

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
23 INS 00738

DURHAM COUNTY

BLUE CROSS AND BLUE SHIELD OF )  
NORTH CAROLINA, )  
 )  
Petitioner, )  
v. )  
 )  
NORTH CAROLINA STATE HEALTH )  
PLAN FOR TEACHERS AND STATE )  
EMPLOYEES, )  
 )  
Respondent. )  
 )  
and )  
 )  
AETNA LIFE INSURANCE COMPANY, )  
 )  
Respondent-Intervenor. )  
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\_\_\_\_\_ )

RESPONDENT’S RESPONSE TO  
PETITIONER’S MOTION TO COMPEL  
DISCOVERY FROM RESPONDENT-  
INTERVENOR

NOW COMES Respondent North Carolina State Health Plan for Teachers and State Employees (hereinafter, the “Plan”) and responds to the Motion to Compel filed by Petitioner Blue Cross and Blue Shield of North Carolina (hereinafter, “Blue Cross”) on June 9, 2023. Although Blue Cross’s motion seeks to compel discovery from Respondent-Intervenor, not the Plan, the Plan opposes the motion because it improperly seeks to challenge the Plan’s discretionary decisions using irrelevant information that the Plan could not have known; and because any such information will only confuse the issues and unnecessarily increase the time and expense required for the Plan to defend this contested case.

**FACTUAL AND PROCEDURAL BACKGROUND**

Following months of preparation, the Plan publicly posted its Request for Proposal (RFP) for a third-party administrator (TPA) to administer the health plan on August 30, 2022. The

resulting 2022 TPA RFP differed from previous TPA RFPs in certain and deliberate ways. For example, around March 2022, the Plan had decided that it would not accept narrative responses in the proposals. (See **Exhibit A**, Affidavit of Dorothy C. Jones, ¶15). This decision was part of the Plan's effort to modernize and improve its contracting processes for all RFPs. (**Ex. A**, Jones Aff. ¶¶ 7-14). By moving away from narrative responses, the Plan hoped to accomplish several things, namely:

- To improve objectivity and consistency in the scoring of proposals;
- To avoid equivocation in narrative responses that undermines contractual obligations undertaken by bidders;<sup>1</sup>
- To simplify and shorten the RFP process; and
- To reduce the burden on Plan staff and encourage staff participation in RFP evaluation processes.<sup>2</sup>

(**Ex. A**, Jones Aff. ¶ 14).

The decision to not allow a vendor to submit narrative responses explaining how it planned to meet the Plan's requirements was grounded in reasoned bases. Once a winning bidder is selected, its RFP responses become part of the contract, so, regardless of *how* the vendor plans to meet the requirements, the vendor is contractually obligated to meet them. The Plan and vendor can also collaborate during the implementation period (frequently a year or more before the

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<sup>1</sup> A vendor's RFP responses become the contract terms when its bid is awarded the contract. (**Ex. A**, Jones Aff. ¶ 9). The Plan has had problems with vendors (including Blue Cross) relying on qualification and vague language in RFP responses to justify balking at performing terms of the contract. (Jones Aff. ¶ 13).

<sup>2</sup> As Ms. Jones describes, narrative answers inject subjectivity into the review which in turn makes reaching consensus much more difficult and sometimes contentious. (**Ex. A**, Jones Aff. ¶¶ 11-12). The time commitment to assess lengthy, narrative responses also hinders the limited staff's other responsibilities, and the difficulty of parsing subjective written responses made staff reluctant to serve on RFP evaluation committees. (**Ex. A**, Jones Aff. ¶ 12, 14).

contract term begins) to address how the vendor will meet each requirement. (Ex. A, Jones Aff. ¶ 16). Of course, if the contracted TPA cannot meet the requirements as agreed, the Plan has contractual remedies. (Ex. A, Jones Aff. ¶ 17).

