

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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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.

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**AFFIDAVIT**

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

JOSEPH WILSON, being duly sworn, deposes and states:

1. I am currently the Principal of the Ithaca High School (hereinafter "IHS") and a Defendant in this action. I make this Affidavit in support of Defendants' Motion for Summary Judgment.

2. I have earned a Bachelor's degree from Amherst College in history, a Masters Degree in Education from the University of Pennsylvania, a Masters Degree in Public Administration from Harvard University, and a Juris Doctor from the University of Southern

California. I do not currently practice law. I am licensed to practice in Delaware and California. During my time as a practicing attorney and during my studies at the University of Southern California, I became familiar with issues of Constitutional law.

3. In the spring of 2004, I applied for and was hired as the Principal of the IHS starting July 1, 2004. During the hiring interviews, it was made clear to me that the new principal was expected to enforce existing school rules more consistently and systematically than had been the practice in the immediate past. When the school year began, my administrative team and I did so.

4. During the summer, I reviewed the Ithaca Board of Education's School Conduct Manual for 2004-2005 (hereinafter "ICSD"). Among other things, I noted that the Manual states that students may distribute literature, including questionnaires, surveys, and petitions on school grounds only after authorization by the Superintendent. Therefore in the early fall when I became aware of students wanting to conduct surveys, I consulted with my supervisor, Dr. William Russell, (hereinafter "Dr. Russell"), the Assistant Superintendent, about how to respond to them. He indicated that I should respond to requests from students and staff at IHS, and he would respond to requests from others. I sent an email to the faculty reminding them that school district policy required all surveys to be approved in advance. Attached hereto as Exhibit "A" is a true and accurate copy of the section of the School Conduct Manual for the ICSD for 2004-2005, Section I (B), which deals with student surveys.

5. In or about October of 2004, when staff members of *The Tattler*, the IHS newspaper, asked to distribute a survey to the student body concerning the students' confidence in my ability to perform my job, instead of acting on their request, I recused myself. I did so because the subject of the survey was me, and I did not want to be seen to be acting with a real or apparent conflict of

interest. Therefore, I referred the survey and the *Tattler* staff members to Dr. Russell. He approved the survey. Later, when the results were published in *The Tattler*, I learned that some percentage of the students surveyed did not have confidence in my leadership. I did not, however, attempt to prevent the creation or distribution of the surveys, the collection of data, or the publication of the article. I did not take any action to discipline or admonish any member of the *Tattler* staff for any action regarding the survey. To my knowledge, no one else among the administration took any action to discipline anyone regarding the survey.

6. In November of 2004, I became aware that *The Tattler* intended to conduct a survey of the faculty concerning their confidence in my ability to perform my job. When the *Tattler* sought my permission, I again recused myself and referred them to Assistant Superintendent Russell. I did so for the same reasons--because the survey was about me. Upon information and belief, the matter went to Dr. Judith Pastel, Superintendent of Schools for the ICSD (hereinafter "Superintendent Pastel"). I made no decision regarding this survey, and I made no attempt to interfere with the distribution of the survey, the collection of data, or the publication of the results. On information and belief, the results of the survey were published in *The Tattler*. I did not take any action to discipline or admonish any member of the *Tattler* staff for anything they did regarding the survey. On information and belief, I believe that no one else took any action to discipline any *Tattler* staff member regarding the survey.

7. On December 8, 2004, I observed several students in a Biology class violating our rule against eating food outside of the cafeteria. I entered the classroom and spoke to the students. In doing so, I attempted to use humor to persuade the students to abide by the rule. The attempt I made was to allude to the television show "Seinfeld"'s character the "Soup Nazi", by referring to

myself as the “food nazi”. After reflection, I realized that the comment could have been offensive to students or staff. I returned to the class and apologized for what I had said to anyone who had found my reference hurtful or offensive. I also participated in an interview with *The Tattler* where I discussed what I had said, my apology, and indicated again that I had made a poor choice of words.

8. In early January of 2005, I became aware of concerns among some students, faculty and community members about articles in the January 5, 2005 issue of *The Tattler*. Specifically, I recall concerns about comments that many considered racist in an article about a local restaurant. I also recall concerns about an article concerning academic dishonesty at IHS.

