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June 12, 2009

Hon. Norman A. Mordue  
United States District Court  
Northern District of New York  
P. O. Box 7396  
Syracuse, New York 13261-7396

Re: **Ochshorn, et al. v. Ithaca City School District, et al.**  
**Case # 5:05-cv-695 (NAM/GDB)**  
**Appellate Docket No. 09-1651**

Dear Judge Mordue:

Please accept this letter as plaintiffs' application for a Certification pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, determining and certifying that this Court's Decision and Order dated March 23, 2009, insofar as that Decision and Order granted partial summary judgment to defendants dismissing plaintiffs' first, second and third causes of action, is ripe for immediate review and that there is no just reason for delay.

The Court's Order, as it does not dispose of all claims in the action, is not final and, accordingly, the appeal from that Order is subject to dismissal by the Second Circuit on a jurisdictional ground. However, pursuant to Rule 54(b), an Order granting summary judgment completely disposing of one or more claims, and thus rendering a final decision under 28 U.S.C. § 1291 on those claims, may be appealable when so certified by the District Court.

As the Court knows, plaintiffs have asserted several claims arising out of defendants' institution of guidelines for *The Tattler*, the student-run paper of Ithaca High School. The three claims concerning the authority of defendants to subject *The Tattler* to any content-based restrictions on the material published were dismissed by the Court in granting partial summary judgment as a matter of law to defendants. Plaintiffs have taken an appeal from that portion of the Court's Order, and the Court has granted an adjournment of the trial on the remaining claims pending resolution of

plaintiffs' appeal. Should the Second Circuit dismiss that appeal for lack of finality, the trial on the remaining claim -- that the guidelines that were imposed were vague and overbroad -- would proceed. Following that trial, and the issuance of the Court's final order, plaintiffs would then take an appeal concerning at the very least the three claims on which summary judgment has been granted. Should plaintiffs prevail on any of these claims, a second trial would be necessary, not only on plaintiffs claims but on defendants' claim of qualified immunity.

The resulting waste of judicial resources, and the waste of the parties' time and money, in duplicating the major portions of the original trial would be obviated by permitting plaintiffs' three dismissed claims to be reviewed by the Second Circuit at this time. A request for certification may be denied if the granting thereof would raise the possibility of duplicate appellate review; that concern is not present here, as although the remaining and dismissed claims all arise out of the same set of facts, the claims themselves are sufficiently separable to permit entry of judgment. Accordingly, plaintiffs request that this Court make a determination that there is no just reason for delaying this appellate review and direct the entry of judgment on plaintiffs' first, second and third causes of action.

The issues of finality and certification were discussed among counsel for the parties and the court attorney for the Second Circuit Court of Appeals at a recent telephone conference under the Second Circuit's Civil Appeal Management Plan. Based on that discussion, plaintiffs are proceeding on a good faith belief that defendants will not oppose this application for certification.

Respectfully yours,

/s/RAYMOND M. SCHLATHER  
Bar Roll No. 501364

RMS/dvb

cc: Gregg T. Johnson, Esq.