

IN THE UNITED STATES DISTRICT COURT OF COMMON PLEAS  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BENJAMIN AUSLANDER,	:	
	:	
Plaintiff,	:	
	:	
-v.-	:	No: 2:22-cv-01425-HB
	:	
TREDYFFRIN/EASTTOWN SCHOOL	:	
DISTRICT,	:	
	:	
Defendant	:	

\*\*VIDEOTAPE DEPOSITION\*\*

DEPONENT: Arthur J. McDonnell

DATE: Thursday, August 18, 2022

TIME: 10:02 a.m.

PLACE: 353 West Lancaster Avenue, Suite 300  
Wayne, PA

REPORTER: Ted Allen

SOLICITOR: Wally Zimolong

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ALSO PRESENT:

Chris Weiss Calhoun, videographer

## I N D E X

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1 THE VIDEOGRAPHER: All right, everything  
2 is recording and we are now on the record. My  
3 name is Chris Weiss Calhoun, certified legal  
4 videographer retained by Karasch & Associates.  
5 This is a video deposition in the United States  
6 District Court for the Eastern District of  
7 Pennsylvania. Today's date is August 18th of  
8 2022, the time on the monitor is 10:02 a.m.  
9 The deposition is being held at Zimolong, LLC,  
10 353 West Lancaster Avenue, Wayne, Pennsylvania.  
11 We are here in the matter of Benjamin Auslander  
12 versus Tedyffrin -- sorry, Tredyffrin/Easttown  
13 School District, et al., the deponent is Arthur  
14 J. McDonnell.

15 Will the attorneys please state their ap-  
16 pearance for the record.

17 MR. ZIMOLONG: For the plaintiff, Walter  
18 Zimolong.

19 MR. ELIAS: For Tredyffrin/Easttown School  
20 District and Arthur McDonnell, Brian Elias and  
21 Christina Gallagher.

22 MR. DONOHUE: For Pacific Education Group  
23 Michael Donohue.

24 THE VIDEOGRAPHER: And the court reporter  
25 today is Ted Allen and will now administer the

1 oath.

2 ---

3 ARTHUR J. MCDONNELL was called as a witness and after  
4 having been first duly sworn, according to law, was examined  
5 and testified as follows:

6 --- EXAMINATION ---

7 BY MR. ZIMOLONG:

8 Q. Good morning, Mr. McDonnell.

9 A. Good morning.

10 Q. We met before the deposition started, my  
11 name is Walter Zimolong, I represent the plaintiff  
12 in the litigation that brings us here today.

13 MR. ELIAS: Mr. Zimolong, is usual stipu-  
14 lations?

15 MR. ZIMOLONG: Stip, yeah, all objections  
16 except for the form of the question are re-  
17 served.

18 MR. ELIAS: Thank you.

19 BY MR. ZIMOLONG:

20 Q. As I said we're here today to take your  
21 deposition today, um, you've just been placed under  
22 oath.

23 Do you understand that that oath has the  
24 same force and effect as if it were given in a  
25 courtroom before a judge and a jury?

1 A. Absolutely.

2 Q. I'll ask you to speak up, we were talking  
3 a little bit before because of the sound of the, um,  
4 HVAC system. Um, and likewise if you can't hear me  
5 and if I'm not speaking loud enough -- I know we're  
6 at somewhat of a distance here -- uh, let me know  
7 and I'll, and I'll do my best to speak up.

8 Is that okay?

9 A. Sure.

10 Q. Uh, all the answers to my questions need  
11 to be, uh, verbal. Uh, nods of the head, shakes of  
12 the head, things like that nonverbal indications.

13 Um, so full yeses and nos and what have  
14 you, do you understand that?

15 A. Yes.

16 Q. Do that for me, okay. Um, in addition to  
17 not hearing what I said because of, of the -- of  
18 some of the background noise, if you don't under-  
19 stand any question that I have, uh, let me know and  
20 I'll, I'll -- I'll do my best to try to rephrase it  
21 so that you do understand the question.

22 Will you do that for me?

23 A. Sure.

24 Q. I'll ask you not to provide me with ans-  
25 wers that are pure speculation or pure guesses.

1 Educated guesses or estimates of any kind  
2 are fine, will you do that for me?

3 A. I will try to do that, yes.

4 Q. And if you are strictly speculating or  
5 guessing please let us know, okay?

6 A. Sure.

7 Q. We're doing a pretty good job of this al-  
8 ready, but this is an instruction I give to all of  
9 my witnesses is that allow me to finish my question  
10 before you answer it. Um, we have a natural tenden-  
11 cy as human beings to want to anticipate a question  
12 and then answer. There's multiple reasons for that,  
13 number one, it's going to give your, your attorneys  
14 a chance to raise an objection, and it's going to  
15 make our court reporter's job much, much easier to  
16 avoid talking over each other.

17 Do you understand that?

18 A. Yes.

19 Q. This instruction is sort of a silly ins-  
20 truction but I have to give it, um, which is:

21 Are you under the influence of any drugs,  
22 medication or other intoxicating substances that  
23 would prevent you from fully understanding the ques-  
24 tions that I ask you today?

25 A. No.

1 Q. The corollary to that one I always hear as  
2 an aside is, are you under any drugs or medication  
3 that are going to prevent you from testifying truth-  
4 fully. Now, I don't know what the heck that ques-  
5 tion is, but I always find that one humorous.

6 The next, uh, instruction I -- or question  
7 I have is, have you ever been convicted of a crime?

8 A. Yes.

9 Q. Which --

10 MR. ELIAS: Objection.

11 THE WITNESS: Sorry.

12 BY MR. ZIMOLONG:

13 Q. Okay. What crime have you been convicted  
14 of?

15 MR. ELIAS: Objection, I instruct you not  
16 to answer.

17 BY MR. ZIMOLONG:

18 Q. Uh, your attorney has instructed you not  
19 to answer the question, um, are you going to follow  
20 his instruction?

21 A. Yes.

22 Q. Um, was the your criminal conviction  
23 within the last ten years?

24 MR. ELIAS: Objection. The witness is not  
25 here to talk about his personal background ab-



1 out a criminal conviction or anything, he's not  
2 going to answer those questions.

3 BY MR. ZIMOLONG:

4 Q. Are you going to listen to your attorney's  
5 instructions and not answer the questions?

6 A. Yes.

7 MR. ZIMOLONG: We'll continue with the  
8 deposition and, perhaps, at the end to make  
9 this efficient we'll call the Court to see if  
10 we can resolve that objection, okay?

11 MR. ELIAS: I guarantee you the Judge  
12 won't like your question but we can do that.  
13 My, my guess is the Judge might say why don't  
14 you ask him if he's ever been convicted of a  
15 crime involving his honesty or giving a false  
16 statement, that might be conceivably relevant.  
17 But someone's general criminal history as you  
18 well know or should know is off limits and the  
19 Judge will agree, but we can call him later if  
20 you'd like.

21 MR. ZIMOLONG: Okay, but we'll move on  
22 with the deposition then.

23 BY MR. ZIMOLONG:

24 Q. Mr. McDonnell, what's the highest level of  
25 education you've obtained?

1 A. A master's degree.

2 Q. And where did you obtain that degree from?

3 A. I have two master's degrees from Blooms-  
4 burg University, B-L-O-O-M-S-B-U-R-G.

5 Q. And are those master's degrees in any spe-  
6 cialization or specific field?

7 A. Yeah, masters of science and accounting,  
8 and a masters in business administration.

9 Q. When did you obtain those degrees?

10 A. I didn't hear your question.

11 Q. When did you obtain those masters degrees?

12 A. Masters, um, I think one was in 1996 and I  
13 forget the other one, sometime after that.

14 Q. Uh, where did you complete your undergrad-  
15 uate studies?

16 A. Penn State University.

17 Q. What did, was your undergraduate degree in  
18 from Penn State?

19 A. Bachelor's of science and accounting.

20 Q. And when did you obtain that degree?

21 A. It was in '85, 1985.

22 Q. Do you have, maintain any licenses or ac-  
23 creditations related to your employment?

24 A. Yes, I have, um, a state accreditation  
25 from Pennsylvania Association of School Business

1 Officials, and I have a national, two national ac-  
2 creditations. One which is a school financial offi-  
3 cer from Association of School Business Internatio-  
4 nal, and I also have a registered school business  
5 administration certificate from ASBO as well.