9. Regarding the article, I was told that two students had submitted what their teacher regarded as plagiarized work in connection with an article for *The Tattler*. More, specifically, one student intentionally re-wrote the work of another student and submitted it in her own name. On information and belief, I understand that the objective of the students was to see if the teacher would detect what they had done. The teacher disciplined the students for academic dishonesty following our school policies by giving each student a zero on the assignment. The parents of the students appealed the teacher’s decision to me. As a result, a meeting was held on January 10, 2005 with the students, their parents, the teacher, Ms. Stephanie Vinch, (hereinafter “Ms. Vinch”) the faculty advisor of *The Tattler* and the Associate Principals assigned to the students. During the meeting, the two students provided me with a copy of the assignment they had received from *The Tattler*. The assignment included instructions and what was understood as an assurance that the students would not get into trouble. Attached hereto as Exhibit “B” is a true and accurate copy of what the students represented.

10. We determined to uphold the teacher's decision for the students to receive a zero. No disciplinary action was taken against those who assigned the article or any other member of *The Tattler* Editorial Board or staff for the assignment or making the assurance.

11. In the first week of January, 2005, I attended a meeting with Assistant Superintendent Russell and *Tattler* advisor, Ms. Vinch. Ms. Vinch stated that she was considering resigning as faculty advisor. She cited the time demands of the position and difficulties in working the members of *The Tattler* staff. She indicated that written guidelines making her role clear could be helpful. Ms. Vinch gave Dr. Russell and me her suggestion for such guidelines. On information and belief, they 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 "C" is a true and accurate copy of the draft guidelines provided by Ms. Vinch to Dr. Russell and me at or around that January, 2005 meeting.

12. Upon information and belief, Dr. Russell, with the assistance of the District's counsel Bond, Shoeneck & King, PLLC (hereinafter "BS&K"), drafted a formal set of guidelines for *The Tattler*. I was not involved in a substantive way in this work.

13. On or about January 21, 2007, Dr. Russell and I met with members of *The Tattler's* Editorial Board and staff to share and discuss the guidelines. Dr. Russell handed out copies of the guidelines he had developed with BS&K. Attached hereto as Exhibit "D" is a true and accurate copy of the guidelines provided to the Editorial Board and staff of *The Tattler* on or about January 21, 2007.

14. At some point after sharing the guidelines, Ms. Vinch approached me indicating that she had advised editors of *The Tattler* that she would not approve a cartoon they wanted to run

in the paper. Upon reviewing the cartoon, which depicted stick figures apparently engaged in various sex acts, I thought it obscene and not suitable for immature student audiences. In my mind this audience included the 20 or so seventh and eighth graders taking classes on our campus and the 800-plus 13, 14, and 15 year-olds in our 9<sup>th</sup> and 10<sup>th</sup> grades. I also thought publishing the cartoon would be inconsistent with the educational mission and the pedagogical concerns of the District. In reaching these conclusions, I considered the fact that issues of *The Tattler* were delivered to every classroom in the school as well as to all public areas in the school. Typically, the papers were scattered throughout the halls, the building, and over the campus shortly after delivery. Moreover, each issue was widely distributed to many restaurants, kiosks, and other public gathering places throughout the community, and each issue was also posted online. In short, if the cartoon appeared, it would receive very wide and indiscriminate circulation. Given all this, I did not believe the inclusion of the cartoon in an issue of *The Tattler* could be allowed. In short, I supported Ms. Vinch's decision.

15. On or about January 31, 2005, I received a letter from Robert Ochshorn (hereinafter "Mr. Ochshorn"), then Editor-in-Chief of *The Tattler*, formally appealing the decision not to allow the cartoon to run. Attached hereto as Exhibit "E" is a true and accurate copy of the January 31, 2005 letter I received from Mr. Ochshorn.

16. On or about February 9, 2005, I replied to Mr. Ochshorn advising him that I would not overrule Ms. Vinch's decision to deny publication of the cartoon. I also advised Mr. Ochshorn that *The Tattler's* request to rescind the District's guidelines governing *The Tattler* and adopt the model guidelines from the Student Press Law Center was denied. Attached hereto as Exhibit "F" is a true and accurate copy of my February 9, 2005 letter to Mr. Ochshorn. It states my reasons for

denying *The Tattler's* requests.

