

LEMIRE JOHNSON, LLC

Attorneys at Law

2534 Route 9, P.O. Box 2485, Malta, NY 12020
518.899.5700 ~ 518.793.9005
Fax 518.899.5487

July 29, 2009

Honorable Norman A. Mordue
Chief Judge
United States District Court
Northern District of New York
Syracuse, New York 13261

Re: R.O., et al. v. Ithaca City School District, et al.
Civil Case No.: 05-cv-695 (NAM/GDB)

Your Honor:

We write to request that Defendants' time to respond to Plaintiffs' July 20, 2009 Motion for Certification be adjourned until September 28, 2009.

The reasons for this requested adjournment (which have been previously discussed with Plaintiffs' counsel and the Clerk for the Second Circuit Court of Appeals) is that the status of the at-issue Guidelines will likely be clarified upon the commencement of the upcoming 2009-2010 school year. To the extent the at-issue Guidelines have been nullified, amended and/or replaced, that could impact upon the outcome and/or necessity of Plaintiffs' motion as well as the Court of Appeals' jurisdiction over Plaintiffs' appeal.

Thank you in advance for the Court's consideration of this request.

Respectfully submitted,

LEMIRE JOHNSON, LLC

Gregg T. Johnson

Gregg T. Johnson
Gtj@lemirejohnsonlaw.com

GTJ:dl

cc: Raymond M. Schlather, Esq.
Dr. Judith Pastel
Joseph Wilson
Dr. William Russell
Jonathan Fellows, Esq.

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, **ELECTRONICALLY FILED**

-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.

**DEFENDANTS' MEMORANDUM OF LAW IN PARTIAL
"OPPOSITION" TO PLAINTIFFS' MOTION FOR CERTIFICATION**

LEMIRE JOHNSON, LLC
Attorneys for Defendants
Office and P.O. Address
2534 Route 9
PO Box 2485
Malta, New York 12020
Tel: 518-899-5700
Fax: 518-899-5487
gtj@lemirejohnsonlaw.com

(Gregg T. Johnson, Esq., of Counsel)

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

STATEMENT OF RELEVANT FACTS 2

ARGUMENT 3

 POINT I
 BECAUSE PLAINTIFFS’ CLAIMS FOR INJUNCTIVE OR DECLARATORY RELIEF
 ARE MOOT, DEFENDANTS AGREE THAT FOLLOWING THE DISMISSAL OF
 SUCH CLAIMS, THIS COURT’S MARCH 23, 2009 DECISION AND ORDER
 WOULD BE “FINAL” (ALBEIT ON DIFFERENT GROUNDS THAN PLAINTIFFS
 CONTEND) 3

CONCLUSION 6

TABLE OF AUTHORITIES

FEDERAL CASE LAW

Janki Bai Sahu v. Union Carbide Corp.,
475 F.3d 465 (2d Cir. 2007) 5

Mawhiney v. Henderson,
542 F.2d 1 (2d Cir. 1976) 5

Princeton University et al. v. Schmid,
455 U.S. 100, 102 S.Ct. 867 (1982) 4

SPL Shipping Ltd. v. Gujarat Cheminex, Ltd.
2007 U.S. Dist. LEXIS 27822 (S.D.N.Y. 2007) 5

Sussman, et al. v. Crawford,
548 F.3d 195 (2d Cir. 2008) 4

Twaab v. Metz,
554 F.2d 22 (2d Cir. 1977) 4

Young v. Coughlin,
866 F. 2d 567 (2d Cir. 1988) 4

FEDERAL STATUTES

28 U.S.C. §1291 5, 6

Fed. R. Civ. P. 54(b) 6

PRELIMINARY STATEMENT

As this Court has detailed in its March 23, 2009 Decision and Order (Dkt. No. 52) (hereinafter “Summary Judgment Decision”), this action was commenced four (4) years ago by a group of eight former students at the Ithaca High School (hereinafter “IHS”). As this Court’s Summary Judgment Decision delineated, the varied claims advanced by Plaintiffs fall into two discernible groups.¹

First, by their first three causes of action advanced in the Complaint, Plaintiffs sought to recover money damages and attorneys fees against the ICSD and individual Defendants for the allegedly unconstitutional actions of the Ithaca City School District (hereinafter “ICSD”) and administrators. Those constitutional “tort” claims were all dismissed in their entirety by this Court’s Summary Judgment Decision. Plaintiffs’ pending motion for certification seeks an Order from this Court permitting them to challenge this Court’s comprehensive, well-reasoned Summary Judgment Decision dismissing these tort claims.