In other ways, the 2022 TPA RFP was structured like prior RFPs. Relevant to Blue Cross' motion, the RFP required potential vendors to identify their network of healthcare providers under contract or binding letters of intent and to quantify network pricing. However, as in earlier RFPs, the Plan did not require supporting documentation, such as copies of the letters of intent and contracts. (Ex. A, Jones Aff. ¶¶ 23-24). As with the other components of the contract, a winning bidder is bound by its proposed network pricing. (Ex. A, Jones Aff. ¶ 23). In the event a selected vendor cannot provide the network discounts it proposed, the Plan has contractual remedies available, including but not limited to performance guarantees that allow the Plan to recoup administrative fees paid to the vendor. (Ex. A, Jones Aff. ¶¶ 17, 23). Further, the Plan had insufficient staff and time to review and verify tens of thousands of network provider contracts and/or letters of intent for each proposal. The plan would likely discover any misrepresentation in the implementation period, harming the vendor's reputation and triggering potential contractual claims for the Plan. Accordingly, as in past TPA RFPs, the Plan considered it reasonable to rely on the networks and pricing represented in each vendor's cost proposal. (Ex. A, Jones Aff. ¶ 24).

The scope of information and documents to be considered was apparent from the face of the RFP when it was made available to interested vendors on August 30, 2022. (See **Exhibit B**, RFP Excerpts, Attachment A (Pricing), pp. 81-85, Attachment K (Minimum Requirements), p. 117, Section L (Technical Proposal), p. 118).<sup>3</sup> In fact, the Plan's leadership held individual

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<sup>3</sup> A copy of the RFP is also attached as Exhibit 1 to Blue Cross's Petition for Contested Case Hearing.

meetings with Blue Cross and the other vendors *well before* the RFP was issued, in which the vendors were advised that the format of this RFP would be different, including the limits on information to be included in their responses. The Plan also held a phone call with all interested vendors on September 1, 2022, the day after the RFP became public, in which the format of the RFP was discussed, and vendors were allowed to ask questions. This discussion specifically included the prohibition on narrative responses regarding the technical and minimum requirements. (Ex. A, Jones Aff. ¶ 25).

The RFP also allowed for two rounds of written questions from interested vendors that were answered before bids were submitted and urged vendors to raise any questions, issues, or exceptions to the RFP. (Ex. B, RFP Section 2.3, pp. 10-11). It also invited vendors to suggest desired modifications of the RFP's terms and conditions during the question period. (Ex. B, RFP Section 2.3, p. 11). In the event the Plan elected to make changes to the RFP at the request of interested vendors, the Plan would issue an addendum to the RFP. (Ex. B, RFP Section 2.3, p. 11). However, no vendor objected to the non-narrative format of the RFP in the individual meetings held before the RFP was issued, or in the Sept. 1 phone call with vendors; nor did any vendor raise questions, exceptions, or desired modifications to the RFP format during the written question and answer periods. (Ex. A, Jones Aff. ¶ 27).

Three vendors, including both Blue Cross and Respondent-Intervenor Aetna Life Insurance Company (hereinafter, "Aetna"), submitted bids in response to the RFP. The TPA contract was ultimately awarded to Aetna. Blue Cross instituted this contested case challenging that award, not contending that the Plan failed to follow the RFP but mainly challenging the wisdom of the process the Plan adopted. At issue in this motion, Blue Cross has requested numerous documents to which Aetna has objected. These requests focus entirely on information the Plan consciously chose not

to request or allow with vendors' submissions: copies of letters of intent and contracts between Aetna and healthcare providers, documents related to Aetna's ability to comply with the contract requirements, and documents regarding Aetna's pricing guarantees.

### **SUMMARY OF ARGUMENT**

The Plan agrees with Aetna that the requests exceed the scope of permissible discovery and that discovery and evidence of this type is not only irrelevant (and unlikely to lead to discovery of admissible evidence) but also risks significant confusion of issues and wastes the time and resources of the Plan, the other parties, and the tribunal. The subject of this contested case is the Plan's decision—not whatever decisions the Plan could have made or might have made if it had chosen a different process for evaluating bids.

The thrust of Blue Cross's motion to compel is that it needs the discovery to ascertain what the Plan would have known if it had asked for additional information. But at the time the Plan designed the RFP and decided what information it would consider, the Plan could not have known any of Aetna's internal information that Blue Cross is now trying to discover. Discovery into such information in no way allows the ALJ reliably to evaluate the Plan's decision—which was made without the information sought. As such, Blue Cross is inviting this tribunal now to substitute its judgment for that of the Plan. However, this tribunal's role is not to second-guess the Plan's discretionary decisions, but instead to determine whether the RFP process used by the Plan here was affected by reversible error. The discovery sought has no bearing on that issue, and therefore Blue Cross's motion should be denied.

