

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)

JUDITH PASTEL, being duly sworn, deposes and states:

1. I am currently the Superintendent of Schools for the Ithaca City School District (hereinafter "ICSD") and a Defendant in this action. I have served in my current capacity as Superintendent for the ICSD since July 1, 1996 and am familiar with the facts and circumstances at issue in this action. I make this affidavit in support of Defendants' Motion for Summary Judgment.
2. My understanding of the purpose of *The Tattler* was to provide students at the Ithaca

High School (hereinafter “IHS”) with an opportunity to learn journalism through a hands on experience. It was always my understanding that the experience would be supervised by a Faculty Advisor who would navigate the students through the often difficult ethical, professional and legal waters that one travels as a journalist. It was always my understanding that in order to successfully meet this expectation, the Faculty Advisor would have final say over the content of *The Tattler*. While *The Tattler* is a learning experience provided by the ICSD, it presents distinct concerns for the District, both legal and ethical, that student journalists often do not have the maturity or knowledge to understand, which requires an adult Faculty Advisor to have final say over *The Tattler*’s content.

3. In the summer of 2004, I was involved in the hiring process for the position of Principal for the IHS. Joseph Wilson (hereinafter “Mr. Wilson”) was offered and accepted the position of Principal for the IHS for the 2004-2005 academic school year.

4. In or about November of 2004, I learned that student publishers of the IHS’s newspaper, *The Tattler*, were seeking to distribute surveys to the faculty of the IHS evaluating the faculty’s confidence in Mr. Wilson’s ability to perform his job. The ICSD Conduct Manual states that students may only distribute literature, including questionnaires, surveys, and petitions on school grounds with the authorization of the Superintendent. Pursuant to this policy, *The Tattler* submitted a copy of the survey to me. Upon reviewing the survey, I realized that it sought a significant amount of personally identifying information about the teacher answering the survey, which could potentially conflict with the ICSD’s collective bargaining agreement with the Ithaca Teacher’s Association. As a result, the students were denied permission to distribute the survey as written, but were permitted to revise and resubmit a survey that did not contain personally identifying information about the teacher. The students submitted a second survey that I approved and allowed to be distributed to the

IHS faculty. Upon information and belief, the results of this survey were published in *The Tattler*. To the best of my knowledge, no ICSD administrator attempted to interfere with the collection of the surveys or the publication of the survey results.

5. In or about January of 2005, I became aware of escalating concerns from faculty and community members relating to certain material published in *The Tattler*. This included concern over a restaurant review of a local establishment known as Ralph's Ribs, which many people believed contained racist speech and overtones. Upon information and belief, the District received a letter from the employees of Ralph's Ribs expressing their anger over the content of the article.

6. In or about January of 2005, I became aware of the fact that the Faculty Advisor for *The Tattler* had requested guidelines to outline her responsibilities as Faculty Advisor. Upon information and belief, Dr. Russell took the lead on this issue, and to the best of my knowledge, worked with the ICSD's counsel Bond Schoeneck & King, PLLC (hereinafter "District's counsel") to create guidelines that codified the District's past practice with respect to *The Tattler* and *The Tattler's* Faculty Advisor.

7. The guidelines that were promulgated by Dr. Russell with the assistance of the District's counsel and given to *The Tattlers'* staff in January of 2005 reflected my understanding of the past practice of the ICSD with respect to *The Tattler*. *The Tattler* is the ICSD's newspaper that is supported by the ICSD in order to teach journalism and certain aspects of business to those students who are interested in that discipline. As it is the ICSD's newspaper, the ICSD is ultimately responsible for its content. Until the 2004-2005 academic school year, written guidelines were not necessary because the editorial staff understood and respected the role of the Faculty Advisor. Due to the number and nature of disputes between the Faculty Advisor and specific editorial staff

members during the 2004-2005 academic school year, it was necessary to put the ICSD's past practice in writing through formal written guidelines. Attached hereto as Exhibit "A" is a true and accurate copy of the guidelines provided to *The Tattler's* editors and Faculty Advisor in January of 2005 which reflect the past practice of the ICSD with respect to *The Tattler*.

