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February 22, 2016

VIA U.S. MAIL and EMAIL

Marcia Holland
Board Chair
Missoula County Public Schools Board of Trustees
2616 Wedgewood Ct.
Missoula, MT 59808
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Dear Board,

Please be informed that I represent Jane Bennett in all matters regarding the three-day suspension levied against her on February 1, 2016.

Ms. Bennett was given until February 22, 2016 to appeal the decision to discipline her. This letter is Ms. Bennett's Notice of Appeal of the Superintendent's decision to discipline Ms. Bennett.

The issues can be distilled into two relatively simple questions:

1. Did Ms. Bennett violate Missoula County Public Schools Policy 3221 (Policy 3221)?
2. Is suspending the principal when a school newspaper is suspected of violating Policy 3221 an excessive sanction in light of past practices in the District?

There are other, significantly more convoluted issues implicated here, and Ms. Bennett reserves her right to address those issues in other forums. For the sake of simplicity and brevity, however, only these two issues are addressed in this appeal.

BACKGROUND

Ms. Bennett is the principal at Willard High School. On February 1, 2016, Ms. Bennett received a letter of reprimand from Karen Allen (attached as Exhibit A). The Letter of Reprimand ("the Letter") addresses the January edition of Willard's school newspaper, the *Willard Wire*, which featured an article (Attached as Exhibit

B) regarding the Free the Nipple Movement.¹ The District found the article objectionable because the cover photo for the article depicted six topless people on the cover (five female, one male) with their nipples covered by black. In the article itself, there is a second photo showing a topless male and a topless female standing next to each other. The people appearing in the picture were all over 18 and signed releases relating to use of the picture by the *Willard Wire*.

The District also found objectionable a portion of the article titled “An Interview with a Breastfeeding Mother,” specifically the portion of the interview addressing misconceptions about breastfeeding in public. That portion responds to the frequent argument that allowing breastfeeding in public would be no different than allowing a man to expose his penis and receive oral sex in public. The objection apparently arises from the author’s use of the vernacular “dick” and the reference to oral sex.²

The Letter imposed an immediate three-day suspension without pay for violation of Policy 3221. That Policy states:

Publications and Distribution or Posting of Materials

School-sponsored publications and productions are part of the curriculum and are not a public forum for general student use. Material appearing in such publications should reflect all areas of student interest, including topics about which there may be controversy and dissent. Controversial issues may be presented provided they are treated in depth and represent a variety of viewpoints. Such materials may not be libelous, obscene, or profane nor may they cause a substantial disruption of the school, invade the privacy of others, demean any race, religion, gender, or ethnic group, or advocate the violation of the law. They may not advertise tobacco, liquor, illicit drugs or drug paraphernalia. School authorities may edit or delete material which is inconsistent with this policy.

¹ Free The Nipple is self-described as: “a film, an equality movement, and a mission to empower women across the world. We stand against female oppression and censorship, both in the United States and around the globe. Today, in the USA it is effectively ILLEGAL for a woman to be topless, breastfeeding included, in 35 states. In less tolerant places like Louisiana, an exposed nipple can take a woman to jail for up to three years and cost \$2,500 in fines. Even in New York City, which legalized public toplessness in 1992, the NYPD continues to arrest women. We’re working to change these inequalities through film, social media, and a grassroots campaign.” <http://freethenipple.com/what-is-free-the-nipple/>

² This argument against legalization of public breastfeeding is common. Forums discussing this argument frequently use the same vernacular. See, e.g., <http://www.mommyish.com/2014/06/12/arguments-against-breastfeeding-in-public-penis/> (using the term “dick”); <http://theodysseyonline.com/pratt/breastfeeding-public-good-obscene/130095> (same); <http://theleakyboob.com/2010/09/a-letter-to-the-world-about-public-breastfeeding/> (same).

The Superintendent shall develop guidelines to implement these standards and shall establish procedures for the prompt review of any materials which appear not to comply with the standards.

The Letter states: “The publication of photographs of partially nude female youth reasonably perceived to be students, as well as the section of the paper, *Misconceptions Slammed*, which contained lewd and vulgar language referencing sexual acts, violated Board policy.”

The Letter, however, does not explain how Ms. Bennett violated the Policy. The Letter also does not identify any policy other than 3221 that Ms. Bennett may have violated. The Letter simply asserts that Ms. Bennett reviewed the publication, including the pictures, prior to publication. The Letter also states that Ms. Bennett was aware of the releases, but did not have them reviewed by the District and did not ensure that the information in the releases was accurate. The Letter asserts that Ms. Bennett’s failure to have the District review the releases and her purported violation of Policy 3221 “negatively impacted the District and potentially put students at risk”—though, how she negatively impacted the District and potentially put students at risk is never explained. The paragraph addressing the basis for Ms. Bennett’s three-day suspension concludes by claiming she failed to exercise good judgment “in that you failed to provide effective guidance to Ms. Waller [the journalism teacher] prior to final publication of the Willard Wire.”