6 Q. And you're currently employed by the Tred-  
7 yffrin/Easttown School District?

8 A. That's correct.

9 Q. And, and when did you become employed by  
10 the school district?

11 A. I was hired in 2007 in the summer.

12 Q. Um, who was your immediate previous emplo-  
13 yer to the school district?

14 A. Wyomissing Area School District.

15 Q. What was your job position with Wyomiss-  
16 ing?

17 A. Business administrator.

18 Q. And your job titles with the Tredyffrin  
19 Easttown School District are business manager and  
20 board secretary?

21 A. That's correct.

22 Q. What does, um -- What are your job duties  
23 as business manager?

24 A. Well, I have oversight of all fiscal ope-  
25 rations. I'm in charge of business office, the pur-

1 chasing department, food service, transportation,  
2 um, and I also supervise and maintain custodial, and  
3 I work with construction projects through that off-  
4 ice as well. And then board secretary would be any-  
5 thing related to board operations, I approve all  
6 contracts, set the agenda with the board president  
7 and superintendent, and pretty much manage the board  
8 operations just to make sure that everything's you  
9 know in sync and operating at the board level corr-  
10 ectly.

11 Q. Have your, have your job duties as a busi-  
12 ness manager with Tredyffrin/Easttown School Dist-  
13 rict remained generally the same since you've become  
14 employed?

15 MR. ELIAS: Objection, you can answer.

16 BY MR. ZIMOLONG:

17 Q. Do you understand the question?

18 MR. ELIAS: Objection, you can answer.

19 THE WITNESS: Do you want me to answer?

20 MR. ELIAS: If you can.

21 THE WITNESS: Oh, yes. Um, well, when I  
22 started I was also, um, in charge of the data  
23 management department, and when we hired a new  
24 technology director we moved that department  
25 under the technology director.

1 BY MR. ZIMOLONG:

2 Q. Did you perform similar duties as the bus-  
3 iness administrasure -- excuse me, the business ad-  
4 ministrator at Wyomissing?

5 MR. ELIAS: Objection, you can answer.

6 THE WITNESS: Um, similar but smaller  
7 school so more hats.

8 BY MR. ZIMOLONG:

9 Q. Um, now shifting back, uh, you mentioned  
10 some of your duties as, uh, the board secretary.

11 Have you told me everything that you can  
12 think of related to your job duties as board secre-  
13 tary?

14 MR. ELIAS: Objection, you can answer.

15 THE WITNESS: Um, yeah, in a general way.  
16 I mean there might be some specific things, but  
17 I can't think of anything off the top of my  
18 head.

19 BY MR. ZIMOLONG:

20 Q. Do you attend school board meetings?

21 A. Yes.

22 Q. Do you attend some, most, all, all?

23 MR. ELIAS: Objection, you can answer.

24 THE WITNESS: Sorry, all.

25 BY MR. ZIMOLONG:

1 Q. And did I hear testimony correctly as  
2 board secretary you, you come up with the agenda for  
3 board meetings?

4 MR. ELIAS: Objection, you can answer.

5 THE WITNESS: I work with the superinten-  
6 dent and the board president to set the agenda.

7 BY MR. ZIMOLONG:

8 Q. Is the board president and the superinten-  
9 dent the same person, or are they two different peo-  
10 ple?

11 A. Two different people.

12 Q. Um, now am I correct that in addition to  
13 the business manager and board secretary you are  
14 also the school district's right-to-know officer?

15 A. Open records officer.

16 Q. Open records officer, how long have you  
17 been the school district's open records officer?

18 A. Since I was hired.

19 Q. And what do you do as the open records  
20 officer for the school district?

21 A. I would receive requests, right-to-know  
22 requests and, um, make sure that we're complying  
23 with the open records law and you know getting out  
24 responses to those folks and managing that process.

25 Q. Had you, before becoming the open records

1 officer for, uh, Tredyffrin/Easttown School Dist-  
2 rict, had you ever acted as an open records officer  
3 before?

4 A. Yes.

5 Q. Where?

6 A. Uh, in the previous two school districts  
7 where I worked.

8 Q. That would've been Wyomissing?

9 A. Mm-hmm.

10 Q. Correct?

11 A. Yes.

12 Q. And, uh, what was the previous school dis-  
13 trict to that?

14 A. Central Columbia.

15 Q. Have you ever received any training rela-  
16 ted to, um, your duties as a open records officer?

17 A. Yes.

18 Q. Uh, from whom?

19 A. A couple different sources, um, Pennsyl-  
20 vania School Boards Association, Pennsylvania Asso-  
21 ciation of School Business Officials and the open  
22 records office itself, Pennsylvania Open Records  
23 Office.

24 Q. How were these trainings -- How are those  
25 trainings conducted or how were they conducted?

1 A. Various ways, uh, face to face, workshops,  
2 virtually and then webinars.

3 Q. Uh, do you have to do a certain amount of  
4 training? Like for example, lawyers need to take  
5 continuing, a certain number of continuing education  
6 courses a year. Do open records officers have to  
7 complete a certain number of courses or training,  
8 uh, per year?

9 A. Not to my knowledge, no.

10 Q. How, how many training sessions do you  
11 typically do per year as an open records officer?

12 MR. ELIAS: Objection, you can answer.

13 THE WITNESS: There's no typical number.

14 BY MR. ZIMOLONG:

15 Q. When's the last time you, you, uh, took  
16 any sort of training related to your duties as an  
17 open records officer?

18 A. Probably in the last two years, I know I  
19 did one during Covid, but I can't remember when.

20 Q. To the best of your knowledge could you  
21 identify the topics relating to your duties as an  
22 open records officer, as an open records officer  
23 that you received training on?

24 A. The law that's involved in open records,  
25 responses, uh, what's considered an open records re-



1 quest, um, the process, the billing for charges, um,  
2 difficult you know requesters, those kinds of  
3 things.

4 Q. So it sounds like you have a good deal of  
5 familiarity with the right-to-know law?

6 MR. ELIAS: Objection.

7 MR. DONOHUE: Objection.

8 BY MR. ZIMOLONG:

9 Q. You can answer.

10 MR. ELIAS: Yes, you can.

11 THE WITNESS: Um, with the law itself, um,  
12 as it pertains to what I'm doing, yes. Do I  
13 profess to know everything about the open rec-  
14 ords law, no.

15 BY MR. ZIMOLONG:

16 Q. On average how many right-to-know requests  
17 do you process on behalf of the school district each  
18 year?

19 MR. ELIAS: Objection.

20 THE WITNESS: Um, it's been more lately,  
21 um, I think the average in the last two years  
22 has been between forty and fifty.

23 BY MR. ZIMOLONG:

24 Q. Have the number of, uh, right-to-know re-  
25 quests that you've processed in the last two years

1 been more or less on average than the years previous  
2 to that?

3 A. More.

4 Q. Previous, before the last two years on av-  
5 erage how many would you process?

6 MR. ELIAS: Objection.

7 THE WITNESS: It varied twenty to thirty.

8 BY MR. ZIMOLONG:

9 Q. So in the last two years the average num-  
10 ber has increased?

11 A. Yes.

12 Q. Do you have an understanding as to the  
13 reason why the number of right-to-know requests have  
14 increased in the last two years?

15 MR. ELIAS: Objection, you can answer.

16 THE WITNESS: No.

17 BY MR. ZIMOLONG:

18 Q. Have, um, have the right-to-know requests  
19 in the last two years concerned the same or similar  
20 topics?

21 MR. ELIAS: Objection.

22 THE WITNESS: No.

23 BY MR. ZIMOLONG:

24 Q. Does the school district maintain a writ-  
25 ten policy on how a right-to-know officer should

1 process a night -- a right-to-know request?

