

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

R.O., a Minor, by his parent and guardian JONATHAN OCHSHORN; T.S., a Minor, by his parent and guardian MARK E. SORRELLS; ANDREW M.H. ALEXANDER; HARRY T. STINSON; L.F., a Minor, by her parent and guardian ELIZABETH A. FATTARUSO; A.H., a Minor, by his parent and guardian TERESA HALPERT DESCHANES; BRYAN ELLERBROCK; and P.P., a Minor, by his parent and guardian RAMESH RAJ POKHAREL,

Plaintiffs,

-against-

Civil Case No.: 5:05-CV-695
(NAM/GDB)

ITHACA CITY SCHOOL DISTRICT; JUDITH C. PASTEL, Superintendent, in her official and individual capacities; WILLIAM RUSSELL, Assistant Superintendent, in his official and individual capacities; and JOSEPH WILSON, Ithaca High School Principal, in his official and individual capacities,

Defendants.

AFFIDAVIT

STATE OF NEW YORK)
)SS.:
COUNTY OF TOMPKINS)

DR. WILLIAM RUSSELL, being duly sworn, deposes and states:

1. I was the Assistant Superintendent of Schools for the Ithaca City School District (hereinafter "ICSD") from July 1, 2000 to June 30, 2006. I am currently the Superintendent of Schools for the Owego Apalachin Central School District. I am a Defendant in this action and as such, am fully familiar with the facts and circumstances at issue in this action. I make this affidavit in support of Defendants' Motion for Summary Judgment.

2. During my tenure at the ICSD, the Ithaca High School (hereinafter "IHS") published a newspaper known as *The Tattler*. During my time as Assistant Superintendent for the ICSD, I always considered *The Tattler* the newspaper of the IHS.

3. My understanding of the purpose of *The Tattler* was that it served as a learning tool for those students interested in the field of journalism, as the IHS did not offer a journalism course during this period of time.

4. The ICSD provides *The Tattler* with a Faculty Advisor. The ICSD provides the Faculty Advisor for *The Tattler* an annual stipend for his or her role as Faculty Advisor. That stipend was approximately \$1,044 in 2002-2003, \$1,122 in 2003-2004, and \$1,161 in 2004-2005. The current Faculty Advisor receives a stipend that is higher than these amounts.

5. During my time at the ICSD, *The Tattler* always had a Faculty Advisor. It was always my understanding that the Faculty Advisor had final editorial control over the content of *The Tattler*. To the best of my knowledge, the Faculty Advisor from approximately 1993 to 2003 was Eileen Bach, from 2003 until February of 2005 was Stephanie Vinch, and from June of 2005 through the present has been Roselyn Teukolsky.

6. The Faculty Advisor for *The Tattler* began receiving teaching release credits for acting as Faculty Advisor since at least 1996. Upon information and belief, when Eileen Bach was Faculty Advisor for *The Tattler*, she received two periods of release from her faculty responsibilities. When Stephanie Vinch became Faculty Advisor for *The Tattler*, she received one period of release from her faculty responsibilities. One period of release is the equivalent of teaching one class. Thus, acting as the Faculty Advisor for *The Tattler* is equivalent to teaching one class. As that teacher's normal class load must still be covered, the District must pay for another faculty member to cover

the Faculty Advisor's released class.

7. The ICSD provides *The Tattler* with an office on school grounds, inside the IHS. The ICSD pays for all expenses related to the maintenance and operation of *The Tattler's* office, including, *inter alia*, heat, light, power, maintenance, cleaning and insurance. The ICSD also provides *The Tattler* office with computers, a phone, a free phone line, internet access, an access code to a District photocopier, office supplies and furniture.

8. The ICSD provides *The Tattler* with an annual budget to cover the cost of postage, printing and publication. For 2004-2005, the budget was \$1,483 and for 2005-2006, the budget was \$1,527.

9. The ICSD has provided *The Tattler's* staff and the Faculty Advisor with funding to attend student journalism conferences as part of the learning experience. In 2004-2005, the ICSD took \$1,800 from parking funds of student activities to cover the cost of sending members of *The Tattler* and their Faculty Advisor to a Journalism Conference at Columbia University. The District has also funded trips for members of *The Tattler* and their Faculty Advisor to Syracuse University for similar student journalism conferences.

10. In the spring of 2004, I became aware of concerns relating to a personal ad that appeared in the May 5, 2004 issue of *The Tattler*. The ad was construed to insinuate that a student, the President of the Class of 2005, was a homosexual. The student was quite upset over the personal ad. Upon information, then Faculty Advisor for *The Tattler* Stephanie Vinch (hereinafter "Ms. Vinch"), believing that student editors of *The Tattler* had maliciously inserted the ad into the May 5, 2004 issue of *The Tattler* without her knowledge, cancelled an issue of *The Tattler* that was scheduled to be printed in June of 2004. I do not recall receiving or hearing about the ICSD

receiving an appeal or grievance from *The Tattler*, or its editors, relating to Ms. Vinch's decision.

11. In the Spring of 2004, I chaired the search committee charged with filling the position of Principal for the IHS. Joseph Wilson (hereinafter "Mr. Wilson") was selected for the position, beginning in the 2004-2005 academic school year.

12. On August 2, 2004, I met with Ms. Vinch and former IHS student Robert Ochshorn (hereinafter "Mr. Ochshorn") regarding Mr. Ochshorn's desire to publish an online version of *The Tattler* that contained students' last names. The District's policies do not permit the posting of student's last names on District websites. I informed Mr. Ochshorn that he would not be allowed to publish students last names in an online version of *The Tattler* as such a practice would violate the District's internet policies. With my assistance and the District's counsel, *The Tattler* developed a means for parents and students to give express written permission for their child's last name to appear on *The Tattler* website.