In sum, the Letter does not show a violation of any policy. The Letter does not identify any policy other than 3221 that Ms. Bennett’s acts or omissions might have violated, and none of these alleged violations of Policy 3221 match any of the language of the Policy.

ARGUMENT

I. Ms. Bennett did not violate Policy 3221.

The article itself does not appear to have violated the Policy. The article did not cause any “substantial disruption of the school” at any of the schools where it was delivered. In fact, it didn’t cause any disruption at all, substantial or otherwise. The District’s only conceivable argument that the article violated the Policy, then, would presumably fall under the prohibition on “obscene” materials.

The article, however, was not “obscene.” That term has had an accepted definition since 1973 when the U.S. Supreme Court announced a three-part test for determining whether material is “obscene”:

- (1) whether ‘the average person, applying contemporary community standards’ would find that the work, ‘taken as a whole,’ appeals to ‘prurient interest’
- (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and

(3) whether the work, 'taken as a whole,' lacks serious literary, artistic, political, or scientific value.

Miller v. California, 413 U.S. 15 (1973). Even if the first two parts of the test were satisfied, the third is not. The article addresses a growing socio-political movement whose arguments are grounded in science and reason. The reaction the pictures invoke, including the reaction of members of the District, underscores the point of the article in a way that no amount of words could.

If the article did not violate the Policy, then it is unclear how any of Ms. Bennett's actions could have violated the Policy. At a minimum, she had good reason to believe that the article did follow the Policy given the Policy's plain language and the socio-political focus of the article.

However, even if we assume the article did violate the Policy, none of Ms. Bennett's actions in relation to the article violated the Policy. As should be evident from the language of the Policy, Ms. Bennett's review of the paper prior to publication did not violate the Policy. The Policy states: "School authorities *may* edit or delete material which is inconsistent with this policy." However, it does not mandate that they do so. Hence, even if the article violated the Policy, and Ms. Bennett reviewed it, believed it violated the policy, and did not censor it, she still would not have violated the Policy.

II. Violating Policy 3221 has never resulted in the suspension of the school's principal, and there is no justification for that result here.

This is not the first time a high-school publication in this District has been accused of violating Policy 3221. In 2012, the *Hellgate Lance* published a Valentine's day edition that elicited numerous complaints. The publication included an article that extolled the virtues of pornography, argued that mildly violent pornography is innocuous fantasy, included addresses to free pornography websites, and explained how to bypass age restrictions on those websites. In a separate editorial, a student advocated that those lonely and bored on Valentine's day experiment with bisexuality. Other stories shared students' sexual fantasies and included graphic descriptions of sex acts. See Exhibit C: *Missoulian* article regarding the publication and resulting furor.

The principal of Hellgate at the time of the publication, Russ Lodge, was not disciplined in any way for the paper's publication and distribution. While at least some portions of that publication undoubtedly violated Policy 3221, the District did not write a letter of reprimand to the principal, much less impose a three-day suspension on him. The District may not impose such a sanction in this case without some sort of justification for treating Ms. Bennett differently than Mr. Lodge.

CONCLUSION AND REMEDY

The publication at issue does not appear to have violated Policy 3221. At a bare minimum, there were sufficient grounds for Ms. Bennett to believe that it did not violate the policy. Moreover, even if the publication violated the Policy, nothing in the Policy suggests that the principal is responsible for that violation. That the District has always taken this view is apparent from its handling of the issue of the *Hellgate Lance* that was found to violate the Policy, in which the principal was not disciplined in any way. There appears to be no legitimate distinction between the actions of the principal in that case and the actions of Ms. Bennett in this case that would justify the disparate treatment.

Accordingly, Ms. Bennett requests that the Board overturn the Supervisor's imposition of the three-day suspension and mandate that Ms. Bennett be paid for those three-days and that the letter of reprimand be removed from her file.

Signed,

A handwritten signature in black ink, appearing to read "Paul Leisher", written over a horizontal line.

Paul M. Leisher
PAOLI LAW FIRM, P.C.

cc: Bea Kaleva



Forward Thinking, High Achieving.

Karen Allen
Executive Regional Director
Missoula County Public Schools
215 South 6th West
Missoula, MT 59801
728-2400, Ext. 1074

February 1, 2016

To: Jane Bennett
From: Karen Allen
Re: January 2016 Willard Wire

Dear Jane,

On January 29, 2016, David Rott and I met with you to discuss concerns regarding the publication of inappropriate material in the January 2016 edition of the Willard Wire. During our meeting you were given an opportunity to explain why the publication of the material in question occurred and your justification for approving it. In addition to discussing the general publication protocol at Willard, we discussed the use of the photo of five topless females on the cover of the edition and an additional photo of a topless female which accompanied the article, *Free the Nipple*. Additionally, we discussed the language used in the section *Misconception Slammed* section of the paper which referenced a sexual act.

