

ICSD still on the hook in Tattler lawsuit

Another high-profile lawsuit against the Ithaca City School District isn't going away — at least not as the district had requested.

Judge Norman A. Mordue of the U.S. District Court for the Northern District of New York ruled last week in favor of former Tattler student members by refusing to dismiss a lawsuit alleging the ICSD violated their First Amendment rights by censoring the paper in 2005. In addition, regulations imposed by the district following the Tattler's criticism of Ithaca High School Principal Joe Wilson were deemed unconstitutional, according to the ruling. The school district had filed for summary judgment in April 2007, seeking the dismissal of the suit.

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

While Mordue declined to dismiss the lawsuit in its entirety, and called the ICSD regulations unconstitutional, he did uphold the district's decision to censor a stick figure cartoon Tattler staffers wanted to publish as commentary on the teaching of sexual education in health classes. He also classified the paper as a "limited public forum," which would allow for some school district oversight as opposed to papers classified as open public forums.

Rob Ochshorn, a plaintiff

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in the lawsuit, was the editor in chief of the Tattler when the issues arose. In a prepared statement, he said he and his fellow Tattler staffers were "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 continued in the statement. "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."

Attorney Raymond Schlather, of Schlather, Geldenhuys, Stumbar and Salk in Ithaca, has represented the students pro bono since they filed the lawsuit in 2005. He said the Tattler has always been an open forum type of paper, with approximately half of its issues finding distribution outside of the Ithaca City School District.

"The judge, in his reasoning, said, 'School district, you're wrong. Tattler, you're wrong. It is a limited public forum,'" Schlather said. "The court determined, though, that because it is a limited public forum it is protected from prior restraint."

"Any guidelines (put forth by the school district) must withstand the standard of prior restraint," he added. "At the end of the day, the ruling states the regulations will not pass constitutional muster."

Asked why it was important for him to see the lawsuit through to resolution,

Ochshorn said his interest was two-fold. "First is the guidelines they imposed on the paper," he said. "They even ask for a list of all story ideas, before they are even written, and gives the district veto power over everything."

"The second is I am still connected to the paper; in fact, I am even going to meet with the students on their current staff to talk to them about what this decision means," Ochshorn added. "This is still important to me, to all of us involved in the lawsuit."

Because the judge did not dismiss the lawsuit in its entirety, the matter is still moving toward a potential trial.

"Unless we can come to terms (with the district), the issue of the case will be tried," Schlather said. "The judge will probably issue an injunction to keep the regulations from censoring the paper."

No trial date has been set, and both parties have until April 20 to decide whether they will appeal the latest ruling.

"If there is no appeal, then the judge will deem the case trial ready after May 1," Schlather said, "so if there is no appeal, I expect it will be tried sometime this year."

Ochshorn said he and the other plaintiffs are keeping their options open, but have not decided whether or not to pursue an appeal. He said they would be discussing it with Schlather before coming to a resolution.

In terms of cost of the case, Schlather said he and another attorney in his firm have each put in more than 300 hours on the case, which he said was "frankly, a conservative estimate."

"Most of that was in pre-trial discovery," he said. "We took depositions from several witnesses over many,

many days, and that was a huge amount of work. Then the motion itself was presented to the court, which was more work."

"And the motion was made by the other side, so my guess is they have more hours into it than we do," Schlather added. "We're doing it on a pro bono basis, but the value of our services is probably around \$150,000 for approximately 600 hours of work."

With that estimate for how much it would cost for his services — if he was charging the students — how much does Schlather think the school district has spent in legal expenses on just this lawsuit?

"The amount of time billed to the school district, I wouldn't be surprised if it was at least \$200,000," he said. "My guess is they have put in more than 600 hours. It's a huge amount of money."

What makes the situation even more interesting, is that the students proposed alternative guidelines based on working with the Student Press Law Center — before they even retained Schlather's services — that would have prevented the lawsuit going forward.

"We had proposed dropping all the claims in this lawsuit in exchange for (the school district) adopting guidelines (for the Tattler) that were constitutional," Schlather said. "In fact, they were proposed by the students themselves before they even came to my firm."

Copies of the decision, court filings, press clippings and background information are available on-line at www.rmozone.com/tattlerwiki. ■

— ROB MONTANA

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