8. In January and February of 2005, I became aware of an increasing number of ICSD students who were engaged in risky sexual behavior and drug use. This came to my attention after several community leaders, a Board member and staff members approached me with their concerns. There were middle school student parties with boys standing in a line while the girls knelt going down the line orally "servicing" them. The female students told adults their actions did not constitute "sex." Some students allegedly were being recruited and pressured to engage in group sex and sexual behavior with multiple partners. The problem became so severe that the secondary principals and I wrote a letter to all parents of ICSD secondary students alerting them to the ICSD's concerns. Attached hereto as Exhibit "B" is a true and accurate copy of the letter that we sent to the parents and caregivers of students within the ICSD.

9. Upon information and belief, on or about February 3, 2005, Stephanie Vinch (hereinafter "Ms. Vinch") resigned as Faculty Advisor for *The Tattler*.

10. On or about February 15, 2005, I received a letter from former IHS student Robert Ochshorn (hereinafter "Mr. Ochshorn"), then Editor-in-Chief of *The Tattler*, informing me that pursuant to the ICSD Student Grievance Procedures, he was appealing a decision made by the Faculty Advisor for *The Tattler* that he had appealed to Mr. Wilson and which Mr. Wilson had upheld. Ms. Vinch had refused to allow the publication of a drawing which depicted stick-figures in various sexual positions in *The Tattler*. Attached hereto as Exhibit "C" is a true and accurate copy of

Mr. Ochshorn's February 15, 2005 letter.

11. On or about March 3, 2005, several IHS students, most of whom were editors for *The Tattler*, sought permission to distribute an independent student newspaper known as *The March Issue* on ICSD grounds. The students sent a letter to then Assistant Superintendent Dr. William Russell (hereinafter "Dr. Russell") officially informing the ICSD of their intent to distribute what they called *The March Issue*.

12. Upon reviewing *The March Issue*, I determined that permission to distribute on ICSD grounds would be denied for two reasons. First, *The March Issue* contained the sexual stick figures drawing that was the subject of a current appeal by *The Tattler*, which both the Faculty Advisor and Mr. Wilson refused to allow to be published in *The Tattler*. I deemed this drawing to be obscene, and therefore inappropriate for publication in *The Tattler*. Second, the proof set of *The March Issue* that was provided to me by the student publishers contained confidential mental health information about an ICSD teacher. Specifically, one article noted that the teacher had spent time in a mental hospital. Accordingly, on March 8, 2005, I sent a letter to Mr. Ochshorn notifying him that I did not authorize distribution of *The March Issue* on ICSD grounds. Attached hereto as Exhibit "D" is a true and accurate copy of my March 8, 2005 letter to Mr. Ochshorn.

13. After sending Mr. Ochshorn my March 8, 2005 letter, I received two letters from Mr. Ochshorn in which he rescinded his initial request to distribute the version of *The March Issue* that contained the personal health information, but argued that denying distribution based on the sexual drawing was improper. Mr. Ochshorn agreed to have *The March Issue* reprinted to remove the personal health information, but not the sexual stick-figures drawing.

14. On or about March 9, 2005, I sent a letter to Mr. Ochshorn in which I noted that

distribution of *The March Issue* would not be granted as a result of the sexual stick-figures drawing remaining in *The March Issue*. I noted in my letter that I still considered the drawing obscene, and that its distribution would be offensive to many students and confusing to others, particularly those immature students whose understanding of and views about sexual relations are not yet fully formed. I concluded that any publication containing the drawing should not be distributed because it would interfere with the District's health curriculum, in particular, that sexual relations is a matter to be taken seriously. Attached hereto as Exhibit "E" is the March 9, 2005 letter I sent to Mr. Ochshorn denying permission to distribute *The March Issue* on ICSD grounds.