Secondly, the fourth and fifth claims interposed by Plaintiffs’ Complaint were directed at the “2005 Guidelines” (Dkt. No. 32-2) and sought to have the 2005 Guidelines declared unconstitutional (Compl. ¶54) and to enjoin the ICSD from enforcing the 2005 Guidelines in the future (Compl. ¶¶56, 57). This Court’s Summary Judgment Decision declined to dismiss the declaratory judgment and injunction claims directed at the 2005 Guidelines prior to a trial (Dkt. No. 52, pp. 50-52).

In the wake of this Court’s Summary Judgment Decision which confirmed the ICSD’s legitimate right to exercise a measure of control over the *Tattler* newspaper and thus rendered the 2005 Guidelines unnecessary; and, with the commencement of the current school year, the ICSD abolished the 2005 Guidelines and replaced them with new Guidelines (hereinafter “2009 Guidelines”). (Aff.

¹ Plaintiffs likewise recognize that their claims are distinguishable, and can be grouped into two distinct categories (Dkt. Nos. 58 p. 2; 61 pp. 5-7)

Pastel ¶¶6-10; Aff. Mills ¶¶2-6; and Lynn Aff. ¶¶4-6). The new 2009 Guidelines essentially track this Court's well-reasoned Summary Judgment Decision. (*Id.*, Ex. A).

Accordingly, Defendants' position regarding Plaintiffs' pending motion is as follows:

Because the surviving claims (causes of action four and five) have been rendered completely moot by the ICSD's elimination of the 2005 Guidelines challenged by Plaintiffs' surviving claims and the implementation of the 2009 Guidelines, the ICSD agrees that complete dismissal of the Complaint is appropriate rendering this Court's March 23, 2009 Decision and Order "Final" and subject to appellate review.

While Defendants object to Plaintiffs' pending motion to the extent it seeks certification of their tort claims while maintaining their equitable claims (which are now moot), Defendants do not object to a finality determination (founded upon the dismissal of Plaintiffs' equitable claims) that permit Plaintiffs' appeal of this Court's March 23, 2009 Summary Judgment Decision.

STATEMENT OF RELEVANT FACTS

As demonstrated by this Court's comprehensive March 23, 2009 Summary Judgment Decision, this Court is well versed on the factual record which preceded Defendants' Summary Judgment motion. Accordingly, the factual history will not be repeated here. Since the disputes which Plaintiffs had with their former school administrators five years ago during the 2004-05 school year, it is beyond dispute that:

- All Plaintiffs have graduated from IHS four years ago;
- All Plaintiffs have been replaced on the *Tattler* Editorial Board by current IHS students;
- The 2005 Guidelines were never "applied", enforced, or implemented in a manner that subsequent *Tattler* Editorial Boards found to be actionable;

- During at least the 2008-09 school year, the *Tattler's Faculty Advisor* never referred to, implemented, enforced, applied or used the 2005 Guidelines (Aff. Pastel ¶¶6; Aff. Lynn ¶¶2-4);
- On August 21, 2009, the 2005 Guidelines, to the extent they meaningfully existed as such, were eliminated (Aff. Pastel ¶¶7-9; Aff. Mills ¶¶4-6; Aff. Lynn ¶5);
- On August 21, 2009, a completely new set of 2009 Guidelines were implemented and introduced to the Editorial Board of the *Tattler* (Aff. Pastel ¶¶7-10; Aff. Mills ¶¶4-6; Aff. Lynn ¶¶5-6; Ex. A).

Based upon these factual developments, Defendants submit that the two equitable claims which survived the Court's Summary Judgment Decision are completely moot and must be dismissed. Upon such dismissal, (by either a stipulation or a ruling of this Court), this Court's Summary Judgment Decision would be "final" and appropriately subject to appellate review.

ARGUMENT

POINT I

**BECAUSE PLAINTIFFS' CLAIMS FOR INJUNCTIVE
OR DECLARATORY RELIEF ARE MOOT, DEFENDANTS AGREE
THAT FOLLOWING THE DISMISSAL OF SUCH CLAIMS, THIS COURT'S
MARCH 23, 2009 DECISION AND ORDER WOULD BE "FINAL"
(ALBEIT ON DIFFERENT GROUNDS THAN PLAINTIFFS CONTEND)**

The District's implementation of new 2009 Guidelines (replacing the 2005 Guidelines) renders Plaintiff's fourth and fifth causes of action moot, and upon dismissal of such claims, this Court's March 23, 2009 Decision (Dkt. No. 52) would be final.