2 A. Yes.

3 Q. And is that the policy 1123?

4 A. Yes.

5 Q. And if you could, um, I'm just going to  
6 identify this stack of documents for the record.  
7 This is, um, the documents that were produced by  
8 your attorney, TESD000001 through TESD000073, and  
9 I'd like you to and I -- just bear with me as I get  
10 these Bates labels right.

11 Is or does a copy of Policy 1123 appear,  
12 um, at the documents Bates labeled TESD1 and TESD2  
13 just the first two pages of this if you look?

14 MR. ELIAS: Is this for him?

15 MR. ZIMOLONG: Yes, sir.

16 MR. DONOHUE: Are you marking this?

17 MR. ZIMOLONG: No, I just want him to  
18 identify the two documents there.

19 MR. ELIAS: Are we looking at Bates num-  
20 bers?

21 MR. ZIMOLONG: The first two TESD and I'm  
22 going to exclude the multiple zeroes at the be-  
23 ginning of one and two.

24 MR. ELIAS: Mm-hmm, thank you.

25 THE WITNESS: I'm sorry, what was the

1 question?

2 BY MR. ZIMOLONG:

3 Q. Is that a, uh, full and complete copy of  
4 the written policy 1123?

5 A. It appears to be, yes.

6 Q. If you note, uh, on the bottom of the sec-  
7 ond page, uh, it states it was revised January 5th,  
8 2021, do you see that?

9 A. Yes.

10 Q. Do you know why it was revised?

11 A. I don't recall.

12 Q. Did you draft policy 1123?

13 A. No, I didn't.

14 Q. Did you play any role in the revisions  
15 that were made effective January 5th, 2021?

16 A. When you say role what do you mean?

17 Q. Were you aware that revisions were made?

18 A. Oh, yes.

19 Q. Could you to the best of your knowledge  
20 tell us what the revisions were?

21 MR. ELIAS: Objection.

22 THE WITNESS: I don't recall.

23 BY MR. ZIMOLONG:

24 Q. And I may have asked this, do you know why  
25 the revisions were made?

1 MR. ELIAS: Objection, you can answer.

2 THE WITNESS: I don't recall.

3 BY MR. ZIMOLONG:

4 Q. And then in there's, uh -- In the subse-  
5 quent page, T, TESD3 and, uh, probably like the next  
6 ten pages at the top it states those, those pages  
7 state Regulation 1123, do you -- do you see those  
8 pages?

9 A. I do.

10 Q. What's the difference, if any, or let me  
11 ask it this way. What's Regulation 1123?

12 A. The, in the school district we have poli-  
13 cies set by the board and regulations are connected  
14 to these policies. They're the operational document  
15 for the board policy approved, so they're written by  
16 administration and reviewed by the board but not ap-  
17 proved by law, but the board has to accept policy.  
18 So they would approve this first document that that  
19 we talked about, and then the regulation is the ope-  
20 rational document or how the policy is carried out  
21 and that's true for every policy.

22 Q. Did you assist in the drafting of the Reg-  
23 ulation 1123?

24 A. Uh, if you, if you go to the policy you'll  
25 see where it's adopted, it has like an origination

1 date on there and the same with the regulation. So  
2 these, the policy and regulation were adopted before  
3 my employment at the school district, you can note  
4 by the date there since it says 2002 and I was hired  
5 in 2007. So the revision of the, the regulation was  
6 only once in December of 2008. So I was employed  
7 there, so I'm sure that I was involved in that, and  
8 I would've sat at the meeting where we discussed it,  
9 but I don't recall what we changed in the regulation  
10 in 2008.

11 Q. Could you describe for me the process by  
12 which a right-to-know request, the current process,  
13 uh, by which a right-to-know request is processed  
14 when it comes in to you?

15 A. So initially I want to get across whether  
16 it's in writing or an email. Um, we would date  
17 stamp it and then the five -- the clock would start  
18 for the five-day response, and then we'd get to de-  
19 termine what our five-day response is going to be.

20 Q. And after the, the document is date  
21 stamped for the five-day response what happens next?

22 A. Well, we would determine depending on what  
23 the response is, there could be multiple responses  
24 on a five-day response. You could provide the rec-  
25 ords within five days, or you may extend the time by

1 thirty days. And then there's a list of items in  
2 this regulation that you can spend, extend the time  
3 for and that's also in this form, there's like seven  
4 or eight of them on here. Redaction, retrieval from  
5 a remote location, family response we review, the  
6 request or failure to comply, the requester didn't  
7 pay fees, or the extent of the nature of the request  
8 precludes response within the five-day time period.

9 Q. Um, when you say "we" do you, do you pro-  
10 cess right-to-know requests with the assistance of  
11 others?

12 A. Yes.

13 Q. And who would they be?

14 A. Well, my administrative assistant for one  
15 and then we have to reach out to legal counsel, we  
16 would do that.

17 Q. Who's your administrative assistant?

18 A. Mary Minicozzi.

19 Q. So it sounds like what, what happens ini-  
20 tially is the right-to-know request comes in and  
21 gets date stamped and, uh, there's a --

22 There's a determination by you as to whe-  
23 ther or not the document request can be completed  
24 within five days; is that fairly accurate?

25 A. That's the first step, sure.

1 Q. And if it can't be completed in, in five  
2 days then the requester would receive a letter in-  
3 voking, notifying the requester that the district  
4 was invoking the additional thirty days, correct?

5 A. Correct.

6 Q. And then after that step determining whe-  
7 ther compliance can be made within the five-day  
8 period or another, the additional thirty days is go-  
9 ing to be necessary, what does the school district  
10 do to determine whether it has documents responsive  
11 to the request?

12 A. It would depend on the request what we  
13 would do next. Um, the request could be as simple  
14 as I want a copy of the invoices from a certain com-  
15 pany in which case we would go see if we had them,  
16 if they were readily available we would then provide  
17 that. If it's something extensive that we knew  
18 wasn't going to be able to be gathered in five days,  
19 then we would invoke that extension and then go ab-  
20 out getting the documents together.

21 Q. Um, does Ms. Minicozzi assist you in eve-  
22 ry, the processing of every right-to-know request?

23 A. Yes.

24 Q. You stated that, um, there, um, are occa-  
25 sions when you seek the assistance of counsel to



1 process a request?

2 A. Correct.

3 Q. Do you seek the assistance of counsel for  
4 every right-to-know request?

5 A. No.

6 Q. How do you decide when to seek assistance  
7 of counsel in compliance with the right-to-know re-  
8 quest?

9 MR. DONOHUE: Objection to form.

10 BY MR. ZIMOLONG:

11 Q. You can answer.

12 A. It depends on the request, I mean it dep-  
13 ends on what's being requested.

14 Q. Can you give me, um, some examples of the  
15 types of right-to-know requests that would, um,  
16 cause you to seek the assistance of counsel?

17 A. If somebody was asking for a copy of some-  
18 thing either that we thought was confidential or  
19 protected or copyrighted or something that, you  
20 know, we thought that we needed advice before we re-  
21 leased it.

22 Q. So it sounds like you do and, and you make  
23 an initial consideration as to whether the request  
24 is seeking documents that are subject to some exemp-  
25 tion under the right-to-know law?

1 A. Yes.

2 MR. ELIAS: Objection.

3 THE WITNESS: Yeah, that's accurate.

4 BY MR. ZIMOLONG:

5 Q. And has the process -- Do process  
6 right-to-know requests remain consistent since  
7 you've been the right-to-know officer at the school  
8 district?

9 MR. ELIAS: Objection.

10 THE WITNESS: I'm not sure, consistent  
11 how?

12 BY MR. ZIMOLONG:

13 Q. Well, have you always required it to, have  
14 you always date stamped the right-to-know request  
15 when it comes in?