15. On or about March 9, 2005, I wrote a letter to Mr. Ochshorn formally denying *The Tattler's* appeal from the decision of the Faculty Advisor to not allow publication of the stick-figure drawing in the January 5, 2005 issue of *The Tattler*. Although my position is more fully set forth in my letter, my basic conclusion was that the drawing was obscene, and therefore could not be distributed to ICSD students pursuant to the ICSD Policy Manual. I also noted in my letter that I would not be rescinding the guidelines applicable to the Faculty Advisor and staff of *The Tattler*. Attached hereto as Exhibit "F" is a true and accurate copy of my March 9, 2005 letter to Mr. Ochshorn denying *The Tattler's* appeal of the Faculty Advisor's decision.

16. My decisions relating to *The Tattler*, specifically my decisions relating to the sexual stick-figures drawing, were impacted, at least in part, by my knowledge of a recent trend in risky sexual behavior ICSD students were engaging in at this time. It was incumbent upon me, as Superintendent of a school district where students were not taking sexual relations seriously, which led to the incidents I described above, to maintain a consistent position that sexual relations are to be taken seriously, as today sex can often be a matter of life and death. Accordingly, it was the

District's position that printing a drawing that makes light of sexual relations and mocks the ICSD's health education program in an ICSD publication would undermine the District's concerted effort to stress to students and parents the seriousness of sexual relations, as well as diminish the District's efforts to put forth a health curriculum that stresses sex education, including abstinence.

17. In April and May of 2005, I received a request from IHS students to distribute two independent student newspapers known as *The April Issue* and *The May Issue*. At the time, I understood that *The April Issue* and *The May Issue* had been created by the former editors of *The Tattler* and *The March Issue*. As *The April Issue* and *The May Issue* did not violate the 2004-2005 School Conduct Manual for the ICSD, Section I(B)(6) dealing with "School Newspaper and Student Publications" and Section I(B)(2) dealing with "Literature Distribution, Surveys and Petitions", I approved the distribution of *The April Issue* and *The May Issue* on ICSD grounds. Attached hereto as Exhibit "G" is a true and accurate copy of the 2004-2005 School Conduct Manual for the ICSD, Section I(B), entitled First Amendment rights.

18. During my time at the ICSD, *The Tattler* has always had a Faculty Advisor. It was always my understanding that the Faculty Advisor had final editorial control over the content of *The Tattler*.

19. To the best of my knowledge, the Faculty Advisor for *The Tattler*, 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 is Roselyn Teukolsky.

20. Pursuant to the collective bargaining agreement between the ICSD and the Ithaca Teachers Association (hereinafter "I.T.A."), the Faculty Advisor for *The Tattler* has received teaching release credits for acting as Faculty Advisor since at least 1996. The amount of release

time is equivalent to teaching one class. Thus, acting as the Faculty Advisor for *The Tattler* is the 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. The value of that release credit, which is provided by the District, has ranged from approximately \$7,782 to \$12,257. This calculation is based taking the Faculty Advisor's salary, and dividing it by five (the number of classes each full time teacher must teach) to determine the value of one course that teacher instructs.

21. The ICSD provides the Faculty Advisor for *The Tattler* with an annual stipend for his or her role as Faculty Advisor. Pursuant to the collective bargaining agreement between the ICSD and the Ithaca Teacher's Association, the stipend amounts were \$1,044 in 2002-2003, \$1,122 in 2003-2004, \$1,161 in 2004-2005, \$1,200 in 2005-2006 and \$1,243 in 2006-2007.

22. 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.

23. 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.

24. 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,

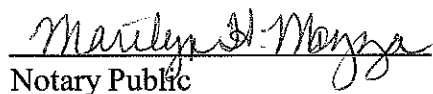
including, among other things, heat, light, power, maintenance, cleaning and insurance. The ICSD also provides *The Tattler* office with computers, a phone, a free phone line, internet access, an access code to a District photocopier, office supplies and furniture.

DATED: April 12, 2007.



Judith Pastel

Sworn to before me this
12 day of April, 2007.



Notary Public

MARILYN H. MAZZA
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01MA6155686
QUALIFIED IN TOMPKINS COUNTY
MY COMMISSION EXPIRES NOV. 13, 2010