Plaintiffs' fourth cause of action plainly seeks a declaratory judgment that the 2005 *Tattler* Guidelines are unconstitutional and their fifth cause of action seeks injunctive relief enjoining Defendants from adopting and implementing the 2005 Guidelines (Compl. ¶¶54, 56, 57). Both of these

claims are moot since the 2005 Guidelines were abolished and replaced by the new 2009 Guidelines (Aff. Pastel ¶¶8-9; Mills Aff. ¶¶4-5; Lynn Aff. ¶5, Ex. "A"). As the 2005 Guidelines have now been abolished, the issue as to the constitutionality of the 2005 Guidelines and the request for an injunction is completely moot. *See: Princetown University et. al. v. Schmid*, 455 US 100, 103 102 S.Ct. 867, 869 (1982)(the Court held that it lacked jurisdiction where the regulation at issue was substantially amended); *see also Sussman, et. al. v. Crawford*, 548 F.3d 195, 199 (2d Cir. 2008).

The Second Circuit Court of Appeals decision in *Sussman v. Crawford* last year is directly applicable to this case. *Id.* In *Sussman*, the Court of Appeals ruled that Plaintiffs' challenge to West Point's speech policy on the grounds that such policy lacked a response deadline was mooted by West Point's interim policy amendment which provided for a deadline. *Id.*, pp. 8-9. Similarly, in the present action, the District's voluntary abolition of the 2005 Guidelines (or "cessation of conduct in question") and implementation of the new 2009 Guidelines tailored after this Court's Summary Judgment Decision (Aff. Pastel ¶7), moots Plaintiffs' fourth and fifth causes of action.

As the United State Supreme Court framed the issue:

"...the issue of the validity of the old [2005 Guidelines] is moot for this case has lost its character as a present, live controversy of the kind that must exist if we are to avoid advisory opinions on abstract questions of law." *Princeton Univ.* 455 U.S. at 103 quoting in part *Hall v. Beals*, 396 U.S. 45, 48 (1969).

Twwab v. Metz, 554 F.2d 22, 24 (2d Cir. 1977) (The Court held that a change in policy embodied in an official prison document make it "absolutely clear that the alleged wrongful behavior could not reasonably be expected to recur").

Furthermore, Plaintiffs are no longer students at IHS thus, they will not be subject to the District's new 2009 Guidelines, and as such their existing claim for an injunction is moot. *Young v. Coughlin*, 866 F.2d 567, fn.1 (2d Cir. 1988)(prisoner's demand for an injunction is moot where he

is no longer in the facility); *Twwab*, 554 F.2d at 24. “In order for a federal court to exercise its judicial power, an actual case or controversy must exist at each stage of review and not only at the time the Complaint is filed.” *Mawhinney v. Henderson*, 542 F. 2d 1, 4 (2d Cir 1976). As there is no case or controversy in existence and due to the elimination of the 2005 Guidelines, Plaintiffs’ fourth and fifth causes of action must be dismissed as moot.

Moreover, assuming *arguendo* that the Court refuses to dismiss the fourth and fifth causes of action (or Plaintiffs refuse to withdraw same), Defendants oppose Plaintiffs’ application for immediate certification while maintaining their declaratory judgment and injunctive claims.

First, Courts in this Circuit have been reluctant to certify cases pursuant to 28 U.S.C. §1291 when finality has not been achieved.

“The Second Circuit has explained that ‘[i]t is a basic tenet of federal law to delay appellate review until a final judgment has been entered.’ Koehler v. Bank of Bermuda Ltd., 101 F.3d 863, 865 (2d Cir. 1996)(citing Coopers, 437 U.S. at 475); see also, 28 U.S.C. §1291). Indeed, the Court of Appeals has consistently emphasized that a district court is to ‘exercise great care in making a §1292(b) certification.’” (citations omitted).