## ARGUMENT

### **I. Standard of Review**

In order to prevail on a motion to compel, a moving party must prove that the discovery requests relate to information that is both relevant and necessary to its claims or defenses. *See Wagoner v. Elkin City Schools' Bd. of Educ.*, 113 N.C. App. 579, 585, 440 S.E.2d 119, 123 (1994); N.C. R. Civ. P. 26(b)(1). Relevancy is a legal determination to be made by the ALJ, and “such rulings are given great deference on appeal.” *State v. Wallace*, 104 N.C. App. 498, 502, 410 S.E.2d 226, 228 (1991). Orders regarding discovery fall within the ALJ’s discretion and will not be upset absent an abuse of discretion. *See Wagoner*, 113 N.C. App at 585, 440 S.E.2d at 123; *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 446, 448, 271 S.E.2d 522, 523 (1980).

Relevant evidence is that which has the “tendency to make the existence of any fact *that is of consequence to the determination* of the action more probable or less probable than it would be without the evidence.” N.C. R. Evid. 401 (emphasis added). In its motion, Blue Cross contends that “a critical question in this case is whether the Plan’s newly designed RFP process gathered the information needed for the Plan to make an informed decision.” (Mot. to Compel, p. 4). More accurately, the question is whether the RFP process, including the scope of information required, constituted error in one or more of the ways enumerated in Section 150B-23(a) of the General Statutes. Because Blue Cross cannot show that the scope of information required in the RFP was error, the hypothetical question of what the Plan *might* have learned using a different RFP format is not of consequence and is thus irrelevant.

The only potential basis for reversal raised by Blue Cross relevant to its motion is that the non-narrative RFP format and the scope of information the Plan considered were arbitrary and capricious. *See* N.C. Gen. Stat. § 150B-23(a)(4). Neither the language of the RFP nor any Plan

policy required, or even allowed, any bidder to present any of the information Blue Cross now seeks in discovery. Accordingly, Blue Cross cannot contend that the Plan acted erroneously or failed to use proper procedure by not considering it.<sup>4</sup> See N.C. Gen. Stat. § 150B-23(a)(2), (3). Further, no statute or rules govern the information the Plan must obtain and consider. Thus, Blue Cross cannot contend that the Plan exceeded its authority or jurisdiction or failed to act as required by law or rule. See N.C. Gen. Stat. § 150B-23(a)(1), (5). To the contrary, the substance of Blue Cross’s argument is that it disagreed with the limits set by the Plan. In effect, Blue Cross argues that the decision not to request more information was not based on fair and careful consideration or any course of reasoning—that is, it was arbitrary and capricious. See, e.g., *ACT-UP Triangle v. Comm’n for Health Servs. of the State of N.C.*, 345 N.C. 699, 707, 483 S.E.2d 388, 393 (1997).

The Plan is entitled to a presumption that it properly performed its duties. See, e.g., *In re Broad & Gales Creek Cmty. Assoc.*, 300 N.C. 267, 280, 266 S.E.2d 645, 654 (1980); *Adams v. N.C. State Bd. Of Registration for Prof’l Eng’g & Land Surveyors*, 129 N.C. App. 292, 297, 501 S.E.2d 660, 663 (1998); *In re Land & Mineral Co.*, 49 N.C. App. 529, 531, 272 S.E.2d 6, 7, *disc. rev. denied*, 302 N.C. 397, 297 S.E.2d 351 (1981) (holding that “[t]he official acts of a public agency . . . are presumed to be made in good faith and in accordance with the law”). A contested case is not a *de novo* proceeding where the ALJ is free to substitute her judgment for that of the Plan. Rather, the ALJ must give due regard to the demonstrated knowledge and expertise of the Plan within its specialized knowledge. N.C. Gen. Stat. § 150B-34(a).

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<sup>4</sup> Blue Cross’s petition contends that the prohibition on narrative responses to the technical requirements was “*erroneous*, arbitrary and capricious” (Petition ¶ 107, emphasis added). But as discussed herein, the decision not to accept narrative responses was intentional and communicated in advance, as Blue Cross acknowledges (Petition, ¶¶ 30-32). Accordingly, this limitation was not mistaken or “erroneous.”

