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**M E M O R A N D U M**

**TO:** Applicant  
**FROM:** Frank Eisner  
**DATE:** February 24, 1998  
**SUBJECT:** Gardenton Board of Education—Proposed Communications Code for Gardenton High School

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Dr. Edwina Kantor, the President of the Gardenton Board of Education, came to see me a few days ago about a new code to regulate the content of student communications at our public high school, Gardenton High. At its next meeting, the Board wants to present for public comment the most restrictive communications code permissible, one that gives the school the greatest flexibility to prevent the publication of offensive material. Dr. Kantor wants me to meet with and advise the Board in advance of that meeting and to be prepared to respond to comments from members of the public who have signed up to speak pro and con about the code.

Over the last few months, parents and civic groups have objected to what they consider to be intemperate, irresponsible reporting, profanity, and sexually charged material of questionable taste appearing in the various student media.

I've included in the file a transcript of my conversation with Dr. Kantor so you can get a better idea of what the issues are and how she'd like to have this matter resolved.

Please prepare a memorandum in which you evaluate the preamble and each of the guideline provisions in the draft of the communications code that Dr. Kantor left with me. Identify the legal issues that can give rise to constitutional challenges to each of the provisions and analyze whether each such provision is likely to be found legally permissible. Make suggestions for deleting, modifying, or adding any items in order to help the Board achieve its goal. Be sure to state your reasons for concluding that each guideline provision is legally permissible or impermissible, as well as the reasons for any suggestions you make. Support your reasons with appropriate discussion of the facts and law.

## TRANSCRIPT OF DISCUSSION WITH DR. EDWINA KANTOR

**Lawyer:** Thanks for allowing me to record this discussion, Dr. Kantor. It'll make it easier to reconstruct it later on.

**Kantor:** That's fine. This problem is becoming a real headache.

**Lawyer:** Tell me what the situation is.

**Kantor:** With increasing frequency, we've been getting complaints from local residents, some city leaders, parents, and various church and civic groups about the degenerating quality of the subject matter being reported in *The Weekly Cougar* and the language being used by students in their student theatrical and video productions. In fact, we've come pretty close to being sued for defamation by a number of really irate citizens who've read or seen things published about themselves or their families.

**Lawyer:** *The Weekly Cougar*—that's the student newspaper, right?

**Kantor:** That's right. It's published by the students in the senior journalism class. Students in drama and theatrical arts classes also publish plays. The performances are produced a couple of times a year. Sometimes there are live performances and sometimes the plays are filmed or videotaped by the students in the cinematography department and then shown in the auditorium or in classrooms in lieu of live plays.

**Lawyer:** Is the *Cougar* circulated beyond the student body? Who is invited to attend the student theatrical productions?

**Kantor:** Well, we don't consciously circulate the *Cougar* off campus. It's intended to be an educational vehicle for training students, but there's nothing to prevent anyone who's interested from getting copies. In order to finance the costs, the students solicit advertisements from local merchants and business operators. But it's not a newspaper of general circulation.

As far as the theatrical productions are concerned, the regular annual live performances are advertised around town and admission is charged. The targeted audiences are made up mostly of students and their friends and relatives. Some of the smaller productions—I mean videos and films—are just for student consumption. We've never tried to open either the live plays or the smaller productions to the public at large.

**Lawyer:** What's the problem?

**Kantor:** Well, the student reporters for the *Cougar* have reported stories about individuals, relying on rumor and innuendo, without verifying the facts, without exercising mature judgment, and generally exceeding the boundaries of responsible journalism. They have used some profanity in their stories. They just don't have the experience to know better. As a result, there have been some pretty defamatory and tasteless things published.

The plays and theatrical productions have sometimes bordered on being obscene. They frequently deal with sexually charged and morally questionable subject matter that parents, community leaders, and civic groups have found offensive. And, I've got to tell you that I agree with them.