16 A. Right, we have to know 'cause we have to  
17 comply with the five-day response.

18 Q. And you always discuss them, have you al-  
19 ways discussed the right-to-know request with Ms.  
20 Minicozzi?

21 A. Right, she processes the paperwork. On  
22 the form itself is a date of receipt you know when  
23 you receive it so it's, it's right on the form and  
24 then once -- the date you respond is also on there.

25 Q. And is it, is it you personally that makes

1 the determination as to whether or not to seek ass-  
2 istance of counsel, or is it in collaboration with  
3 Ms. Minicozzi?

4 A. I usually make the call if I'm going to  
5 reach out to the attorney initially.

6 Q. Besides Ms. Minicozzi, uh, are there --  
7 and, and counsel -- are there any other individuals  
8 that you discuss right-to-know requests with?

9 A. Yes.

10 Q. Who else?

11 A. Anybody that would be involved in the rec-  
12 ords that were being requested.

13 Q. Do you discuss right-to-know requests with  
14 members of the school board?

15 MR. ELIAS: Objection.

16 THE WITNESS: Sometimes.

17 BY MR. ZIMOLONG:

18 Q. What would cause you to discuss a right-  
19 to-know request with members of the school board?

20 A. A request by the superintendent to inform  
21 the school board of a right-to-know request that he  
22 was aware of. Uh, possibly if there was public com-  
23 ment at a meeting that the board saw that was rela-  
24 ted to a right-to-know request, I might keep them  
25 updated through that process.

1 Q. All right. So I want to talk about the  
2 right-to-know request that brings us here today, and  
3 this is I made copies.

4 MR. DONOHUE: I guess it's are you going  
5 to mark it?

6 MR. ZIMOLONG: No, that's for you.

7 MR. DONOHUE: Yeah, okay.

8 BY MR. ZIMOLONG:

9 Q. Mr. McDonnell, uh, I've handed you a copy  
10 of a right-to-know request dated January 19, 2022,  
11 from Ben Auslander, do you have that document in  
12 front of me -- in front of you?

13 A. Yes.

14 Q. And when you, uh, received this request,  
15 uh --

16 MR. ELIAS: Are you marking this?

17 MR. ZIMOLONG: No.

18 BY MR. ZIMOLONG:

19 Q. When you received this request -- you know  
20 what, I'll just put it in the record.

21 MR. ZIMOLONG: This is Document 16-8B --

22 The witness has been handed Document 16-18 it's  
23 been filed in the docket.

24 BY MR. ZIMOLONG:

25 Q. Mr., uh, McDonnell, when you received

1 the --

2 MR. ELIAS: I don't think you got it  
3 right.

4 MR. ZIMOLONG: I didn't get it right,  
5 when?

6 MR. ELIAS: It's not the right one.

7 MR. DONOHUE: Hold on, are you making this  
8 an exhibit for this deposition, or are you just  
9 referencing these documents?

10 MR. ZIMOLONG: We can make it an exhibit,  
11 I mean.

12 MR. DONOHUE: No, no, I'm just asking what  
13 you're doing.

14 MR. ZIMOLONG: Yeah, I'm referencing the  
15 document for the records so we all know what  
16 we're talking about.

17 MR. DONOHUE: So it's not going to be an  
18 exhibit for the deposition?

19 MR. ZIMOLONG: It's not going to be an ex-  
20 hibit for the deposition.

21 MR. DONOHUE: That's fine.

22 MR. ZIMOLONG: Thanks. So just so we're  
23 clear, uh, this is the document, this is Docu-  
24 ment ECF No. 16-18.

25 MS. GALLAGHER: Hold on one second.

1 THE WITNESS: I don't have the --

2 MR. ELIAS: The one we're staring at says  
3 seventeen.

4 THE WITNESS: Yeah.

5 MR. ELIAS: The one you handed to us it  
6 says seventeen.

7 MR. ZIMOLONG: Okay. Hold, hold on for a  
8 second.

9 MR. ELIAS: Response.

10 MS. GALLAGHER: This one you handed us  
11 it's labeled document --

12 MR. ZIMOLONG: Now what the heck. Oh, I  
13 used the wrong document, I'm sorry. Okay, wait  
14 a minute. You're right, I'm wrong, thank you.  
15 The doc -- The document, the document is, uh,  
16 ECF Document 17, okay, that's what we're talk-  
17 ing about.

18 MR. ELIAS: Right at the top?

19 THE WITNESS: Yeah, I see --

20 MR. ZIMOLONG: Okay.

21 THE WITNESS: -- seventeen, I don't see  
22 any ECF but --

23 BY MR. ZIMOLONG:

24 Q. It says Document 17 at the top, yes?

25 A. Yes.

1 Q. Okay, okay, fair enough. Now, uh, this is  
2 a right-to-know request submitted by Mr. Auslander  
3 on January 19, 2022.

4 Before Mr. Auslander submitted this right-  
5 to-know request did you know who he was?

6 A. I don't recall.

7 Q. And before, uh, Mr. Auslander submitted  
8 this right-to-know request he had submitted previous  
9 right-to-know requests?

10 MR. ELIAS: Objection.

11 THE WITNESS: Is that a question?

12 BY MR. ZIMOLONG:

13 Q. Yes.

14 A. I believe so, I'm not, I'm not sure.

15 Q. Do you recall Mr. Auslander being someone  
16 that attended school board meetings?

17 A. Yes.

18 Q. And he was someone that often spoke at  
19 those meetings?

20 MR. ELIAS: Objection.

21 THE WITNESS: Um, I, I don't recall if he  
22 spoke at every meeting he attended, um, I ob-  
23 served him speak several times.

24 BY MR. ZIMOLONG:

25 Q. What were your observations of him at

1 those -- Describe your observations of him when he  
2 spoke at the meetings that you can recall.

3 MR. DONOHUE: Objection to the form.

4 THE WITNESS: I'm not sure what you're  
5 asking me like.

6 BY MR. ZIMOLONG:

7 Q. When, when he -- To the best of your rec-  
8 ollection when he spoke at school board meetings,  
9 what did he speak about?

10 A. Uh, probably a couple different things  
11 but, um, I would say critical race theory would be  
12 one of the things he brought up.

13 Q. Do you know Mr. Auslander to be part of  
14 the group of parents that are antagonistic to the  
15 school district?

16 MR. DONOHUE: Objection to the form.

17 MR. ELIAS: Objection.

18 THE WITNESS: Not that I'm aware of.

19 BY MR. ZIMOLONG:

20 Q. Do you know him to be part of a group of  
21 parents that are antagonistic to the school board?

22 MR. DONOHUE: Objection to the form.

23 MR. ELIAS: Objection.

24 THE WITNESS: Not that I'm aware of.

25 BY MR. ZIMOLONG:



1 Q. What do you recall Mr. Auslander saying at  
2 school board meetings about critical race theory?

3 MR. ELIAS: Objection, the objection --  
4 These meetings are recorded on the internet --  
5 pardon me, let me finish. These meetings are  
6 recorded and on the internet, no one here  
7 should be guessing what is said when we can  
8 just go watch them, thank you.

9 THE WITNESS: Yeah, I --

10 MR. ELIAS: We're not going to do a got  
11 you --

12 THE WITNESS: That's what I said.

13 MR. ELIAS: -- if he missed something.

14 THE WITNESS: Yeah, specifically I can't  
15 give you like --

16 BY MR. ZIMOLONG:

17 Q. So you don't recall, you don't recall any-  
18 thing specific?

19 MR. ELIAS: Objection, that's not what he  
20 said.

21 MR. DONOHUE: Objection to form.

22 BY MR. ZIMOLONG:

23 Q. Okay. Well, do you recall anything -- Do  
24 you recall anything Mr. Auslander said at any school  
25 board meetings about critical race theory?

1 MR. ELIAS: Objection.

2 THE WITNESS: Specifically no, I don't re-  
3 call.

4 BY MR. ZIMOLONG:

5 Q. Did you ever have any discussions with  
6 school board members about Mr. Auslander?

7 A. I updated the board about right-to-know  
8 requests so yes.

9 Q. Did you always -- Did you update the board  
10 about every right-to-know request that you received?

11 MR. ELIAS: Objection.

12 THE WITNESS: No, I think I said earlier  
13 that you know if there was a need to know, or  
14 if they are involved in a previous request, or  
15 they had someone comment in a public meeting  
16 that involved a right-to-know request I updated  
17 them. If the superintendent gave me directions  
18 to update the board about something then that's  
19 when I would involve the board.