SPL Shipping, Ltd. v. Gujarat Cheminex, Ltd., 2007 U.S. Dist. LEXIS 27822 * 4 (S.D.N.Y. 2007). “Section 1292(a)(1) functions only as a ‘narrowly tailored exception’ to the ‘policy against piecemeal appellate review.’” *Janki Bai Sahu v. Union Carbide Corp.*, 475 F.3d 465, 467 (2d Cir. 2007) quoting *in part, Huminski v. Rutland City Police Dep’t*, 221 F.3d 357, 359 (2d Cir. 2000).

Second, while Plaintiff’s surviving claims (fourth and fifth causes of action) are readily discernable from their first three tort claims because they exclusively seek equitable relief from the District Court (not any individual Defendant), Plaintiffs ignore that these claims are factually related. Specifically, Plaintiffs’ allegations in support of their tort claims are based, in part, on the 2005 Guidelines (Compl ¶¶26-28, 37-39, 42-43).

Accordingly, while Defendants welcome an affirmation of the Summary Judgment Decision by the Court of Appeals, the requirements of FRCP 54(b) and 28 U.S.C. §1291 have not been met unless and until the surviving claims for injunctive relief are disposed of.

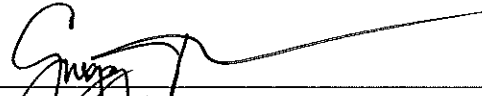
CONCLUSION

Wherefore, it is respectfully requested that this Court dismiss Plaintiffs' fourth and fifth causes of action regarding the 2005 Guidelines as moot, rendering the remaining issues ripe for appellate review; and for such other and further relief as to this Court may seem just and proper.

Dated: September 28, 2009

LEMIRE JOHNSON, LLC

By:



Gregg Johnson, Esq. (506443)

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 "District") and have served in my current position since July 1, 1996. I am familiar with the facts and circumstances at issue in this action and offer this Affidavit for the limited purposes of describing some of the changes that have been implemented with respect to the *Tattler* newspaper since receiving and reviewing the Court's March 23, 2009 Decision in the above-captioned case.

2. On July 9, 2008^p, Dr. William Russell's employment with the District ended at which time he became a full-time administrator for another school district in New York state. Accordingly, Dr. Russell no longer exercises any control over the *Tattler* or the *Faculty Advisor* to the *Tattler*.

3. On or about June 30, 2009, Joseph Wilson's employment with the District ended at which time he became a full time administrator at another public school district in New York state. Accordingly, Mr. Wilson no longer exercises any control over the *Tattler* or the *Faculty Advisor* to the *Tattler*.

4. On July 1, 2009, Donald Mills was hired as the *Ithaca High School Principal*, thereby replacing Joseph Wilson. Prior to July 1, 2009, Mr. Mills was not employed by the District and exercised no control over the *Tattler* or the *Faculty Advisor* to the *Tattler*.

5. During my time at the District, *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*. In July 2008, IHS Teacher, Deborah Lynn was appointed as the Faculty Advisor to the *Tattler*. Ms. Lynn was reappointed in July 2009. Thus, Ms. Lynn has held the position of Faculty Advisor continuously since July 2008 and is expected to serve as the *Tattler's* Faculty Advisor through at least the end of the current school year.

6. Upon information and belief, during the 2008-09 school year, the 2005 Guidelines were never enforced, applied or utilized in connection with the *Tattler*.

7. After receiving this Court's March 23, 2009 Decision and Order, I read and analyzed it in light of the existing 2005 Guidelines. I also discussed the March 23, 2009 Decision and Order with the Board of Education. Upon reviewing the March 23, 2009 Decision, it was clear to me that this Court agreed with and/or confirmed the District's central positions regarding the status of the

Tattler and the relationship between the District and the *Tattler*. In fact, one of the goals of the former 2005 Guidelines was to put the former Editorial Board on notice that the District administration exercised some legitimate control over the *Tattler* publications. In the wake of this Court's March 23, 2009 Decision, I believed that the 2005 Guidelines were no longer necessary. After reviewing the Court's March 23, 2009 Decision I believed a new set of Guidelines should be implemented to eliminate any confusion presented by the 2005 Guidelines and also to put the current IHS students on notice of central rulings by this Court's March 23, 2009 Decision. The new 2009 Guidelines (Ex. "A") were developed with the express purpose of complying with this Court's March 23, 2009 Decision which outlined in part, the nature of the *Tattler* as a school publication and the legitimate ways in which the District could regulate the publication of the *Tattler*. The 2009 Guidelines were developed in the wake of this Court's March 23, 2009 Decision and the reports that I had received that the 2005 Guidelines had not been used during the 2008-09 school year.