**Lawyer:** Haven't the school administrators and classroom teachers been able to control the contents sufficiently to avoid these problems?

**Kantor:** Not really. It's not that they don't want to. It's just that they haven't had any guidelines, and they've been unsure how far they can go to squelch what some people say is free speech. The Board has worked up some guidelines as part of a communications code that we'd like to implement. I'll just leave this copy with you.

**Lawyer:** All right. Where would you like to end up with this thing?

**Kantor:** Well, in the best of worlds, we'd like to be able to implement each and every one of the controls we've listed in the draft. It was supposed to be a working draft and was supposed to be kept secret until we were ready to go public with it. Somehow it got out, and the next thing we know the opposition groups are coming out of the woodwork, and we're being threatened with litigation from both sides. The Union for Freedom of Speech is threatening to sue us if we promulgate any code at all, and the Gardenton Civic League is threatening to sue us if we don't.

We really want to go as far as the law will allow us in controlling what the kids can publish and in giving the school district and the high school administration something they can enforce without being tied up in litigation. We have to satisfy the parents and the community that we're doing something to curb the problem and, at the same time, convince the students and free speech activists that what we're doing is within the law.

**Lawyer:** What, specifically, can I do to help?

**Kantor:** The next public meeting of the Board is scheduled for a week from Friday. The public session begins at 8:00 p.m. We already know from the sign-up list that there are going to be a lot of speakers on both sides of the issue. We are particularly concerned about the Union for Freedom of Speech, which we believe is champing at the bit to sue us. They've told us they'll sue to enjoin us. I think they believe that publication of any code would be a violation of the students' constitutional right of free speech.

We'd like you to meet with us before the meeting to advise us on whether or not the draft of the guidelines is something we can lawfully implement. If not, tell us why not, and tell us what we can do. We're not wedded to all the items in the draft. The main thing is that we be able to censor unacceptable language and morally questionable subject matter that runs counter to our educational goals, especially things that open us up to suits for libel and slander and invasion of privacy.

**Lawyer:** What about procedures for implementing the guidelines?

**Kantor:** One step at a time. First, let's get agreement on these substantive guidelines at

the Board meeting. Then we can turn our attention to the procedures for applying them. Later on, we'll draft some procedures and ask you to look at them.

**Lawyer:** OK, Dr. Kantor. Let me get to work. I'll see you at the Board meeting at 6:00 p.m.

## **STUDENT COMMUNICATIONS CODE FOR GARDENTON HIGH SCHOOL**

**Preamble:** This Communications Code shall apply to all student publications and media representations produced either as a result of course work or intramural extracurricular activities that are published, distributed, or otherwise disseminated on or off campus. This code shall apply to school newspapers, yearbooks, plays and other literary publications, films, movies, videos, signs, posters, and other photographic productions and graphic displays.

### **Guidelines for Student Publications and Productions:**

1. All student publications and productions shall maintain professional standards of English language and journalistic style.
2. All student publications and productions shall avoid language and depictions that are not in good taste, having regard for the age, experience, and maturity of the general student population.
3. No stories or reports of events shall be published unless the accuracy of the facts and any quotations from individuals have first been verified to the satisfaction of the teacher supervising the publication.
4. No person shall be quoted or photographically depicted in any student publication or production without that person's prior permission and, in the case of a minor, the permission of the minor's parent or guardian, except that persons posing for group photographs shall be deemed to have given their implied consent.
5. No publication, literary piece, play, film, video, or other student production shall include material that:
  - a. is libelous or slanderous or violates any person's right of privacy;
  - b. contains profanity, which means language that would not customarily be used in local newspapers, to wit: *The Gardenton Times* or *The Morning Herald*;
  - c. criticizes or demeans any public official, including officials, administrators, and teachers of the school; or
  - d. is deemed by the principal not to be in the school's best interest.
6. Material must receive the prior approval of the principal before it is published, distributed or otherwise disseminated.

**Procedures for Implementation:** [to come later.]