20 BY MR. ZIMOLONG:

21 Q. Why did you decide to involve the board  
22 regarding Mr. Auslander's right-to-know request?

23 MR. ELIAS: Objection, you can answer.

24 THE WITNESS: Two reasons, one the super-  
25 intendent directed me to, the second one was

1           they were at the same meetings you just brought  
2           up, those public school board meetings. So,  
3           um, we thought updating the board made sense  
4           'cause it was connected to what he was talking  
5           about at meetings which was CRT.

6 BY MR. ZIMOLONG:

7           Q. How did the superintendent know that Mr.  
8 Auslander submitted a right-to-know request?

9           MR. ELIAS: Objection.

10           THE WITNESS: Uh, state it, I'm sorry  
11 to -- I'm sorry, say it again.

12 BY MR. ZIMOLONG:

13           Q. How did the sup -- Do you know how the  
14 superintendent knew that Mr. Auslander had submitted  
15 a right-to-know request?

16           MR. ELIAS: Are we talking about Document  
17 17?

18           MR. ZIMOLONG: Yeah, sorry, that that's a  
19 good point.

20 BY MR. ZIMOLONG:

21           Q. Uh, how did, how did the school board sup-  
22 erintendent know that Mr. Auslander submitted the  
23 right-to-know request that's Document 17?

24           MR. DONOHUE: Objection to the form.

25           THE WITNESS: So --

1 MR. ELIAS: You can answer.

2 THE WITNESS: Yeah, so he's just the sup-  
3 erintendent, he's not the superintendent of the  
4 school board, I informed the superintendent.

5 BY MR. ZIMOLONG:

6 Q. So when, when you received the right-to-  
7 know request, Document 17, you informed the superin-  
8 tendent of the school district?

9 A. Yes.

10 Q. And why did you inform the superintendent  
11 of the school district when you received Document  
12 17?

13 A. We had received other requests that were  
14 similar to this that I informed him of, so I keep  
15 him informed usually when there's any kind of re-  
16 quest that's been previous or that's been public  
17 commented about or that the board has awareness of  
18 so he's in the loop.

19 Q. Did you notify this -- Did you notify the  
20 school board about Document 17?

21 A. I, I didn't do it in the form of like an  
22 email or a phone call or anything like that, it may  
23 have come up in executive session, possibly, or in  
24 discussions with them but not any kind of official  
25 notification.

1 Q. When you informed the superintendent of  
2 the school district about Document 17 what did you  
3 say to him?

4 A. I just showed him a copy of it.

5 Q. Did you say anything to him, or you just  
6 showed him a copy of the document?

7 A. I probably emailed it to him, actually I  
8 probably just forwarded the email, I think this came  
9 electronically.

10 Q. Did you forward the email with any comm-  
11 ents?

12 A. I don't recall.

13 Q. Do you maintain that email?

14 A. It depends how long ago it was, we only  
15 have emails for so long before they get deleted.

16 MR. ZIMOLONG: I just want to put on the  
17 record I'd ask for that email to be produced.

18 BY MR. ZIMOLONG:

19 Q. Did you email the --

20 MR. ELIAS: Objection, I believe you have  
21 asked for that email to be produced, and I be-  
22 lieve we objected saying it is not relevant and  
23 it's not going to be produced as intended.

24 MR. ZIMOLONG: So the, the document is not  
25 going to be produced?

1 MR. ELIAS: The email, we've produced  
2 emails -- strike that. We produce all records  
3 that relate to how the 166 pages of PEG materi-  
4 als are going to be handled, i.e., are they go-  
5 ing to be -- Are we going to allow copies, are  
6 we going to allow reproductions, are we not --  
7 We produced all those records, and we pro-  
8 duced all the records that relate to what hap-  
9 pened on February 7, 2022.

10 MR. ZIMOLONG: I'm talking about the  
11 email --

12 MR. ELIAS: I know what you're talking ab-  
13 out.

14 MR. ZIMOLONG: Okay.

15 MR. ELIAS: But I'm telling you that the  
16 email you're that, that what's referenced here  
17 would not be relevant to this case and there-  
18 fore it hasn't been produced.

19 MR. ZIMOLONG: And it won't be produced,  
20 right?

21 MR. ELIAS: We've objected it's not going  
22 to be produced, right. To the extent it exists  
23 we haven't searched for it, it's not relevant.

24 BY MR. ZIMOLONG:

25 Q. Did you email Document 17 to anyone else

1 upon receiving it?

2 A. Not to my recollection.

3 Q. In the email to the superintendent did you  
4 email it with any commentary?

5 MR. ELIAS: Objection.

6 THE WITNESS: Again I don't recall.

7 BY MR. ZIMOLONG:

8 Q. And I apologize, I may have asked this but  
9 in the colloquy I may have forgotten. Besides the  
10 superintendent did you email it to anyone else?

11 MR. ELIAS: Objection.

12 THE WITNESS: Not to my recollection.

13 BY MR. ZIMOLONG:

14 Q. Following your email of Document 17 to the  
15 right-to-know request to the superintendent did you  
16 discuss it with the superintendent?

17 A. I'm sure I did. I don't recall the con-  
18 versation or when that happened, but I'm sure I pro-  
19 bably did.

20 Q. And who, what's the name of the superin-  
21 tendent of the school district?

22 A. Dr. Richard Gusick.

23 Q. Do you recall what Mr. or Dr. Gusick said  
24 to you during these discussions?

25 MR. ELIAS: Objection.

1 THE WITNESS: No.

2 BY MR. ZIMOLONG:

3 Q. Do you recall anything whatsoever about  
4 the discussions with Dr. Gusick about the right-to-  
5 know request?

6 A. No.

7 Q. Did you speak with anyone at Pacific Edu-  
8 cational Group?

9 A. No.

10 Q. Did you email a copy of the right-to-know  
11 request to Pacific Educational Group?

12 A. No.

13 Q. Now it's, it's my understanding that, um,  
14 you made a determination to deny Mr. Auslander's re-  
15 quest for copies of the materials that he sought in  
16 the right-to-know request, but did permit him the  
17 time to schedule an inspection of the materials?

18 MR. ELIAS: Objection.

19 BY MR. ZIMOLONG:

20 Q. Is that correct?

21 A. That's correct.

22 MR. ELIAS: When we say materials here are  
23 we talking about the 166 pages of PEG materi-  
24 als?

25 MR. ZIMOLONG: I'm talking about the ma-



1 materials that Mr. McDonnell deemed responsive to  
2 the right-to-know request.

3 MR. ELIAS: Okay.

4 THE WITNESS: That's the 166 pages.

5 MR. ELIAS: So that's what you're talking  
6 about?

7 MR. ZIMOLONG: Yes.

8 THE WITNESS: In response to records.

9 MR. ELIAS: Well, what I'm getting at  
10 is --

11 THE WITNESS: Yes.

12 MR. ELIAS: When Wally asked about a year  
13 ago he asked for a whole lot of things, one of  
14 which was the PEG records.

15 When it comes to Mr. Auslander earlier  
16 this year is it just the PEG records, or was it  
17 more like Wally's bigger scope?

18 THE WITNESS: Right, so I'm talking about  
19 just this request.

20 BY MR. ZIMOLONG:

21 Q. Just this request, we're talking about  
22 this request right here?

23 A. Right.

24 Q. And you, you offered Mr. Elias an opportu-  
25 nity to inspect those, correct?

1 A. Correct.

2 Q. Before the, before Mr. Auslander's right-  
3 to-know request -- um, the one we're talking about,  
4 Document 17 -- had you ever denied a request or phy-  
5 sical copies of the documents but offered a request  
6 or an opportunity to inspect them?