You stated that in your role as principal of Willard, you oversee and approve the Willard Wire prior to publication. In the present case, you indicated you would have approved the publication of the January 2016 edition, and while you do not specifically recall seeing the photographs in question, that you probably did prior to approving it. You said that you defer to the professional judgement of the teacher in these matters.

In our interview with the Willard Wire advisor, Lisa Waller, she stated that you came to the journalism room and saw the final copy of the edition, including the photographs.

You stated that you knew who had taken the pictures and whose camera it was. Additionally, you indicated that there were "Releases," signed by the individuals in the photographs indicating that they were at least 18 years old. You indicated you were uncomfortable handing over the releases to us, but did agree to gather them and store them in your office. You provided us a copy of a blank release. While the release did have an "over 18" acknowledgement, there was nothing in the release indicating that participants were not MCPS students. The releases were created by Willard journalism students. At no time did you have the releases reviewed by the District nor did you independently verify that the participants in the photo shoot were in fact over 18. You said you knew the participants were over 18 because the students assured you of such. You acknowledged that the paper does receive funding from the District, that it is created at school as part of a class, and that Ms. Waller is the advisor.

You further stated that you were aware of the District Board Policy regarding student publications. However, you also noted that there is a written Willard publication policy that the



students follow. You stated that the policy is an evolving policy and that you have worked with Ms. Waller on it. You recognized that under District policy that school-sponsored publications are not a public forum, and this would include the Willard Wire.

Regarding the Willard Wire edition in question, you stated that you were surprised by the negative reaction and that the photos were chosen to visually illustrate points in the story. You stated that they were, in a way, an art form. Regarding the language used in the *Misconception Slammed* section of the paper, you stated that people of our generation might object to it, but that you are around kids all the time, so it didn't surprise you.

All student publications are governed by Board Policy 3221 which states in relevant part:

Publications and Distribution or Posting of Materials

School-sponsored publications and productions are part of the curriculum and are not a public forum for general student use. Material appearing in such publications should reflect all areas of student interest, including topics about which there may be controversy and dissent. Controversial issues may be presented provided they are treated in depth and represent a variety of viewpoints. Such materials may not be libelous, obscene, or profane nor may they cause a substantial disruption of the school, invade the privacy rights of others, demean any race, religion, gender, or ethnic group, or advocate the violation of the law. They may not advertise tobacco, liquor, illicit drugs or drug paraphernalia. School authorities may edit or delete material which is inconsistent with this policy.

While you have offered an explanation of the process by which the paper is approved and published, your explanation does not relieve you of the responsibility to consistently exercise good judgement in your role as building principal and your responsibility to adhere to Board Policy. You reviewed the edition prior to publication, including the pictures. You were aware that there were releases, but did not have the same reviewed by the District, nor did you ensure that the information contained therein was accurate. Your failure in this regard and failure to follow Board Policy 3221, negatively impacted the District and potentially put students at risk. The publication of photographs of partially nude female youth reasonably perceived to be students, as well as the section of the paper, *Misconceptions Slammed*, which contained lewd and vulgar language referencing sexual acts, violated Board policy. The publication included pictures without disclaimers creating an impression that the people in the photos were MCPS students. Your failure to exercise good judgment is evident in that you failed to provide effective guidance to Ms. Waller prior to final publication of the Willard Wire.

Because school-sponsored publications are part of the curriculum, the school needs to take an active role in making sure that the publications are consistent with the curriculum. This is not about political viewpoint censorship, but about ensuring that published material is appropriate and consistent with the curriculum and the pedagogical values defined by the Board.

Effective immediately, you are suspended without pay for three days. Additionally, this serves as a Letter of Reprimand. It is my expectation that as the principal of Willard, you will ensure that the Willard Wire is in compliance with MCPS Board Policy 3221 prior to publication. As a principal, you are required to take an active role to make sure that all student publications are

consistent with the curriculum and Board policy. Student publication policy is controlled by Board Policy 3221, not school created policy. If you do not understand my expectations, please schedule an appointment with me for additional guidance. Failure to comply with my directives will result in further discipline, up to and including termination. A copy of this Letter of Reprimand will be placed in your personnel file. You may attach a response if you wish to do so.

I hereby acknowledge receipt of the Letter of Reprimand.

RB # 02.01.16
Signature Date

I hereby witness Jane Bennett's receipt of this Letter of Reprimand.

Chad Rd 2/1/16
Signature Date

C: Personnel File