

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

_____	:	
JOEL DOE, et al.,	:	No. 17-cv-1249 - EGS
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
BOYERTOWN AREA SCHOOL DISTRICT, et al.,	:	
	:	
Defendants,	:	
and	:	
	:	
Pennsylvania Youth Congress Foundation,	:	
	:	
Intervening Defendant.	:	

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

During the course of discovery, the parties anticipate the production of documents and testimony containing confidential information, including the identities of Plaintiffs who have been granted leave to proceed pseudonymously and the identities of minor students of the Boyertown Area School District (“BASD”). The parties agree, and the Court finds, that there is good cause to protect this information from public disclosure. The parties have therefore agreed and the Court hereby orders production of unredacted records in discovery, subject to entry of the following Stipulated Protective Order, in accordance with Fed. R. Civ. P. 26(c).

Although this Stipulated Protective Order places the burden of designating confidential information on the party producing that information, all parties shall use their best efforts to

identify and redact information that would lead to the disclosure of the identities of the Plaintiffs or any minor students attending BASD.

The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery, and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties acknowledge that this Stipulated Protective Order does not entitle them to file confidential information under seal; instead, Fed. R. Civ. P. 5.2 and Local Rule 5.1.5 govern the filing of documents under seal.

2. DEFINITIONS

The following definitions apply to this Stipulated Protective Order:

2.1 Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items:

- (a) the name of any plaintiff in this case;
- (b) the name of any minor student of BASD;
- (c) any information that could foreseeably disclose the identity of a person identified in 2.2(a) or (b), including but not limited to nicknames, email or IP addresses, or residential address
- (d) any other information that qualifies for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel: Counsel, whether of record or otherwise, for any party (including intervening parties) and their support staff.

2.4 Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: A person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Party: Any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Counsel.

2.10 Producing Party: A Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.11 Professional Vendors: Persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.12 Protected Material: Any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.13 Receiving Party: A Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulated Protective Order cover both Protected Material (as defined above), and (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Nothing in this Stipulation shall prevent any party from disclosing its own confidential information to any person as it deems appropriate, and any such disclosure shall not be deemed a waiver of any party's rights or obligations under this Stipulation.

Nothing in this Stipulation shall constitute: (1) an agreement by the parties to produce any documents or supply any information or testimony in discovery not otherwise agreed upon or required by court order; (2) a waiver by any person or party of any right to object or to seek a further protective order in response to any discovery request in this or in any other action; or (3) a waiver of any claim of immunity or privilege with regard to any testimony, documents or information.

4. DURATION

After final disposition of this litigation, the confidentiality obligations imposed by this Stipulated Protective Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. The Court shall retain jurisdiction after the case is closed for the purpose of enforcing this Stipulated Protective Order.

5. PRODUCTION OF DOCUMENTS CONTAINING PROTECTED MATERIAL

For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), the Producing Party shall affix the legend "CONFIDENTIAL" to each page that contains protected material and mark the protected material with brackets or highlighting to aid in future redaction.

6. TREATMENT OF PROTECTED MATERIAL IN DEPOSITIONS AND DEPOSITION TRANSCRIPTS

In deposition transcripts, the Plaintiffs shall be referred to by their court-approved pseudonyms. Current or former students of BASD (other than proposed Intervenor Aidan DeStephano) shall be given a letter designation (e.g., “Student A”) and the parties shall maintain a reference list of the students so designated for their own use, which shall be treated in the same manner as all other protected material. If the Court deems it necessary, the parties will submit the reference list to the Court for in camera review and, if ordered, shall file it under seal.

Any Party may designate a deposition or portion thereof as “CONFIDENTIAL” by serving all other counsel electronically with a copy of the page(s) on which the protected material appears labelled “CONFIDENTIAL” and marking the protected material with brackets or highlighting to aid in future redaction. Such designations must be made within two (2) business days of receiving the transcript, exclusive of the day of receipt, of any deposition taken prior to the preliminary injunction hearing scheduled for July 17, 2017, and within twenty (20) days of receiving the final transcript of any deposition taken after the preliminary injunction hearing.

7. **USE OF PROTECTED MATERIAL IN COURT FILINGS OR IN COURT**

In filings with the Court and during court proceedings, all Parties, witnesses and Counsel shall refer to the Plaintiffs by their court-approved pseudonyms and shall refer to current or former students of BASD (other than proposed Intervenor Aidan DeStephano) by their letter designation (e.g., “Student A”). Any other protected material shall be redacted from any exhibits or excerpts in court filings. If any party believes there is good reason to include unredacted Protected Material in a filing or to refer to such material during court proceedings, that party shall seek the Court’s permission to submit the protected information under seal or in camera.

8. **AUTHORIZED USE AND DISCLOSURE OF PROTECTED MATERIAL**

A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation, or in accordance with any law enforcement effort. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Stipulated Order. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Stipulated Protective Order.

Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) Counsel, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) the officers, directors, and employees of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.

9. INADVERTENT PRODUCTION OF PRIVILEGED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. CHALLENGING DESIGNATION

If any party objects to the designation of any information as “Confidential,” the party shall state the objection by letter or electronic mail to counsel for the party making the designation. If the parties are then unable to resolve the dispute, any party may move the Court to resolve the dispute.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the Court rules on any such motion, the information shall continue to be treated as “Confidential” under the terms of this Stipulation.

The failure of any party to object to the designation of information as Confidential Information does not prevent the party from later objecting to this designation and requesting that the party be permitted to disclose the information without regard to the terms of this Order.

12. SUBPOENA BY A THIRD-PARTY

If a party in possession of information designated “Confidential” receives a subpoena from a non-party to this Stipulation seeking production or other disclosure of Protected Material, that party shall immediately give written notice to counsel for the party or non-party who designated the materials as “Confidential,” identifying the confidential materials sought and enclosing a copy of the subpoena. In no event shall production or disclosure be made before notice is given and at least ten (10) days have passed during which the Producing Party has made no effort to quash or otherwise void the subpoena.

13. FINAL DISPOSITION

Within sixty (60) days after the final disposition of this action, each Receiving Party must return all Protected Material to the Producing Party, destroy, or permanently redact all copies of such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Upon request, counsel shall furnish a letter to counsel for the party or non-party who initially produced the Confidential Litigation Materials confirming compliance with this provision. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,

correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order.

14. AMENDMENT

The provisions of this Stipulation may be modified by express written stipulation of the parties hereto. In addition, a party may apply to the court for modification of this Stipulation pursuant to motion brought in accordance with the rules of the Court. The parties hereby agree and extend their consent to an expedited hearing upon any such application.

15. MISCELLANEOUS

15.1 If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

15.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

15.3 Right to Assert Other Privileges. By stipulating to the entry of this Stipulated Protective Order, no Party waives any rights it otherwise would have to assert a claim of privilege as to these or similar documents.

15.4 Right to Use. Nothing in this agreement shall be deemed to restrict in any manner the use by any party of its own documents or materials.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

/s/ Cathy R. Gordon, Esq. (pro hac vice)
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 6/22/2017



Edward G. Smith, U.S.D.J.

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of Pennsylvania in the case of *Doe v. Boyertown Area School District*, No. 17-cv-1249. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of Pennsylvania for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____, counsel for _____ [Party] as my agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Dated: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____