7 MR. ELIAS: Objection, are we talking ab-  
8 out just the PEG documents or generally speak-  
9 ing?

10 BY MR. ZIMOLONG:

11 Q. Generally at, at all?

12 A. Yes.

13 Q. Could you give me some examples of where  
14 you denied a requester's request for copies of doc-  
15 uments but, nonetheless, offered a request or an op-  
16 portunity to inspect them?

17 A. Uh, situations where materials were copy-  
18 righted where we couldn't produce copies, so I would  
19 say the obvious example was the request previous to  
20 this by Mr. McTiernan for these same records so a  
21 couple months prior to this request.

22 Q. Any other times when you did that besides  
23 Mr. Mc -- McTiernan?

24 A. I'm sure there were others, I mean it's  
25 been -- I've been doing this a long time so, uh,

1    yeah, we've had people come in and inspect records  
2    before.

3           Q.    But nothing specific comes to mind?

4           A.    Nothing jumps out but it would be some-  
5    thing that either would be copyrighted or protected  
6    or something that can't be reproduced.  Sometimes  
7    people request just to come in and look at them and  
8    they don't want copies so, and we have to sit with  
9    them because we're not allowed to take pictures,  
10   things like that.

11          Q.    I, yeah, I'm -- Just so I'm clear I'm not  
12   talking where someone requests just do an inspec-  
13   tion, I was talking about -- I'm asking about just  
14   specific instances that you can recall where you de-  
15   nied someone copies of documents but offered the op-  
16   portunity to inspect them, okay?

17                  Do you understand the difference?

18          A.    Yes, yes, yeah, it would be protected doc-  
19   uments that we couldn't release physically.

20          Q.    And your testimony is just before Mr. Aus-  
21   lander's request that's something you've done be-  
22   fore?

23          A.    Yes.

24          Q.    And the one specific example of that you  
25   can remember is the one with Mr., Mr. McTiernan,

1 correct, request?

2 A. Right, Mr. McTiernan requested the same  
3 records Mr. Auslander did in this Exhibit 17 a cou-  
4 ple months prior to his request.

5 Q. Can you think of any other specific exam-  
6 ples where that occurred?

7 A. Not specific ones but it has occurred.

8 Q. And on eventually there was an arrangement  
9 made between, was it between you and Mr. Auslander--  
10 or strike that.

11 Did you speak to Mr. Auslander after, um,  
12 you about scheduling a time to permit him inspec-  
13 tion?

14 A. I did not.

15 Q. Who did if you know?

16 A. Mary Minicozzi, my assistant, would've ar-  
17 ranged that with him, I don't know if she spoke to  
18 him or whether they did it via email.

19 Q. But eventually there was a time scheduled  
20 for February 7th, 2022, for Mr. Auslander to come in  
21 to inspect?

22 A. I believe that is the date, yes.

23 Q. And, and before the, um, February -- let  
24 me, let me back up. Did Ms. Minicozzi ever discuss  
25 the right-to-know request? To your knowledge did

1 she ever discuss Mr. Auslander's right-to-know re-  
2 quest, Document 17, with Pacific Educational Group?

3 A. Not to my knowledge.

4 Q. To your knowledge did Ms. Minicozzi for-  
5 ward a copy of the right-to-know request to any,  
6 anyone other than yourself?

7 MR. ELIAS: Objection.

8 THE WITNESS: She probably forward it.

9 Again not, not having her computer or asking  
10 her this question, my recollection is I direc-  
11 ted her to forward it to the attorney.

12 BY MR. ZIMOLONG:

13 Q. But besides the attorney did you, um, ins-  
14 truct her to forward it to anyone else?

15 A. Not to my recollection.

16 Q. Why did you tell her to forward it to your  
17 attorney?

18 A. The, the request that I mentioned previ-  
19 ously by Mr. McTiernan, um, we consulted with the  
20 attorney for that and this was the identical req-  
21 uest so we had already identified the responsive  
22 records. So I was sending it to him to know we had  
23 another request for the same records, and I was ask-  
24 ing just for him to review it and make sure that the  
25 response would be similar.

1 Q. When you received the right-to-know re-  
2 quest that we, that you're referring to as the Mc-  
3 Tiernan right-to-know request, did you discuss that  
4 right-to-know request with anyone at Pacific Educa-  
5 tional Group?

6 A. I did not.

7 Q. Do you know if anyone did?

8 A. I don't know that, sorry.

9 Q. Did you forward Mr. Mc -- is it McTierney?

10 A. Mr. McTiernan yes.

11 Q. McTiernan?

12 A. McTiernan, Michael.

13 Q. Upon receiving Mr. McTiernan's right-to-  
14 know request, did you also forward that right,  
15 right-to-know request to the superintendent?

16 A. I don't recall.

17 Q. And before the February 7th, 2022 meeting  
18 did you discuss it with Ms. Minicozzi?

19 MR. ELIAS: Objection, what's in --

20 BY MR. ZIMOLONG:

21 Q. Let me, did you discuss the, the meeting  
22 -- Did you dis --

23 A. You mean the, the meeting on the 7th with  
24 Mr. Auslander?

25 Q. Yeah, did you discuss that with Ms. Mini-

1 cozzi?

2 MR. ELIAS: Before the meeting?

3 BY MR. ZIMOLONG:

4 Q. Before the meeting?

5 A. I'm sure we had a conversation about the  
6 meeting, yes.

7 Q. Do you remember --

8 A. She was there so.

9 Q. Did you remember anything specific about  
10 the discussions?

11 A. I think I just told her I wanted her to  
12 take notes.

13 Q. Why did you want her to take notes?

14 A. I typically have somebody there when we're  
15 inspecting I -- you know we have different roles,  
16 I'm observing, she's taking notes.

17 Q. Did she take notes at the meeting?

18 A. She did.

19 MR. ELIAS: Can we take a break?

20 MR. ZIMOLONG: Sure.

21 MR. ELIAS: Thank you.

22 THE VIDEOGRAPHER: Okay, going off the re-  
23 cord at 10:55.

24 (Break off the record.)

25 THE VIDEOGRAPHER: We're recording and

1 back on the record at 10:58.

2 BY MR. ZIMOLONG:

3 Q. Just getting back to the February 7, 2022  
4 meeting, um, who was present at that meeting?

5 A. Mr. Auslander and myself and Mary Minicoz-  
6 zi.

7 Q. And when there is a, uh, open records re-  
8 quest requiring an inspection do you always attend  
9 those inspections?

10 A. Yes.

11 Q. Does Ms. -- is it Minicazzi or Minicozzi?

12 A. I've heard it both ways but I say Mini-  
13 cozzi.

14 Q. Minicozzi got it. Does, does, does Ms.  
15 Minicozzi also attend?

16 A. Uh, it depends, usually yes.

17 Q. And I think you said this, the general  
18 purpose of Ms. Minicozzi attending is to take notes  
19 of these inspections?

20 A. Yes.

21 Q. Um, where, where did the -- in the school  
22 district building did this take place this meeting?

23 A. I believe it was in Room 201 in the admin  
24 building.

25 Q. And when that meeting, um, began you ins-



1     tructed Mr. Auslander you could not photograph the  
2     records?

3             A.     Yes.

4             Q.     So I'm clear the records you -- At that  
5     meeting you, you brought with you it was 166 pages  
6     of documents for Mr. Auslander to inspect?

7             A.     Correct.

8             Q.     And, um, you believe that you instructed  
9     him he could not make records -- I'm sorry, could  
10    not make photographs?

11            A.     Right, when, when we originally correspon-  
12    ded with him about setting up the meeting we let him  
13    know what the rules were of the meeting, and Mary  
14    would've communicated that with him however she did.  
15    I don't recall whether it was email or phone or  
16    both, but when she set up the meeting she would've  
17    said that to him or sent it to him in writing.

