2. Second, citing *Sauer*, it held barring the deposition would only be appropriate if plaintiffs could demonstrate that the child could not testify “in any meaningful fashion whatsoever.” *Id.* at *3 (quoting *United States v. Banks*, 520 F.2d 627, 630 (7th Cir. 1975)). Finally, while the court agreed that limitations could be imposed to address plaintiffs’ concerns as to potential trauma, it was not persuaded that this was enough evidence to preclude the deposition altogether. *Mendez*, 2020 WL 3510692, at *4.

I generally agree with the *Mendez* court. Plaintiffs aver that the information sought at depositions is “likely to be duplicative” of what has already been provided through answers to interrogatory questions. ECF No. 35 at 3. However, a substantial portion of the responses to the interrogatories consist of statements that the child in question “does not recall this incident and therefore denies.” ECF No. 42-4 at 7–11. Because the children

are named plaintiffs and their testimony is crucial in understanding the facts underlying this cause of action, it is reasonable for defendants to seek answers through another method, such as a deposition.

Plaintiffs also state that the children “will have a difficult time participating in depositions and answering questions because of their mental health conditions.” ECF No. 35 at 2. Turnipseed is worried that J.T. “would have a very difficult time understanding the attorney’s questions and providing responsive answers” or that she “would not understand the concept of testifying under oath.” *Id.* Similarly, Turnipseed is worried that K.T. would have “a trauma response” and “shut down and be unable to engage in the deposition.” *Id.* While I appreciate these concerns, they are at this point no more than speculation. It is unknown what would happen at the deposition, particularly if there are limitations put in place. Defendants aver plaintiffs are effectively “assert[ing] that [the children] are not competent as witnesses.” ECF No. 47 at 3. To the extent this is true, defendants are also correct that “whether a person is competent to be a witness is a matter of evidence and, thus, admissibility, not discoverability.” *Mendez v. City of Chicago*, No. 18 C 5560, 2021 WL 12318772, at *3 (N.D. Ill. Feb. 24, 2021) (cleaned up).

Finally, plaintiffs argue that these depositions will harm the mental health of the children. ECF No. 35 at 2. But, much like in *Arassi*, the only support provided to this effect are three “cursory . . . and conclusory letters” from the children’s mental health providers. 2014 WL 1385336, at *2.⁷ The letters ultimately state nothing more than the general

⁷ Plaintiffs have also filed a motion to restrict these documents to case participants. ECF No. 37. Because the documents include the names of minors and their personal health information, I will grant this request.

opinion that a deposition would be harmful, but these providers “disclose very little on which I can make a specific finding of harm.” *Id.* Although I am sympathetic, I do not find that this evidence is sufficient to support the extraordinary step of precluding depositions. As both the *Arassi* and *Mendez* courts found, there is also no evidence that limitations on the depositions would not be sufficient to address these concerns. While I am sensitive to the possibility that a deposition could be a difficult experience for the children, I am also acutely aware that they are named plaintiffs with important information.

For all of these reasons, I will not prohibit the deposition of J.T. and K.T. However, I do find that some limitations on the depositions are appropriate. The parties have already agreed that Turnipseed may be present for the depositions, along with K.T.’s mentor. ECF No. 35 at 3 n.1. However, plaintiffs also ask me to impose the following limitations: (1) each deposition should last no more than 45 minutes; (2) leading questions should not be permitted from defense counsel; and (3) if a child answers that she does not remember an event, defense counsel must accept that and move on. ECF No. 35 at 4. Defendants object to each of these limitations. ECF No. 47 at 3–4. Defendants are willing to accept a three and a half hour time limit, exclusive of breaks or delays, and permit breaks as needed. *Id.* at 3. I will consider each of these three requests in turn.

Both parties appear to agree that some time limitation is appropriate. The *Arassi* court limited each child’s deposition to 45 minutes. 2014 WL 1385336, at *3. However, there are significant differences between the *Arassi* case and this one. In *Arassi*, the children’s parents were suing a company that produces gas grills following a serious injury to the father’s hand while assembling a grill. *Id.* at *1. In that case, the children were asked about the accident and how the family’s lives had changed following it, because the

damages arose primarily from the alteration of the father's family and home life. *Id.* The children were not named plaintiffs, the event at issue was a single accident, and the information sought was quite broad. In contrast, the children here are named plaintiffs and the events at issue allegedly span an entire academic school year. Moreover, these children are several years older than the *Arassi* children.⁸ Because of the amount of information that the children are likely to possess (which defendants are entitled to), as well as their approximate age, limiting the deposition to 45 minutes seems too stringent.

