

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CAREER COLLEGES & SCHOOLS OF
TEXAS,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION, *et al.*,

Defendants.

Case No. 1:23-cv-00433-RP

**DEFENDANTS' OPPOSED MOTION
FOR AN EXTENSION OF TIME TO RESPOND TO THE COMPLAINT**

Defendants respectfully move for an extension of time to respond to CCST's complaint. CCST opposes this motion, but as explained below, there is good cause to extend Defendants' response deadline by two weeks, to July 28, 2023.

1. The Final Rule challenged in this case was published on November 1, 2022. *See* 87 Fed. Reg. 65,904 (Nov. 1, 2022).

2. CCST filed this case nearly four months later on February 28, 2023, and it moved for a preliminary injunction on April 5, all in the United States District Court for the Northern District of Texas. *See* ECF Nos. 1, 24. That court determined venue was improper in the Northern District, so it transferred the case to this Court. *See CCST v. U.S. Dep't of Education*, No. 4:23-cv-206-P, 2023 WL 2975164 (N.D. Tex. Apr. 17, 2023).

3. On June 30, after holding an extensive evidentiary hearing and oral argument, this Court denied CCST's motion for a preliminary injunction. *See CCST v. U.S. Dep't of Education*, --- F. Supp. 3d ----, 2023 WL 4291992 (W.D. Tex. June 30, 2023); *see also* Text Order of June 30, 2023 (denying as moot CCST's motion for a temporary administrative injunction). Based on its careful

review of the record, the Court found that “CCST has failed to meet its burden of clearly establishing that it or its members face irreparable harm in the absence of a preliminary injunction.” *CCST*, 2023 WL 4291992, at *10.

4. In the hours *before* this Court rendered its decision, CCST initiated “emergency” proceedings for injunctive relief in the Fifth Circuit. *See* CCST’s Notice of Emergency Motions to Court of Appeals, ECF No. 73. After Defendants informed the Fifth Circuit of this Court’s decision, the Fifth Circuit denied CCST’s motion for an injunction pending appeal, granted a narrow, 21-day administrative injunction that is limited to CCST and its member schools, and set a briefing schedule that will conclude by July 14 for any renewed motion for an injunction pending appeal. *See* Order, ECF No. 77. Last Friday, without first applying for relief from this Court, *see* Fed. R. App. P. 8(a)(1), CCST filed a renewed motion in the Fifth Circuit for an injunction pending appeal. *See CCST v. U.S. Dep’t of Education*, No. 23-50491, Dkt. No. 12 (5th Cir. July 7, 2023).

5. Defendants’ deadline to respond to the complaint is currently July 14 because CCST did not perfect service of process on the Office of the United States Attorney for the Western District of Texas until May 15. *See* Request for Issuance of Summons, ECF No. 52; *see also* Fed. R. Civ. P. 4(i)(1)(A) (detailing requirements for service on the United States Attorney’s Office); Fed. R. Civ. P. 4(m) (providing that service may be made “within 90 days after the complaint is filed”); *Al Hatab v. U.S. Dep’t of Homeland Security*, No. 5:16-CV-988-DAE, 2017 WL 11207255, at *3 (W.D. Tex. Mar. 31, 2017) (requiring strict compliance with Rule 4(i)(1)(A)); *Morrissey v. Mayorkas*, 17 F.4th 1150, 1156 (D.C. Cir. 2021) (discussing the strict service requirements of Rule 4).

6. Defendants respectfully submit that a modest two-week extension of this deadline—to July 28, 2023—is warranted in light of the ongoing emergency proceedings before the Fifth Circuit.

7. First, the requested extension will promote the efficient and orderly disposition of this case. The Fifth Circuit appears likely to enter an order in the coming weeks that may provide guidance

on the central issues presented in this case, given the highly abbreviated briefing schedule it imposed for CCST's motion and the July 21 expiration date it set on its administrative injunction. Such an order would inform any next steps in this litigation, including Defendants' response to the complaint. In the absence of any compelling reason to press ahead, it is appropriate to await the resolution of the fast-moving appellate proceedings initiated by CCST. *Cf. Coker v. Select Energy Servs., LLC*, 161 F. Supp. 3d 492, 495 (S.D. Tex. 2015) (staying proceedings based on public interest in judicial economy).

8. The requested extension is also appropriate to ensure that undersigned counsel are available to assist other government counsel who are new to the case but are representing Defendants in the Fifth Circuit proceedings.

9. Finally, no party will be prejudiced by a two-week extension of Defendants' time to respond to the complaint. CCST will have the benefit of the administrative injunction through July 21. Even after that date, and even assuming the Fifth Circuit denies CCST's motion for an injunction pending appeal, CCST and its members are not likely to face any impending irreparable harms—as this Court already concluded. And a two-week extension—the first extension Defendants have sought with respect to their deadline to respond to the complaint—will not impact any other pending deadlines in this case.

10. In short, a modest two-week extension of the time for Defendants to respond to the complaint will ensure that further proceedings before this Court are conducted with the benefit of any imminently forthcoming guidance from the Fifth Circuit, without causing prejudice to any party or the Court.

11. Before filing this motion, counsel for Defendants conferred with counsel for CCST, who reported CCST's position as follows: "CCST opposes the extension on grounds that the government is not able to commit to the production of the Administrative Record by July 28." But CCST's objection is meritless. There is no basis to require the production of the administrative record

before Defendants have responded to the complaint. *See G.Y.J.P. ex rel. M.R.P.S. v. Wolf*, No. 1:20-cv-1511-TNM, 2020 WL 4192490, at *2 (D.D.C. July 21, 2020) (“This Court’s general practice is to adhere to the traditional civil litigation sequence: the plaintiff files a complaint; then the defendant answers or seeks dismissal of the complaint; then—in APA cases—the Government produce[s] an administrative record; and only then does the Court consider motions for summary judgment.”).

12. For the reasons above, Defendants respectfully request that the Court permit them to respond to CCST’s complaint by July 28, 2023.

Dated: July 10, 2023

Respectfully submitted,

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/s/ Cody T. Knapp
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically via the Court's ECF system, which sent notification of such filing to counsel of record.

/s/ Cody T. Knapp

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**[PROPOSED] ORDER GRANTING DEFENDANTS'
MOTION FOR AN EXTENSION OF TIME TO RESPOND TO THE COMPLAINT**

Upon consideration of Defendants' motion for an extension of time to respond to the complaint, ECF No. 77, and the record herein, it is hereby

ORDERED that Defendants' Motion is **GRANTED**; and

ORDERED that Defendants may respond to the complaint by July 28, 2023.

SIGNED and **ORDERED** in Chambers on this ____ day of July, 2023.

HON. ROBERT L. PITMAN
UNITED STATES DISTRICT JUDGE