18            Q.     Did, did you keep any notes of the meeting  
19    with during the inspection?

20            A.     No.

21            Q.     Describe to me, um, to the best of your  
22    recollection what happened at the meeting.

23            A.     On the 7th we went into Room 201, we got  
24    set up, I had my laptop there, Mary got set up with  
25    her notes. And, uh, Mr. Aus -- Mr. Auslander came

1 in and he sat at the head of the table, and we put  
2 the records in front of him and we reminded him ab-  
3 out the rules. He emailed some questions prior to  
4 that that he wanted to answer prior to the meeting,  
5 um, we told him at the time that we would address  
6 those questions at the meeting.

7 So when he sat down I, he I think reiter-  
8 ated his questions, and I informed him that the  
9 right-to-know law doesn't provide for question and  
10 answer type of thing. That's not really what the  
11 open records law is about it's about public docu-  
12 ments, so I told him that we wouldn't be responding  
13 to those questions as part of this process. Um, and  
14 then he got his phone out and I reminded him again  
15 about you know, no pictures or whatever because we  
16 have to watch that if you want to take pictures with  
17 your phone, and I said you're welcome to take notes.

18 I recall you know Mr. McTiernan was al-  
19 ready in for the same records. He sat in the same  
20 type of meeting, I think, even in the same room, um,  
21 and copied the records and made notes of the records  
22 for, I don't know, say an hour and a half. So you  
23 know we figured we're going to be there for a while  
24 'cause we had just done this a couple months ago.

25 Um, so we settled in and then we told him

1 what the rules were. And he said, well, something  
2 like I can't take notes or I don't have anything to  
3 take notes, something like that so I'm just going to  
4 read them into my phone. He proceeded to do that, I  
5 had my laptop there, I hadn't had that situation be-  
6 fore with somebody reading into their phone. So I  
7 reached out to our attorney that we've been communi-  
8 cating with, a Mr. Pearlstine, Mr. Pearlstine about  
9 this particular request and the previous request  
10 from a Mr. McTiernan, and I told him what was occur-  
11 ring.

12 And he informed me that I was to instruct  
13 Mr. Auslander to stop recording the slides into his  
14 phone, I asked him to do that several times, he re-  
15 fused. At one point he demanded the attorney appear  
16 at the meeting so he could tell me it was wrong, I  
17 said that wasn't going to happen. He said what are  
18 you going to do if I just leave right now and take  
19 these records with me. I said please don't do that,  
20 please don't make me call the police or do something  
21 that we don't want to happen here, you know it's a  
22 pretty simple process. Uh, he continued to do it.

23 I let the attorney know what he was doing  
24 and the attorney instructed me to stop the meeting  
25 and then call the police if I needed to if he

1 wouldn't stop or leave. I think I let him do it one  
2 more time and then I asked, um, I asked Mary to go  
3 get another administrator to join us and she left  
4 the room. And I, at some point I told Mr. Auslander  
5 the meeting was over and he then left the, left the  
6 room and the records were, were there -- he left the  
7 records there.

8 Q. Besides, uh, communications with your at-  
9 torney did you communicate during the meeting with  
10 anyone else?

11 A. Just Mary.

12 Q. How did you communicate with her?

13 A. I think I texted her.

14 Q. Did you text anyone else?

15 A. No.

16 Q. And why did you want Ms. Minicozzi to get  
17 another administrator to come into the room?

18 A. Well, Mr. Auslander was being combative  
19 and he was agitated. And you know when he threat-  
20 ened to take the records, and he kind of like you  
21 know picked them up and went like this with them and  
22 made a motion like he was going to stand up, then I  
23 thought you know I just didn't want it to get out of  
24 hand. And I thought if I had backup, certainly Mary  
25 was busy away taking notes and I just wanted a sec-

1     ond there, it's normal procedure for us in the off-  
2     ice to do that.

3           Q.     Did you instruct her to get any particular  
4     person to come?

5           A.     I sent to get an administrator.

6           Q.     Did that, did she do that?

7           A.     She told me later that, um, she did get  
8     somebody, but by the time that she was working her  
9     way back to that room with the other administrator,  
10    Mr. Auslander was already out of the building.

11          Q.     When Mr. Auslander left the building what  
12    did you do next?

13          A.     I went back to my office, I guess.

14          Q.     Did you discuss the -- Did you, did you  
15    discuss what occurred with Ms. Minicozzi?

16          A.     Um, I think I told her what happened after  
17    she left and she told me what she did, uh, and then  
18    I believe I went over to the superintendent's off-  
19    ice. And I don't know if I spoke to him directly  
20    then or, but at some point later in the day I in-  
21    formed the superintendent of the meeting and what  
22    happened.

23          Q.     Did you create, um, any written record of  
24    what happened at the meeting after the meeting?

25          A.     I didn't.

1 Q. Did you instruct Mini -- Ms. Minicozzi to?

2 A. I asked her to take her handwritten notes  
3 and type them up.

4 Q. Why did you do that?

5 A. Several reasons, one I wanted to make sure  
6 that we had it on the record of what happened in the  
7 meeting, it was kind of an unusual meeting, I wanted  
8 to be able to provide that to the superintendent.  
9 And since I already informed the board, I wanted to  
10 give them an update plus I had a feeling that it  
11 would be needed at some point down the road.

12 Q. Did you see Mr. Auslander take any photo-  
13 graphs at the meeting?

14 A. I didn't see him take any.

15 Q. Did you see him taking any video?

16 A. I didn't see him taking any video.

17 Q. Besides the text message to Ms. Minicozzi  
18 to get an administrator did you send her any other  
19 text messages during the meeting?

20 A. Not to my recollection, no.

21 Q. Following the meeting did you email any-  
22 one besides your attorney about the meeting?

23 A. Not to my recollection.

24 Q. Following the February 7th, '22, '22 meet-  
25 ing did you discuss the meeting with anyone at Paci-

1 fic Educational Group?

2 A. No.

3 Q. And did, to your knowledge did anyone at  
4 Pacific Educational Group ever instruct you how to  
5 conduct the February 7, 2022 meeting?

6 A. They did not.

7 Q. I'm almost done here, Mr. McDonnell. I'm  
8 going to hand you a copy of, um, your responses to  
9 plaintiff's request for production of documents in  
10 this case.

11 MR. ELIAS: Thank you.

12 MS. GALLAGHER: This is the -- (inaudi-  
13 ble.)

14 MR. ELIAS: Is this from the -- (inaudi-  
15 ble.)

16 MS. GALLAGHER: Yeah.

17 MR. ZIMOLONG: I just, it's for you to  
18 look at before we hand it to the witness. I  
19 can get a copy if you want to take a break real  
20 quick.

21 MR. ELIAS: No, I, I think I have a copy  
22 there.

23 MR. ZIMOLONG: This is for you.

24 MR. ELIAS: It's a document request,  
25 right?

1 MR. ZIMOLONG: What's that?

2 MR. ELIAS: It's a document request?

3 MR. ZIMOLONG: No, this is yeah.

4 MR. ELIAS: Yeah.

5 BY MR. ZIMOLONG:

6 Q. Mr. McDonnell, I handed you a document.

7 Um, if you look after the caption in the case it  
8 says, Defendant Tredyffrin/Easttown School District  
9 and Arthur J. McDonnell's Responses to Plaintiff's  
10 Request for Production of Documents; so that's the  
11 document you have?

12 A. Yes.

13 Q. Um, have you seen this document before to-  
14 day?

15 A. Yes.

16 Q. And, uh, if you go to num -- uh, Document  
17 Request No. 9 it appears on page 4.

18 A. Okay.

19 Q. Uh, it states, "All communications by and  
20 between the school board and any person or entity  
21 and documents referring to and concerning or refer-  
22 encing plaintiff," do you see that?

23 A. Yes.

24 Q. Did you conduct a search of your documents  
25 to see if you had any documents responsive to that



1 request?

2 MR. ELIAS: Objection, I instruct you not  
3 to answer. We've talked about this, our res-  
4 ponse is there. In other words, Wally, we are  
5 not going to spend this deposition by you ask-  
6 ing the precise document request to which we  
7 have given a whole timeline answer already.

