

To: Bob Stepaniak

From: Kelly Zwagerman

Date: December 11, 2008

Re: Response to letter dated Dec. 11, 2008

I strongly believe that my job as journalism adviser at Faribault High School involves guiding both students and administrators through legal and ethical scholastic press issues. After earning a degree in journalism/mass communication, I have been advising high school publications for nearly two decades. I have also worked as a reporter; and I regularly attend state and national journalism conventions where current information on legal and ethical issues is provided.

I was hired to teach journalism and advise publications at Faribault High School in 1986, and since that time there has never been any story printed in the Echo that has resulted in litigation. We live in litigious times, and it's common for people to say they are concerned about lawsuits, but under my tenure the Echo has never printed any article that was libelous or "violated the rights of others," a concern you stated in your letter.

According to the Faribault School District's media policy, "faculty supervisors will supervise students to ensure compliance with the law and school district policies. Official school media and activities are free from prior restraint by officials except as provided by law."

Our district's policy states: "Expression in an official school media ... is subject to editorial control by the Faribault School District over the style and content as long as the school district's actions are reasonably related to legitimate pedagogical concerns." Under this section of the policy, #6 states: "assuring that the school is not associated with expression that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane."

Since the students involved with writing the Prieve story have been working on gathering information for approximately four weeks and have met with you twice and contacted you several times, every effort has been made to do adequate research. They have worked closely with professional journalists as well to ensure the accuracy of all their information.

Any article about Ms. Prieve that might be printed in the Echo would not be obscene; is not libelous; does not promote a service not permitted by minors; does not encourage students to commit illegal acts or violate school regulations; will not cause a disruption of the orderly operation of school; and does not advocate harassment or violence or prejudice.

In the absence of legitimate pedagogical concerns or a reasonable belief that there will be material and substantial disruption to the educational process I am concerned that the request to see any articles scheduled to be in the Echo prior to publication puts the district at risk of litigation from journalism students whose First Amendment rights might be violated.

In *Dean v. Utica Community Schools*, a case that was decided after *Hazelwood*, a principal censored stories that student journalists had written about a husband and wife who alleged that school bus exhaust fumes contributed to the husband's lung cancer. School officials claimed the story was based on unreliable sources and contained a number of inaccuracies. They also claimed it was inappropriate for the student journalists to do a story about a legal case in which the school was involved. A lawsuit was filed against the school district in federal court by student reporter Katy Dean, and the newspaper staff also took their case public and received a lot of state and national support. The district said *Hazelwood* supported their decision to censor, but in October 2004, Judge Arthur Tarnow called the school's censorship "indefensible."

The judge found that the student newspaper was a public forum where students – not school officials – were responsible for determining content. The judge also closely examined the article and, using criteria from *Hazelwood*, determined there was not a “significant disparity in quality between Dean’s article ... and the similar article in ‘professional’ newspapers.”

The judge noted that students had no practice of submitting content to school officials for prior review; in fact, the judge found that during the preceding 25 years, school district officials had never intervened in the editorial process of its student newspapers. Faribault High School has a similar history.

If the Echo editors agree to prior review, they feel that administrators will continue to make that request, and that a precedent will be set for the student journalists who will come after them. They fear that administrators will be able to request articles at their whim and that censorship will occur without regard to the law.

Your letter states that unless you review all articles about Ms. Prievé the Echo will not be published. I think it is possible that Echo editors will decide not to submit to prior review, which they believe will lead to prior restraint and censorship. In that case, we can anticipate the Echo will not be published.

Our district faces a greater risk of “uncomfortable” stories by students if they are not allowed to publish a newspaper and they resort to alternative methods of distributing information.

Several years ago I heard a speech by Principal Franklin S. McCallie of Kirkwood High School in Missouri, and he said: “ ... in educating vital, developing minds, there is a process of communication with students and decision-making for students which demands latitude, flexibility, scope and vision, and which is aided and abetted and supervised and coached and mentored by you, the professional journalism teacher. ... [T]hose educational leaders who would stifle scholastic journalism programs just do not have very much faith in students to rise to professional journalism standards.” McCallie concluded his speech using a butterfly metaphor to explain how educators can help students excel: “We can put them ... in the sunlight; we can cheer and encourage. They must stretch and strain and twist and groan and push their way out. And they will fly.”

In over 20 years of working with student journalists I have never been disappointed in them when I have challenged them to do responsible reporting. I believe that with proper guidance and instruction, which both you and I have already provided in this case, Faribault High School journalists can produce well-written stories, and that it is unnecessary to have a principal or superintendent review student work before going to press. I believe that prior review will set a damaging and dangerous precedent and set in motion a series of events that will detract from more positive educational experiences.