

JUDGE: ITHACA SCHOOL DISTRICT'S CENSORSHIP OF STUDENT NEWSPAPER MAY BE UNCONSTITUTIONAL

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ITHACA, NEW YORK — A federal judge on Tuesday refused to dismiss a lawsuit alleging that the Ithaca City School District violated students' First Amendment rights by censoring an Ithaca High School student newspaper.

Regulations imposed by the ICSD in response to the *Tattler's* criticism of IHS Principal Joe Wilson are unconstitutional, suggested Judge Norman A. Mordue of the US District Court for the Northern District of New York.

"The Supreme Court has held that prior restraints are subject to the highest degree of scrutiny," Mordue wrote. "In the case at hand, [the ICSD has] offered no evidence demonstrating that the Guidelines withstand constitutional scrutiny."

Rob Ochshorn, a plaintiff in the suit and former Editor-in-Chief of the *Tattler*, said: "We're pleased that Judge Mordue agreed with our assessment of the facts, and we're optimistic that the case will ultimately be resolved in our favor."

"Judge Mordue disagreed with almost all of the ICSD's contentions," Ochshorn said. "He ruled the *Tattler* was not a closed forum for student expression, as the ICSD had argued, and he ruled that the imposition of draconian guidelines for the paper was not based on legitimate educational needs."

The ICSD had filed for summary judgment in April 2007, requesting that the court throw out the lawsuit, one of many costly and embarrassing civil rights challenges the ICSD has received in recent years. In April 2008, a judge for the New York State Division of Human Rights ruled that the ICSD had failed to prevent racial discrimination against a middle-school student. The student and her mother, Amelia Kearney, were awarded \$1 million in damages. In November 2008, the ICSD settled out of court a complaint by a former employee that the ICSD had denied her a promotion because of her gender.

Judge Mordue's ruling was not a complete victory for students, however. He classified the *Tattler* as a "limited public forum," placing it in an emerging legal gray area that has been criticized by First Amendment groups for diminishing freedom of speech protections afforded to students. The judge also upheld the ICSD's decision to censor a cartoon from the *Tattler* that offered commentary on the teaching of sexual education in health classes.

The case began in the fall of 2004, when the *Tattler* printed an editorial critical of Principal Wilson. Later, the newspaper reported an incident in which Wilson entered a classroom and told students that he was the "Food Nazi" and if students continued eating in class, he would send them to the "food gas chamber." The *Tattler* also commissioned a survey showing that nearly 70 percent of students disliked the policies of the new principal.

The ICSD responded by imposing an unprecedented set of guidelines on the *Tattler*. The guidelines changed the newspaper from a "Tinker" paper—a publication relatively exempt from school censorship as per the U.S. Supreme Court's decision in *Tinker v. Des Moines* (1969)—to a "Hazelwood" paper—one that could be censored at

will by school administrators as per the U.S. Supreme Court's decision in *Hazelwood v. Kuhlmeier* (1988). The ICSD also forbade future surveys of students.

The imposition of the guidelines resulted in the resignation of the faculty advisor, and the *Tattler* was forced to publish underground for several months. After lengthy negotiations with the ICSD were unsuccessful, eight student editors of the newspaper filed suit in June 2005.

Named in the suit are the ICSD, Wilson, Superintendent Judith C. Pastel, and former Assistant Superintendent for Curriculum and Instruction Bill Russell (now Superintendent of the Owego-Apalachin Central School District in Owego, NY).

The students are being represented *pro bono* by Ithaca attorney Ray Schlather of Schlather, Geldenhuys, Stumbar and Salk. The case is in the U.S. District Court for the Northern District of New York as 5:05-CV-695, *Ochshorn, et al. v. Ithaca City School District, et al.* Copies of Judge Mordue's decision, court filings, press clippings, and background information are available online at <http://www.rmozone.com/tattlerwiki>

The *Tattler* has been the student-run newspaper at Ithaca High School since 1892. It is published monthly and has a circulation throughout the school and greater community of 3,000. Past editors include former Deputy Defense Secretary Paul Wolfowitz and Yale Law School professor and New York Times-bestselling author Stephen Carter. <http://www.ihstattler.com>

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CONTACT

Raymond M. Schlather, esq. Schlather, Geldenhuys, Stumbar & Salk ray@ithacalaw.com (607) 273-2202	Adam Goldstein Student Press Law Center agoldstein@splc.org (703) 807-1904	Rob Ochshorn (plaintiff) rmo25@cornell.edu (607) 279-5957	Andrew Alexander (plaintiff) amha@uchicago.edu (607) 592-4759
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