

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION)	
CENTER, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:12-cv-00327 (ABJ)
)	
THE UNITED STATES DEPARTMENT)	
OF EDUCATION,)	
)	
Defendant.)	
_____)	

**DEFENDANT’S CONSENT MOTION FOR EXTENSION OF TIME REGARDING
DISPOSITIVE MOTION BRIEFING SCHEDULE**

Defendant seeks an extension of the dispositive motion briefing schedule until fourteen days after the Court decides plaintiffs’ Motion to Supplement the Administrative Record and Consider Extra-Record Evidence. *See* Pls.’ Mot., July 23, 2012, ECF No. 11.

In this case, plaintiffs challenge a final rule updating the Department of Education’s implementation of the Family Educational Rights and Privacy Act of 1974, as amended (“FERPA”), 20 U.S.C. § 1232g. They challenge the final rule’s definition of three statutory terms under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, arguing that the definitions are “in excess of the [Department’s] statutory authority” and are “not in accordance with law.” Compl. ¶¶ 30, 35. Resolution of such claims depends on the administrative record. *See* 5 U.S.C. § 706 (directing Court to “review the whole record or those parts of it cited by a party”); *WildEarth Guardians v. Salazar*, 670 F. Supp. 2d 1, 4 (D.D.C. 2009) (Court required to review “the full administrative record that was before the Secretary at the time he made his

decision” (citation and quotation marks omitted)).

Because plaintiffs’ motion could alter the scope of the administrative record, the Department requests that it not be required to file its dispositive motion until that scope has been set. This would serve judicial efficiency by avoiding unnecessary or supplemental briefing that could be required if the current briefing schedule went forward and new documents were later determined to be relevant. *Cf. Sara Lee Corp. v. Am. Bakers Ass’n Retirement Plan*, 512 F. Supp. 2d 32, 39 (D.D.C. 2007) (holding motion for summary judgment in abeyance until “resolution of any issues pertaining to the administrative record”); *Delano v. Roche*, 391 F. Supp. 2d 79, 81 n.1 (D.D.C. 2005) (Court stayed briefing on summary judgment motions until after its ruling on plaintiff’s motion to supplement administrative record).

Accordingly, the Department requests that the deadline for its dispositive motion be extended until fourteen days after the Court decides plaintiffs’ Motion to Supplement, and that the remainder of the briefing schedule be as follows: plaintiffs’ opposition and any cross-motion will be due 45 days after the Court’s decision; defendant’s reply and opposition to any cross-motion will be due 75 days after the Court’s decision; and plaintiffs’ reply in support of any cross-motion will be due 89 days after the Court’s decision. The parties met and conferred pursuant to Local Rule 7(m), and plaintiffs consent to this motion.

Dated: July 23, 2012

Respectfully submitted,

STUART F. DELERY
Acting Assistant Attorney General

JOHN R. TYLER
Assistant Director

Of Counsel:

DEBORAH FRIENDLY
RAHUL REDDY
Office of the General Counsel
U.S. Department of Education
Washington, D.C.

/s/ Galen N. Thorp
GALEN N. THORP (VA Bar # 75517)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883, Room 6140
Washington, D.C. 20530
Tel: (202) 514-4781 Fax: (202) 616-8460
E-mail: galen.thorp@usdoj.gov

Attorneys for Defendant