13. In the Fall of 2004, various concerns were raised among the District's faculty and staff concerning the content and tone of *The Tattler*. However, I never took any action, nor am I aware of any ICSD administrator taking any action to control, limit, direct or prohibit any viewpoints students sought to express in *The Tattler*.

14. In January of 2005, I received a letter from Ardell Alling, the shift supervisor of Ralph's Ribs, a restaurant in Ithaca, New York. To best of my knowledge, Ralph's Ribs is one of the very few African American owned business in Ithaca, New York. The letter concerned a review of Ralph's Ribs that appeared in the January 5, 2005 issue of *The Tattler*. Among other things, the letter expressed anger over the content of the article, as the employees of Ralph's Ribs claimed that it contained racist speech and overtones that rose to the level of hurtful, if not hateful. Attached

hereto as Exhibit "A" is a true and accurate copy of the letter I received from the employees of Ralph's Ribs.

15. On January 5, 2005, I attended a meeting with Mr. Wilson and Ms. Vinch. Ms. Vinch stated that she was considering resigning as Faculty Advisor as a result of increasing resistance by the staff of *The Tattler* to her role as Faculty Advisor. Ms. Vinch and Mr. Wilson agreed that it would be helpful to have written guidelines for *The Tattler* to clearly set forth the role of the Faculty Advisor. Ms. Vinch provided me with a draft of guidelines she apparently believed represented her understanding of the role of the Faculty Advisor, as well as the District's expectations from the Faculty Advisor. Attached hereto as Exhibit "B" is a true and accurate copy of the draft guidelines provided by Ms. Vinch to me at or around that January, 2005 meeting.

16. After receiving the draft guidelines from Ms. Vinch, I engaged in a series of discussions with the District's counsel Bond, Schoeneck & King, PLLC (hereinafter "District's Counsel") with respect to creating guidelines. After numerous drafts were exchanged, a final version of the guidelines were created. The guidelines that were created, though put in writing for the first time, merely codified what I understood to be the established practice of the ICSD with respect to *The Tattler*. Attached hereto as Exhibit "C" is a true and accurate copy of the guidelines I developed with the District's counsel in January of 2005.

17. On or about January 21, 2005, Mr. Wilson, Ms. Vinch and I met with members of *The Tattler's* Editorial Board and staff to provide copies of and discuss the guidelines for *The Tattler*. I handed out copies of the guidelines I had developed with the District's counsel. Thereafter, an extended discussion was held. Exhibit "D" is a copy of the guidelines that was given to *The Tattler* editors and staff at that January 21, 2005 meeting.

18. In the first week of February, 2005, Ms. Vinch resigned as Faculty Advisor for *The Tattler*.

19. On or about February 11, 2005 I received a memorandum from Eileen Bach, former advisor to *The Tattler*. Ms. Bach's memorandum provided, in part, a synopsis of certain decisions which were made regarding the editorial content of the newspaper. Attached hereto as Exhibit "E" is a true and accurate copy of the February 11, 2005 memorandum.

20. In the Spring of 2005, I discussed modifying the guidelines with the student editors of *The Tattler* in order to determine if a set of guidelines could be developed that would be mutually acceptable to the students and the administration. However, it became apparent to me that no consensus could be reached, as fundamentally, the students wanted complete editorial control over the content of *The Tattler*, while the District was unwilling to relinquish such control.

21. On or about March 3, 2005, I received a letter from Mr. Ochshorn requesting permission to distribute copies of *The March Issue*, an independent student newspaper on school grounds. I forwarded this request to Superintendent of Schools for the ICSD Judith Pastel (hereinafter "Superintendent Pastel") after recommending to her that it should not be distributed. I recommended that *The March Issue* not be distributed because I saw that it contained the sexual stick figures drawing and that it contained confidential mental health information about a faculty member. Upon information and belief, permission to distribute *The March Issue* on ICSD grounds was denied. Upon information and belief, permission to distribute *The March Issue* on ICSD grounds was denied because it contained a drawing that had already been denied publication in *The Tattler* by Ms. Vinch on the grounds that it was obscene. Attached hereto as Exhibit "F" is a true and accurate copy of the letter I received from Mr. Ochshorn.

22. In May of 2005, I once again worked with the District's counsel to revise the guidelines provided to *The Tattler* on January 21, 2005. Upon information and belief, the purpose of revised guidelines was an attempt to reflect some of the concerns raised by the staff of *The Tattler* to the guidelines they were provided on January 21, 2005. Attached hereto as Exhibit "G" is a draft of the May 19, 2005 revised guidelines.

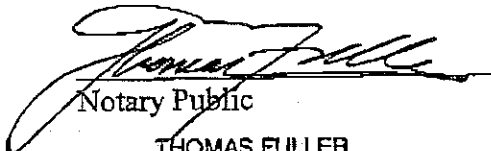
23. To the best of my knowledge, at no point in time did Superintendent Pastel, Mr. Wilson or I attempt to prevent *The Tattler* or its editors from creating, soliciting, writing or publishing material that is controversial or critical of administrators or school policy.

DATED: April 13, 2007



Dr. William Russell

Sworn to before me this
13~~TE~~ day of April, 2007.



Notary Public

THOMAS FULLER
Notary Public, State of New York
No. 01FU6090587
Qualified in Tompkins County
Commission expires April 14, 2011