Furthermore, showing that the RFP was arbitrary and capricious is a very high bar to overcome. *Blalock v. N.C. Dep't of Health and Human Servs.*, 143 N.C. App. 470, 475, 546 S.E.2d 177, 181 (2001). In determining whether the Plan acted arbitrarily or capriciously, the tribunal does not have the authority to substitute its judgment for the Plan's judgment as long as the Plan exercised its discretion in good faith and in accordance with the law. *Lewis v. N.C. Dep't of Human Res.*, 92 N.C. App. 737, 740, 375 S.E.2d 712, 714 (1989). Decisions of an administrative agency may be reversed as arbitrary and capricious only if they are "patently in bad faith," or "whimsical" in the sense that "they indicate a lack of fair and careful consideration" or "fail to indicate any course of reasoning in the exercise of judgment." *ACT-UP Triangle*, 345 N.C. at 707, 483 S.E.2d at 393 (internal citation and quotations omitted). Mere disagreement with the Plan's conclusions does not entitle a Petitioner to relief. See *Little v. Bd. Of Examiners*, 64 N.C. App. 67, 69-70, 306 S.E.2d 534, 536-37 (1983) (holding that contradictory evidence or a difference of opinion with an agency does not lead to a conclusion that the agency's decision was arbitrary and capricious if the agency decision is supported by substantial evidence).

Against this background, the discovery sought is only relevant or calculated to lead to admissible evidence if it is probative of whether the Plan's *design of the RFP* was arbitrary and capricious. It is not.

## **II. The Discovery Sought Does Not Make it More or Less Likely that the RFP was Arbitrary or Capricious**

Aetna's internal information sought by Blue Cross is not relevant to the question of whether the design of the RFP (a process in which Aetna had no part) was arbitrary or capricious. Blue Cross claims to need the discovery because it contends that the Plan's alleged "failure to collect and evaluate information on each bidder's true ability to meet the Plan's needs" could have produced a different result. (Mot. To Compel, p. 7). But whether that scenario could have

produced a different result is a distraction that need not be decided in this contested case. The Plan *could* have chosen any number of reasonable approaches, any one of which could have led to a different result; but as long as the approach it chose was reasonable, other potential choices are of no consequence and are thus irrelevant. *See Craven Reg. Med. Auth. V. N.C. Dep't of Health & Human Servs.*, 176 N.C. App. 46, 59, 625 S.E.2d 837, 845 (2006) (an administrative decision between two reasonable alternatives is entitled to deference); *N.C. Dep't of Env. & Nat. Res. V. Carroll*, 358 N.C. 649, 660, 599 S.E.2d 888, 895 (2004) (“When the trial court applies the whole record test, however, ‘it may not substitute its judgment for the agency’s as between two conflicting views, even though it could reasonably have reached a different result had it reviewed the matter *de novo*.”). Rather, the relevant question is whether the decision not to collect and evaluate information on each bidder’s ability to meet the Plan’s needs was in bad faith, whimsical, or lacking in reason. *That* question can only be answered by looking at what the Plan knew or should have known at the time it designed the RFP.

**A. The Plan’s Decisions in Designing the RFP Were Not Arbitrary or Capricious**

As part of its contracting modernization effort, the Plan decided to disallow narrative responses by March 2022, before the Plan even started drafting the RFP and long before any proposals were submitted. (*See Ex. A*, Jones Aff. ¶¶ 15, 21). Aetna’s internal information, which could not have been available to the Plan when drafting the RFP, has no bearing on these decisions made by the Plan. Moreover, much of the information sought relates to Aetna’s ability to comply with aspects of the RFP that did not yet exist at the time the Plan decided not to accept narrative information. Some of the information sought seeks communications that were made even later, after the proposals were evaluated and the contract awarded to Aetna in December 2022.

Nothing in the record suggests that the Plan's design was arbitrary and capricious. The Plan chose to omit narrative responses for a variety of reasons designed to make the process more efficient, objective, fair, and, most importantly, to strengthen the Plan's contractual rights against any approved vendor. (Ex. A, Jones Aff. ¶¶ 16-17). The approach to the RFP taken by the Plan here was not unique but was reflective of its approach to *all* RFPs beginning in Spring 2022. (See Ex. A, Jones Aff. ¶ 20).