8. In or about May 2009, I communicated with the Board of Education's Attorney to develop a new set of Guidelines that tracked this Court's March 23, 2009 Decision. In or about July 2009, I provided Mr. Mills with a copy of the new proposed 2009 Guidelines and asked him to coordinate the implementation of the 2009 Guidelines and the elimination of the 2005 Guidelines with the *Faculty Advisor* and the *Tattler's* 2009-2010 Editorial Board.

9. In late August 2009, before the commencement of the current school year, IHS Principal Mills reported to me that he and the *Faculty Advisor* had met with the *Tattler* Editorial Board and further, that the former 2005 Guidelines had been replaced by new 2009 Guidelines (Ex. "A"). Accordingly, the 2005 Guidelines have been eliminated and/or replaced. The *Faculty Advisor* and our new *High School Principal* have been charged with applying the new 2009 Guidelines (Ex. "A"), as necessary, in overseeing the *Tattler*.

10. To the extent this Court, or the Court of Appeals for the Second Circuit chooses to exercise or decline jurisdiction over this case based upon Plaintiffs' fourth and fifth causes of action which challenge the 2005 Guidelines, I respectfully submit that such Guidelines have been replaced and are no longer in effect at the District. Moreover, the District has no plans to reinstate the 2005 Guidelines.

Judith Pastel
Judith Pastel

Sworn to before me this
25 day of September 2009.

Marilyn H. Mazza
Notary Public

MARILYN H. MAZZA
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01MAG155688
QUALIFIED IN TOMPKINS COUNTY
MY COMMISSION EXPIRES NOV. 13, 2010

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)

DONALD MILLS, being duly sworn, deposes and states:

1. I am currently the *Principal* of the Ithaca High School (hereinafter "IHS"). I was hired as the IHS Principal effective July 1, 2009. I was never employed by the Ithaca City School District (hereinafter "District") prior to July 1, 2009.

2. Prior to being hired as the IHS Principal, I possessed very limited information about the disputes which lead to this litigation. During the Summer of 2009, I reviewed some internet

materials about the *Tattler*, but I had no direct knowledge about this controversy before arriving at IHS.


3. In late July 2009, the District's Superintendent of Schools, Dr. Judith Pastel provided me with a copy of the proposed 2009 Guidelines and asked me to coordinate the implementation of the 2009 Guidelines and the elimination of what she referred to as the 2005 Guidelines. Specifically, Dr. Pastel asked me to meet with the *Faculty Advisor* to the *Tattler* and the *Tattler's* 2009-2010 Editorial Board. At that time, Dr. Pastel explained to me that in the past there had been a dispute over the 2005 Guidelines, but those Guidelines had not been used or implemented in the past year. Dr. Pastel also explained that the Court had issued a ruling in March 2009, which the District considered to be very favorable, which made the 2005 Guidelines unnecessary. Finally, Dr. Pastel explained that the new 2009 Guidelines were intended to track the Court's Decision and eliminate any confusion or ambiguity about the *Faculty Advisor's* role in supervising the *Tattler* newspaper.

4. During this July 2009 meeting, Dr. Pastel requested that I set up a meeting with the *Tattler Faculty Advisor*, Deborah Lynn and all eight (8) members of the *Tattler* Editorial Board before the 2009-2010 school year. Dr. Pastel explained to me that the purpose of the meeting was to introduce the new 2009 Guidelines and to clearly inform the Editorial Board that such Guidelines replaced the 2005 Guidelines.

5. In accordance with Dr. Pastel's request, Ms. Lynn and I met with the Editorial Board on August 21, 2009. During the August 21st meeting, Ms. Lynn and I distributed the new 2009 Guidelines and explained to the members of the Editorial Board that the former 2005 Guidelines had been replaced by the new 2009 Guidelines (Ex. "A"). Ms. Lynn and I had a very productive exchange with the Editorial Board and they expressed their understanding and acceptance of the 2009 Guidelines.

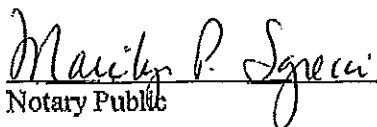
6. Already this year, the *Tattler* has published its first issue during the first week of school.

7. I make this Affidavit voluntarily and I have had an opportunity to review it and make changes before signing it.



Donald Mills

Sworn to before me this
25th day of September 2009.



