

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>BENJAMIN M. AUSLANDER,</b>	:	
	:	<b>Civil Docket No. 2:22-cv-01425-HB</b>
<b>Plaintiff,</b>	:	
	:	
v.	:	
	:	
<b>TREDYFFRIN/EASTTOWN SCHOOL DISTRICT,</b>	:	
<b>ARTHUR J. MCDONNELL, and</b>	:	
<b>PACIFIC EDUCATIONAL GROUP</b>	:	
	:	
<b>Defendants.</b>	:	

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**TREDYFFRIN/EASTTOWN SCHOOL DISTRICT’S AND ARTHUR  
McDONNELL’S RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION  
FOR PROTECTIVE ORDER UNDER FED. R. CIV. P. 30(d)(3) [ECF 44 and 46]**

Barely thirty minutes into Plaintiff’s deposition in this case, Plaintiff’s counsel abruptly ended the deposition and left the deposition room with Plaintiff. Plaintiff’s counsel terminated the deposition over his concern that District Defendants’<sup>1</sup> counsel did not follow the “convention from typical deposition practice where counsel generally explains the rules and grounds for how questions and answers will go,” and because Plaintiff’s counsel felt that District Defendant’s counsel “harassed” and “badgered” Plaintiff because Plaintiff’s counsel believed that the questions were “repetitive and improper.” ECF 46 at p. 6, 10, 13. The deposition transcript, **Exhibit A** hereto, does not support Plaintiff’s counsel’s unilateral termination of Plaintiff’s deposition. Plaintiff must be ordered to appear for the resumption of his deposition.<sup>2</sup>

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<sup>1</sup> District Defendants are Tredyffrin/Easttown School District and Arthur J. McDonnell.

<sup>2</sup> District Defendants anticipate submitting a motion asking this Court to compel Plaintiff and his counsel to reimburse District Defendants for the costs incurred in connection with the terminated deposition.

With great respect for this Court, District Defendants submit that a reading of the transcript alone should be sufficient to deny Plaintiff's instant motion. District Defendants – again, with great respect for this Court – do not believe they should be required to outline for, and receive prior approval from, Plaintiff, Plaintiff's counsel and this Court on how to take Plaintiff's deposition, let alone regarding Defendants' counsel's style and strategy, with which Defendants' counsel takes issue. But given Plaintiff's counsel's accusations of bad faith, District Defendants feel compelled to explain to this Court the relevance of the examination of Plaintiff before the examination was improperly terminated by Plaintiff's counsel.

This case is largely about 11 audio recordings that Plaintiff made of his own voice while inspecting the PEG Materials at the School District's Administrative Offices on February 7, 2022. As this Court knows, District Defendants terminated Plaintiff's inspection of the materials on February 7 because Plaintiff was reading the contents of the materials verbatim into an audio recording application on his iPhone. In this litigation, Plaintiff asserts that he had a First Amendment Right to read the contents of the materials verbatim into the audio recording application.

In one of the recordings believed to be taken during the beginning of the February 7 inspection, Plaintiff can be heard telling Mr. McDonnell that he is making audio recordings “because I can't take notes very well; I am very slow at writing.” Accordingly, District Defendants' counsel opened the examination of Plaintiff by asking him about that direct and relevant statement Plaintiff made to Mr. McDonnell.<sup>3</sup> Plaintiff was somewhat evasive on this topic, which is not atypical of a plaintiff being deposed by opposing counsel. By asking

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<sup>3</sup> Plaintiff's assertion that this portion of the examination “is no different than asking someone: ‘Is it still the case you beat your wife?’” is beyond absurd given Plaintiff's allegations in this case.

additional follow-up questions, which included asking the same question several times (to which Plaintiff's counsel continued to object), we were able to complete this portion of the examination move on.

Next, District Defendants' counsel noticed that Plaintiff was referencing and using a notepad and a folder of documents during the examination. As a result, District Defendants' counsel requested that copies of the notepad and folder be read into the record or be made a deposition exhibit. Plaintiff's counsel objected to that request. Accordingly, District Defendants' counsel requested that the contents of the notepad and folder be preserved. District Defendants are at a loss as to how this aspect of the deposition could have led to Plaintiff's counsel's abrupt termination of the deposition.

Finally, Plaintiff's counsel ended the deposition when District Defendants' counsel was examining Plaintiff concerning the sequential order in which he made the February 7, 2022, audio recordings. While Plaintiff produced the audio recordings that he made, the recordings themselves do not indicate the sequential order in which the recordings were made.<sup>4</sup> And the metadata that accompanied the production of the audio files does not indicate the sequential order in which the recordings were made. Accordingly, District Defendants' counsel examined Plaintiff concerning the order of the recordings. And when Plaintiff offered that he could "go back to my phone and look and see" the order in which recordings were made, District Defendants' counsel asked if Plaintiff could do so. While such an examination should not have been objectionable, Plaintiff's counsel nonetheless improperly terminated the deposition and left the examination with Plaintiff.

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<sup>4</sup> Plaintiff's counsel implies that Defendants' counsel would not identify audio recordings. This is untrue, and the transcript reflects that. Plaintiff's counsel continued to object as Defendants' counsel attempted to play the audio recording to Plaintiff. Defendants' counsel always intended to identify and mark each audio recording (which were provided by Plaintiff's counsel).

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The deposition transcript of the barely thirty minutes of Plaintiff's examination that Plaintiff's counsel allowed does not in any way support any basis for Plaintiff's counsel to have terminated the deposition and seek relief from this Court. Accordingly, this Court should compel Plaintiff to appear for the resumption of his deposition without any of the "restrictions" Plaintiff is asking this Court to place on the deposition via Plaintiff's proposed order. District Defendants also respectfully request that this Court extend the deadline for motions for summary judgment to 15 days after completion of Plaintiff's deposition to give District Defendants sufficient time to obtain and use the transcript in any such motion. Finally, District Defendants also respectfully request such additional relief in favor of District Defendants as this Court deems appropriate.

Respectfully submitted,

**WISLER PEARLSTINE, LLP**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Tredyffrin/Easttown School District's and Arthur McDonnell's Response in Opposition to Plaintiff's Motion for Protective Order Under Fed. R. CIV. P. 30(d)(3) [ECF 44 and 46] was sent to all counsel of record through this Court's electronic case filing system on the date set forth below.

Respectfully submitted,

**WISLER PEARLSTINE, LLP**

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