8 MR. ZIMOLONG: So if I ask him the same  
9 question for numbers ten and eleven you would  
10 give him the same instruct -- or excuse me, el-  
11 even and twelve you would give him the same in-  
12 struction?

13 MR. ELIAS: The document he's staring at  
14 are plaintiff's request for production of docu-  
15 ments to the school district and Mr. McDonnell  
16 and the responses to it, they answer the docu-  
17 ment request. We're not going to sit here and  
18 ask them again as if they haven't been answered  
19 correct, they've been answered.

20 MR. ZIMOLONG: I didn't ask if they were  
21 answered, I was going to ask him if he conduc-  
22 ted a search for documents responsive.

23 MR. ELIAS: And the answer to that search  
24 is below next to the word response.

25 MR. ZIMOLONG: Okay. Well, let's just,

1 I'm not sure I really understand that.

2 BY MR. ZIMOLONG:

3 Q. But Mr., uh, Mr. McDonnell, could you look  
4 at Document Request No. 11.

5 A. Okay.

6 Q. All of defendant's communications between  
7 January 1, 2021, to the present and you named the  
8 term Auslander, do you see that?

9 A. I see it.

10 Q. Did you conduct a search of your records  
11 for documents responsive to that request?

12 MR. ELIAS: Objection, it's a legal objec-  
13 tion to that request and they have not been  
14 searched. You're not going to jam up Mr. Mc-  
15 Donnell for not searching for records his at-  
16 torneys told him don't look for.

17 MR. ZIMOLONG: Okay.

18 BY MR. ZIMOLONG:

19 Q. Mr. McDonnell, uh, if you take a look at  
20 Request No. 12. All of defendant's communications  
21 and documents related to, concerning or referencing  
22 plaintiff's right-to-know request directed to the  
23 school district, did you conduct a search of your  
24 records for documents responsive to that request?

25 MR. ELIAS: Just objection, I instruct you

1 not to answer. As you well know we had a week  
2 to confer in your office this week, unfortunat-  
3 ely I guess you couldn't attend.

4 Nonetheless, we talked about all of these  
5 requests every single one leaving it crystal  
6 clear that Mr. McDonnell and the school dist-  
7 rict responded to every request by providing  
8 documents and information related to whether or  
9 not Mr., Mr. Auslander would be permitted to  
10 make copies of the PEG records on February 7,  
11 and we also produced every record related to  
12 February 7th that's not privileged. That's  
13 what he responded to, that's how these requests  
14 were handled and been answered, and that's how  
15 they're going to be answered right now today.

16 So the reason for that statement, Mr. Zim-  
17 olong, was that because when you talk about Re-  
18 quest 11 or 12, we searched for documents res-  
19 ponsive to those requests provided the extra  
20 caveat that they also must be relevant to whe-  
21 ther or not Mr. Auslander was permitted to make  
22 reproduction of the PEG materials or the meet-  
23 ing on the 7th. We are not, the district is  
24 not searching for every record that includes  
25 the word "Auslander", we're not doing that, go

1 ahead.

2 MR. ZIMOLONG: Mr. McDonnell, that's all I  
3 have in lieu of calling Judge Bartle to resolve  
4 the objections, we think we'll handle that on  
5 motions. So I don't have any more -- I don't  
6 have any more questions for you right now,  
7 thank you, sir.

8 THE WITNESS: You're welcome.

9 MR. ELIAS: Can we take a break?

10 THE VIDEOGRAPHER: Going off --

11 MR. ELIAS: Do you have questions, go.

12 MR. DONOHUE: Just really short nothing --

13 MR. ELIAS: Well, then let me just talk to  
14 him for a minute --

15 MR. DONOHUE: Yeah.

16 MR. ELIAS: -- and then --

17 MR. DONOHUE: I'll be like right --

18 MR. ELIAS: -- I'll be right back in.

19 MR. DONOHUE: -- two minutes.

20 MR. ELIAS: I understand, I understand  
21 then let's, let's just take one break.

22 MR. DONOHUE: Yes.

23 THE VIDEOGRAPHER: Going, going off the  
24 record --

25 MR. ELIAS: Sorry.

1 THE VIDEOGRAPHER: -- at 11:15.

2 MR. ELIAS: Sorry.

3 THE VIDEOGRAPHER: The court reporter can  
4 only take one person down at a time.

5 MR. ELIAS: I know all these, forget it,  
6 I'm sorry. Real quick.

7 (Break off the record.)

8 THE VIDEOGRAPHER: All right. We're rec-  
9 ording, going back on the record at 11:18.

10 --- EXAMINATION ---

11 BY MR. DONOHUE:

12 Q. Mr. McDonnell, I just have a couple really  
13 quick questions for you, we'll be in and out of this  
14 fairly quickly.

15 Did you speak to anyone at Pacific Educa-  
16 tion Group prior to February 7, 2022, about Mr. Aus-  
17 lander's review of the materials?

18 A. I did not.

19 Q. At any time during the February 7th, 2022,  
20 review of those materials by Mr. Auslander did you  
21 contact or speak to anyone at Pacific Education  
22 Group?

23 A. I did not.

24 Q. At any time at, at on February 7th did you  
25 speak to anyone at Pacific Education Group about Mr.

1 Auslander's review of those materials?

2 A. I did not.

3 Q. Was anyone from Pacific Education Group  
4 present at the February 7th, 2022 review in Room  
5 2001 physically present?

6 A. Could you repeat that question again.

7 Q. Sure, sure. Was anyone from Pacific Edu-  
8 cation Group physically present in Room 201 on Feb-  
9 ruary the 7th during Mr. Auslander's review of those  
10 materials?

11 A. No.

12 Q. Were they, was anyone from PEG present via  
13 the telephone?

14 A. No.

15 Q. Zoom?

16 A. No.

17 Q. In any way, shape or form?

18 A. No.

19 MR. DONOHUE: Thank you, I have no further  
20 questions.

21 --- EXAMINATION ---

22 BY MR. ELIAS:

23 Q. Real quick, Mr. McDonnell. Um, during  
24 your examination by Mr. Zimolong you were talking  
25 about I think your duties as, I don't know if it was

1 board secretary and business manager.

2 But I recall you, you describing that you  
3 approve all contracts for the school districts, what  
4 did you mean by approve?

5 A. So I meant I sign all contracts. The  
6 board actually has to approve all contracts, by law  
7 anything over a hundred dollars has to be approved  
8 by the school board, but I am the signatory of those  
9 contracts.

10 Q. So by approve you meant signed approved  
11 contracts?

12 A. Right, that's what I meant.

13 Q. Um, and when Mr. Zimolong was asking you  
14 about Mr. McTiernan's inspection of the 166 pages of  
15 PEG materials -- Maybe I'm wrong, I heard you say  
16 Mr. Auslander took notes and made copies did I --

17 Did Mr. McTiernan make any copies of the  
18 PEG materials?

19 A. No, he did not.

20 Q. He took handwritten notes of the mater-  
21 ials?

22 A. Right.

23 MR. ELIAS: That's all the questions I  
24 have, are you good, Wally?

25 MR. ZIMOLONG: I don't have any further

1 questions, thanks a lot for joining us.

2 THE VIDEOGRAPHER: That con --

3 MR. ELIAS: Thank you, thank you everyone.

4 THE VIDEOGRAPHER: That concludes the dep-  
5 osition today at 11:20.

6 ---

7 (Witness excused.)

8 (Deposition ended at 11:20 a.m.)

9 (Transcripts ordered by Wally Zimolong and  
10 Brian R. Elias.)

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## C E R T I F I C A T E

I, Ted Allen, a Certified Reporter, Notary Public, Montgomery County, Pennsylvania, do hereby certify that the proceedings, evidence, and objections upon the videotaped deposition of ARTHUR J. MCDONNELL are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter on Thursday, August 18, 2022, and that this is a true and correct transcript of same.

---

TED ALLEN, CERTIFIED  
REPORTER, NOTARY PUBLIC  
MY COMMISSION EXPIRES 9/4/2023