17. On or about February 3, 2005, I received a letter from Ms. Vinch resigning as Faculty Advisor for *The Tattler*. Attached hereto as Exhibit "G" is a true and accurate copy of the letter of resignation I received from Ms. Vinch.

18. According to school practice, a student club or activity that has no faculty advisor cannot conduct its activities or occupy school space until such time as there is a duly recognize advisor. Because they had no advisor, *The Tattler* staff could not publish another issue until a Faculty Advisor was appointed. For this reason, students were not permitted to use *The Tattler's* office space. After waiting a reasonable time, we advised the students that they could no longer occupy *The Tattler* office.

19. After Ms. Vinch resigned and because this position involved releasing the advisor from a teaching period each day, the District is required to post the position for a specific amount of time and to follow a prescribed interview and appointment process. Applications were accepted through March and April of 2005. Eventually, two faculty members applied. On or about April 29, 2005, a committee interviewed both applicants and recommended Ms. Roselyn Teukolsky (hereinafter "Ms. Teukolsky"). I concurred in the recommendation and notified Dr. Russell and our Human Resources office. Ms. Teukolsky was formally offered the position by letter dated May 9, 2005 and accepted May 11, 2005. Ms. Teukolsky has acted as the Faculty Advisor for *The Tattler* since that time, and is currently the faculty advisor. Attached hereto as Exhibit "H" is a true and accurate copy of my May 9, 2005 letter to Ms. Teukolsky which she signed on May 11, 2005.

20. After Ms. Teukolsky was appointed, students were again given access to the office space assigned to *The Tattler* and allowed to use the District resources they had used previously to

publish *The Tattler*.

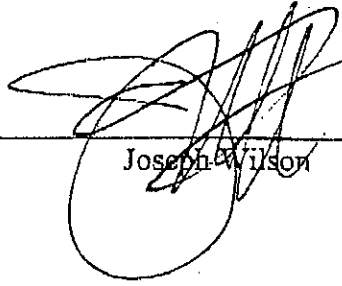
21. In May of 2005, a revised version of the January guidelines was provided to *The Tattler*, Ms. Teukolsky and the newspaper staff. I do not recall any involvement in the revisions. Attached hereto as Exhibit "I" is a true and accurate copy of the May, 2005 revised guidelines.

22. I have not taken any action affecting anyone involved with *The Tattler* in reaction to, in retaliation for, or in any way resulting from anything published in *The Tattler* about me, my decisions, my actions, or my policies. I unequivocally deny any and all of Plaintiffs' claims to the contrary. Whenever I could foresee a possible conflict of interest or the perception of a conflict, I recused myself from decisions regarding *The Tattler*.

23. The only action I have taken regarding the content of *The Tattler* is my refusal to overrule the Faculty Advisor's (Ms. Vinch) decision to prevent publication of the stick-figure cartoon depicting sex acts. This decision was for the reasons stated above.

24. Otherwise, I have never made any attempt to censor the viewpoint of anyone writing an article to appear in *The Tattler*. Other than supporting the teacher who gave the two students a zero for their passing one's work off as that of the other, I have not been involved in, supported, initiated, condoned or been aware of any disciplinary action directed to any student associated with *The Tattler* for anything the student did related to *The Tattler*.

25. Since Ms. Teukolsky became advisor, *The Tattler* has been published nearly every month on the schedule contemplated by the District in giving her released time from teaching. Since this time, there have been no objections to the guidelines by the students involved with *The Tattler*. Each year since on the occasion of her re-appointment, Ms. Teukolsky has affirmed the guidelines and conducted the paper under them without objection.



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Joseph Wilson

Sworn to before me this  
6<sup>th</sup> day of April, 2007.

Tammy M. Podufalski  
Notary Public

TAMMY M. PODUFALSKI  
Notary Public, State of New York  
No. 01PO6027396  
Qualified in Tioga County  
Commission Expires July 6, 20 07