Another court in this district has addressed a similar dispute between parties. In *Tate*, the parties disagreed on the conditions for the deposition of three minor named plaintiffs whose "recollection of the incident" underlying that action was "squarely at issue." *Tate v. City of Chicago*, No. 18 C 7439, 2020 WL 5800817, at *1 (N.D. Ill. Sept. 29, 2020). There, the court limited the deposition of an eleven-year-old with multiple diagnosed psychological conditions to three hours: two and a half allotted to defendants and one half allotted to plaintiffs. *Id.* at *3. The depositions of a thirteen-year-old with a diagnosed psychological condition and a fifteen-year-old with no diagnosed psychological conditions were limited to five hours each. *Id.* at *4. Given the numerous emotional and psychological conditions of the children in this case, I find it appropriate to limit the depositions of J.T. and K.T. to three hours each, exclusive of breaks. Breaks are also to be permitted as needed and requested by the children.

⁸ Although I do not know the exact age of the children, I do know that both J.T. and K.T. were expected to be in high school during the 2023-24 school year, from which we are now two years removed. See ECF No. 28 at 8. Assuming a child enters high school at thirteen or fourteen years of age, then the younger child is likely to be fifteen or sixteen. The *Arassi* children, at the time of the requested deposition, were ten and fourteen years old. 2014 WL 1385336, at *1.

Next is the issue of leading questions. The Seventh Circuit has recognized that leading questions are sometimes necessary for minor witnesses. *United States v. Boyles*, 57 F.3d 535, 547 (7th Cir. 1995). With that said, courts have also recognized that leading questions can also be harmful to vulnerable child witnesses. See, e.g., *Tate*, 2020 WL 5800817, at *2; *Mendez*, 2020 WL 3510692, at *4. I note also that the request from plaintiffs is that “*defense* counsel not . . . ask leading questions.” ECF No. 35 at 4 (emphasis added). I will follow the approach of the *Tate* court, finding that the characteristics of these minor deponents closely mirror those in the *Tate* matter. As in that case, *neither* party will be permitted to use leading questions unless the child is “reticent to testify fully and leading questions become necessary to elicit testimony relevant to the claims and defenses in this case.” *Tate*, 2020 WL 5800817, at *2.

Finally, I consider plaintiffs’ request that defense counsel must “move on” if a child answers that she does not remember an event. In support of this request, plaintiffs point to the children’s mental health conditions. With respect to J.T., they note that she was “unable to provide responsive answers to many of the questions” when plaintiffs’ counsel attempted to work with her to answer the interrogatories. ECF No. 35 at 3. As for K.T., during the work with plaintiffs’ counsel she “became agitated” and in addition to being unable to provide answers could only “say that she did not remember.” *Id.* Moreover, plaintiffs aver that stating they do not remember an event “is a typical trauma response” for these children. *Id.*

While I appreciate these concerns, I remain aware that these children are the only ones with their unique perspective on what occurred (or didn’t) with respect to the events alleged in the complaint. I agree that defendants have a right to try to ascertain the facts

of these events, including the children's perspective on them. Defendants should be able to explore with the children the extent to which they are genuinely unable to remember, as opposed to trying to end the questioning. I am not aware of any cases imposing this type of limitation, and I do not think it is appropriate here. I will, however, remind the parties that the children may take breaks as needed. Moreover, I trust that defense counsel will be "patient and respectful at all times." *Mendez*, 2021 WL 12318772, at *3.

V. CONCLUSION

For the reasons stated, **IT IS ORDERED** that plaintiffs' motion to compel discovery related to the child protective services informer (ECF No. 28) is **GRANTED IN PART**. Defendants shall not reveal the identity of the informer but must respond to other discovery requests without revealing the identity of the informer. Defendants may use redaction as appropriate to protect the identity of the informer.

IT IS FURTHER ORDERED that plaintiffs' motion to compel discovery related to certain personnel files (ECF No. 33) is **DENIED**.

IT IS FURTHER ORDERED that plaintiffs' motion for a protective order or to establish limits for the deposition of minor plaintiffs (ECF No. 35) is **GRANTED IN PART**. J.T. and K.T. may be deposed by defendants, subject to the following limitations: first, each child's deposition may last no longer than three hours, exclusive of breaks, and the children are to be given as many breaks as needed; second, no one is permitted to ask leading questions unless they become necessary, as described herein.

IT IS FURTHER ORDERED that plaintiffs' motion to restrict certain documents (ECF No. 37) is **GRANTED**.

IT IS FURTHER ORDERED that, pursuant to the November 13, 2025 Text Only Order, discovery will close ten days after the entry of this order and dispositive motions will be due ten days after the completion of the depositions of J.T. and K.T. Parties may file requests for additional extensions of time as needed.

Dated at Milwaukee, Wisconsin, this 20th day of February, 2026.

/s/ Lynn Adelman
LYNN ADELMAN
United States District Judge