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2 **FOR PUBLICATION**  
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8 **IN THE SUPERIOR COURT**  
9 **OF THE**  
10 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**  
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12 **COMMONWEALTH OF THE** )  
13 **NORTHERN MARIANA ISLANDS,** )

14 **Plaintiff,** )

15 **v.** )

16 **JOSELITO CASTRO,** )

17 **Defendant.** )  
18 )  
19 )  
20 )

**CRIMINAL CASE NO. 03-0407E**

**ORDER GRANTING MOTION TO  
QUASH DEFENDANT’S SUBPOENA  
DUCES TECUM**

21 **I. INTRODUCTION**

22 **On December 19, 2003,** Defendant Joselito Castro was arrested for the alleged sexual abuse  
23 of the minor, A.B. On August 5, 2004, Defendant served a subpoena *duces tecum* upon Northern  
24 Mariana Islands Public School System (“PSS”) seeking A.B.’s school records. PSS filed a motion,  
25 supported by a memorandum of law, to quash the subpoena on August 10, 2004, citing constitutional  
26 privacy rights. Defendant did not file any written opposition to the Motion to Quash. Oral  
27 arguments were heard on August 12, 2004. Mitchell Ahnstedt and Viola Alepuyo of the Office of  
28 the Public Defender, appeared on behalf of Defendant. Heather Kennedy appearing on behalf of

1 PSS.

2 **II. DISCUSSION**

3 The authorization for issuance of subpoenas *duces tecum* is found in Commonwealth Rule  
4 of Criminal Procedure 17(c). A motion to quash a subpoena may be based on *inter alia*  
5 constitutional claims, discovery rules, or the unreasonableness of the request.

6 PSS’ opposition to the subpoena *duces tecum* is based on constitutional claims. Article I,  
7 Section 10 of the CNMI Constitution, guarantees that “[t]he right of individual privacy shall not be  
8 infringed except upon a showing of compelling interest.” Although student records are compiled  
9 and maintained by schools, they are private records exempt from public disclosure. 1 CMC §  
10 9918(a)(1). As such, Defendant must show a compelling interest in obtaining A.B.’s school records.

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12 Turning to Defendant’s stated need for the records, the Court concedes that a subpoena *duces*  
13 *tecum* is a device for effective trial preparation, however, it is not a discovery tool. *United States*  
14 *v. Nixon*, 418 U.S. 683, 698-99, 94 S. Ct. 3090, 3103, 41 L. Ed. 2d 1039, 1058 (1974).<sup>1</sup> Therefore,  
15 the reasonableness of the subpoena *duces tecum* is tested by the circumstances of non-investigatory  
16 trial preparation. In that context, the burden is on the moving party, as opposed to the subpoena  
17 recipient, to demonstrate that the subpoena should be enforced. *Id.*, 418 U.S. at 699, 94 S. Ct. at  
18 3103, 41 L. Ed. 2d at 1059. *Nixon* articulates that the documents must be evidentiary and relevant,  
19 that the party cannot properly prepare for trial without the documents, and the application is not  
20 intended as a fishing expedition. *Id.* 418 U.S. at 699 - 700, 94 S. Ct. at 3103, 41 L. Ed. 2d at 1059.  
21 The essence of the test is that the moving party must show the existence of three primary factors  
22 relating to the material requested - relevance, specificity, and admissibility. *Id.* 418 U.S. at 700, 94  
23 S. Ct. at 3103, 41 L. Ed. 2d at 1059.

24 Only materials identifiably relevant to trial preparation on a specific issue must be disclosed.  
25 *United States v. Komisaruk*, 885 F.2d 490, 494-95 (9th Cir. 1989). Further, the material requested

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27 <sup>1</sup> *United States v. Nixon*, “recognized certain fundamental characteristics of the subpoena *duces tecum* in  
28 criminal cases: (1) it was not intended to provide a means of discovery in criminal case, (2) its chief innovation was  
to expedite the trial by providing a time and place before trial for the inspection of subpoenaed material. 418 U.S.  
683, 698, 94 S. Ct. 3090, 3103, 41 L. Ed. 2d 1039, 1058 (1974) (citations omitted).

1 must be identified with specificity so the court can identify relevance. Without specificity, the Court  
2 shall treat the request as a fishing expedition for discovery purposes. Here, Defendant's counsel  
3 represents that the documents subpoenaed are required in the event that the Prosecution might make  
4 a statement at trial about any post-incident behaviors that the victim might be displaying at school.  
5 The Prosecution has not, however, made any indication that it intends to make such a statement.  
6 Further, the subpoena *duces tecum* is for all of A.B.'s school records, which include records of  
7 attendance, academic progress, standardized test scores, and possibly discipline records and  
8 counseling information. This Court finds Defendant's request to be over broad, lacking any  
9 specificity, and without any relevance to Defendant's guilt or innocence. As such, the Court finds  
10 there is not a compelling interest which justifies the disclosure of A.B.'s school records.

11 **III. CONCLUSION**

12 For the above stated reasons, PSS' Motion to Quash in hereby GRANTED.

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14 SO ORDERED this 17th day of August 2004.

15  
16 /s/ \_\_\_\_\_  
17 David A. Wiseman  
18 Associate Judge  
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