Notary Public

Marilyn P. Sgrecci
Notary Public - State of New York
Qualified in Tompkins County
Commission Expires 05-05-2011

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 ELLEREROCK; 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)

DEBORAH LYNN, being duly sworn, deposes and states:

1. I am currently employed by the Ithaca City School District (hereinafter "District") as a High School Science Teacher.
2. In July 2008, I was appointed as Faculty Advisor for *The Tatler*, the newspaper of the IHS for the 2008-2009 school year. I was reappointed to the position of *Faculty Advisor* in July 2009 for the 2009-2010 school year.

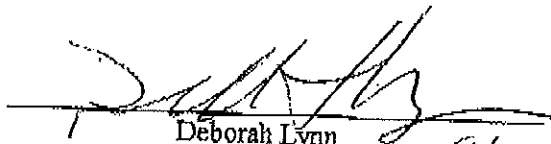
3. As *Faculty Advisor*, I am paid an annual stipend above and beyond my base Teacher's salary. I also received teaching credit for my role as *Faculty Advisor*.

4. During the 2008-09 school year, my relationship with the *Tattler's* student Editorial Board was positive and constructive. During the 2008-09 school year, while fulfilling my responsibilities as *Faculty Advisor*, I never felt the need to consult, apply or enforce what has come to be known as the 2005 Guidelines. In fact, other than briefly reviewing the 2005 Guidelines when former IHS Principal Joe Wilson discussed my becoming the *Faculty Advisor* in the Spring of 2008, I never used or even consulted those Guidelines.

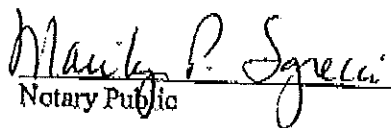
5. In early August 2009, the new IHS Principal, Donald Mills, informed me that an entirely new set of Guidelines was going to be implemented for the 2009-2010 school year and requested that I schedule a meeting with the current Editorial Board. On August 21, 2009, Mr. Mills and I met with the eight (8) member Editorial Board, distributed the new 2009 Guidelines and explained to them they constituted the new guidelines for the *Tattler*. Prior to that meeting, I reviewed the 2009 Guidelines and thought that they were consistent with how I had supervised the *Tattler* during the 2008-09 school year. During our August 21, 2009 meeting with the *Tattler* Editorial Board, we had a constructive discussion about the meaning of the 2009 Guidelines and the Mr. Mills and I attempted to answer the questions posed by members of the Editorial Board. In my view the meeting went well, and I do not anticipate any problems supervising the *Tattler* during this current school year in accordance with the 2009 Guidelines.

6. At no point in time while I was *Faculty Advisor* for *The Tattler* did any ICSD administrator, including the Defendants in this case, ever attempt to interfere with the creation, production or distribution of any articles or stories created for *The Tattler* which I had approved for publication.

7. I make this Affidavit voluntarily and have an opportunity to review and make changes to it before signing it.


Deborah Lynn 9/28/09

Sworn to before me this
28th day of September 2009.


Marilyn P. Sgreco
Notary Public

Marilyn P. Sgreco
Notary Public - State of New York
Qualified in Tompkins County
Commission Expires 05-05-2011

Exhibit A

GUIDELINES FOR THE TATTLER

The Tattler is a school-sponsored student newspaper of Ithaca High School, and bears the imprimatur of the District. The Tattler is designed to impart journalistic knowledge and skills to the student participants and audience. The District desires to set high standards for the student speech that is disseminated in The Tattler, and accordingly is issuing these guidelines.

The Tattler is supervised by a faculty advisor.

The faculty advisor may exercise editorial control of The Tattler as set forth in these guidelines.

No issue of The Tattler may be sent to the printer without the final approval of the faculty advisor.

The faculty advisor may refuse to approve the following material for publication in The Tattler:

1. Material that is obscene.
2. Material that is potentially libelous.
3. Vulgar and lewd speech that would undermine the High School's basic educational mission.
4. Material that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the shared values of a civilized social order.
5. Material that the faculty advisor reasonably believes will substantially and materially interfere with school work or discipline.

If the editor-in-chief of The Tattler disagrees with any determination of the faculty advisor, the editor-in-chief may present the material to the Superintendent of Schools or

his or her designee for review. The Superintendent will complete a review of the article within two school days of its submission and make a determination about whether the content is appropriate for publication under these guidelines.