Blue Cross's motion quotes Vanessa Davison's comment expressing concern on an early draft of the RFP language as evidence that "the Plan" was concerned about the RFP format (Motion to Compel, p. 3). However, Ms. Davison was not the Plan's Director of Procurement and Contracts as the motion states. Instead, Ms. Davison served as a contracting agent, which was not part of the Plan's leadership. (Ex. A, Jones Aff. ¶ 19). Plan leadership was aware of those concerns and understood it was foregoing certain information that could have some marginal utility to its evaluation of the proposals, but believed the benefits of its objective, non-narrative format outweighed those concerns. Ultimately, the Plan chose to prioritize a streamlined RFP process and strengthened contractual standing at the end. (Ex. A, Jones Aff. ¶ 19). The mere fact that differing opinions were discussed or that that Blue Cross does not like the result does not render the process arbitrary or capricious.

Moreover, there was no reason to require documentation supporting the cost proposals because the approved vendor would be contractually bound to provide the proposed pricing. (See Ex. A, Jones Aff. ¶ 23). Indeed, the Plan has not required such documentation in the past, and doing so would greatly increase the administrative burden that the evaluation process imposes on the Plan's staff. The Plan also did not consider it necessary to require documentation to verify vendors' networks or pricing because a certified actuarial opinion was submitted with each

vendor's pricing, and because any misrepresentation would likely be discovered, exposing the vendor to significant reputational and legal risk. (Ex. A, Jones Aff. ¶ 24).

**B. The Requested Discovery Has No Bearing on Whether the Design of the RFP was Arbitrary or Capricious**

But more importantly, evidence of Aetna's internal documents and information (which could not have been known or available to the Plan) cannot make it any more or less likely that the Plan made a reasoned decision. The discovery sought is not designed to uncover why the Plan structured the RFP as it did or what concerns staff members of the Plan may have had regarding the RFP's design—in fact, Blue Cross has already received that discovery from the Plan. (*See, e.g., Mot. To Compel* p. 3; Ex. A, Jones Aff. ¶ 19). Rather, Blue Cross's strategy is calculated to determine what might have happened if the Plan had adopted some other method for evaluating the bids.

Essentially, Blue Cross is hoping to find evidence from Aetna that undermines Aetna's contractual promises and then to use that evidence to argue that the Plan erred by not requesting that information in the first place. The circular logic inherent in this approach (i.e., that in proving a different result would have resulted from a different process, the process chosen must be arbitrary) is riddled with problems and illogical. Most significantly, this tribunal is charged with reviewing the Plan's actual actions, not any other hypothetical actions the Plan could have taken. N.C. Gen. Stat. § 150B-23(a). Blue Cross must first show that the choice made by the Plan was arbitrary or capricious before discovery of a hypothetical alternative has any relevance (and even then, such relevance is limited).<sup>5</sup> *See Craven*, 176 N.C. App. at 59, 625 S.E.2d at 845. Blue Cross

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<sup>5</sup> If Blue Cross could demonstrate that the design of the RFP was arbitrary and capricious, the discovery sought might be relevant to demonstrate whether that error was harmless. However, Blue Cross cannot show that the design was arbitrary and capricious and is not seeking discovery that would shed any light on that issue. Rather, Blue Cross is putting the cart before the horse

simply hopes to discover some piece of evidence that might lead to reconsideration today of decisions made over a year ago. Blue Cross hopes to use that evidence to invite the tribunal to substitute its judgment for the Plan—something it cannot do under the appropriate standard of review. *Carroll*, 358 N.C. at 660, 599 S.E.2d at 895. Second-guessing the Plan on the basis of hindsight is not permitted.

Moreover, Blue Cross’s position ignores the realities about the effect of the Plan’s design. Even if Blue Cross were able to substantiate its concerns that Aetna’s RFP responses were inaccurate, the Plan built significant protections into its process. If the Plan ultimately learns that Aetna is unable to perform as it promised, the Plan has contractual remedies against Aetna, including performance guarantees, termination of the contract, and/or legal recourse for breach of contract, such as damages or specific performance. (**Ex. A**, Jones Aff. ¶ 17). Thus, the discovery sought could not prove that the Plan should have designed the RFP differently because the Plan has adequate remedies should the “problem” Blue Cross fears come to pass.

### **III. Blue Cross’ Requested Discovery is an Impermissible Fishing Expedition**

Even assuming, *arguendo*, that the information sought has theoretical relevance, Blue Cross has not identified any specific evidence, any misrepresentation by Aetna, or any other specific fact to be proved by the information sought. Rather, Blue Cross has made nothing more than conclusory allegations that it suspects Aetna could not meet certain technical requirements (*see, e.g.*, Petition ¶¶ 93, 96, 105) and/or that Aetna’s network pricing was inaccurate or inferior to Blue Cross’s (*see* Petition ¶¶ 56-59) without citing any specific facts justifying such suspicions.

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and assuming relevance without meeting its burden of proving relevance. *See Wagoner*, 113 N.C. App. at 585, 440 S.E.2d at 123.

The discovery requests do not reflect a targeted request for specific evidence, but rather cast a wide net in the hope that some evidence might turn up to question Aetna's promises.

The law disfavors fishing expeditions in discovery. "When the need for production of materials is not shown . . . , the law will not sanction the use of Rule 34. This is so in order to prevent litigants from engaging in mere fishing expeditions to discover evidence or using the rule for harassment purposes." *Stanback v. Stanback*, 287 N.C. 448, 461, 215 S.E.2d 30, 39 (1975); *see also, e.g., Willis v. Duke Power Co.*, 291 N.C. 19, 34, 229 S.E.2d 191, 200 (1976) (noting that although Rule 26 "should be construed liberally, neither party should be allowed to roam at will in the closets of the other"). Indeed, the failure to identify specific documents desired, including an explanation of the contents, has been held fatal to a motion seeking production of documents. *See Patterson v. S. Ry. Co.*, 219 N.C. 23, 12 S.E.2d 652, 653 (1941) (refusing to order production of "practically all the correspondence and writings among the defendants relative to the establishment of the rates involved" in case alleging price fixing conspiracy where no specific evidence was provided to show that the documents would have a direct bearing on the alleged conspiracy); *see also, e.g., Sadler v. Hall*, 2016 WL 7368698, \*2 (N.C. App. Dec. 20, 2016) (affirming order quashing subpoenas to witnesses where there was nothing in the record demonstrating what testimony the subpoenaed witnesses would have provided); *Reynolds Am. v. Third Mot. Equities Master Fund*, 2018 WL 5870626, 2018 NCBC 114, ¶¶ 27-30 (N.C. Sup. Ct. Nov. 7, 2018) (denying motion to compel documents related to defendants' internal policies on theory that they could reveal inconsistencies with the defendants' proffered valuations because the request was overbroad and "lack[ed] any concrete connection [to] the value of the CMB Defendant's shares," the issue in dispute).

#### **IV. The Requested Discovery Will Needlessly Increase Expense and Complicate Discovery and Trial**

“It is well-established that, because the primary duty of a trial judge is to control the course of the trial so as to prevent injustice to any party, the judge has broad discretion to control discovery.” *Capital Resources v. Chelda*, 223 N.C. App. 227, 234, 735 S.E.2d 203, 209 (2012). Allowing the discovery sought by Blue Cross will needlessly increase the expense of discovery and trial and unnecessarily complicate the presentation of evidence. Requiring the production of these documents will only lead to further discovery, including additional depositions, on issues that have no relevance to the issues of consequence in this case. Moreover, any evidence resulting from such discovery presumably then will be offered at trial, wasting time and potentially confusing the issues at trial or on appeal with irrelevant evidence in the record. Exercising the discretion to control discovery now will promote judicial efficiency and protect the parties from unnecessary burden and expense.

#### **CONCLUSION**

The Plan acted deliberately, reasonably, and within its authority to limit the information submitted with responses to the 2022 TPA RFP. Because its decisions to set such limits were not arbitrary or capricious, any information created later and/or other information not available to the Plan at the time of the relevant decision cannot be used to assess the Plan’s decision to award the contract to Aetna. Thus, such information is irrelevant and beyond the scope of permissible discovery. Moreover, Blue Cross has not alleged any specific wrongdoing or identified any probative evidence that it seeks. It should not be allowed to conduct open-ended discovery that will inevitably increase the time and expense necessary for the Plan and the other parties to resolve this contested case.

WHEREFORE, Respondent respectfully requests that Blue Cross's motion to compel be denied, and respectfully requests to be heard on the motion.

This the 19<sup>th</sup> day of June, 2023.

North Carolina State Health Plan for  
Teachers and State Employees

/s/ J. Benjamin Garner

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## CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was uploaded electronically with the Office of Administrative Hearings, causing electronic service, as defined in 26 N.C.A.C. 03 .0501(4), to be made upon the following:

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This the 19<sup>th</sup> day of June, 2023.

*/s/ Marcus C. Hewitt*  
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