



FIRE
Foundation for Individual
Rights and Expression



May 9, 2023

Dr. Amy Meisinger, Principal
Conestoga High School
200 Irish Road
Berwyn, Pennsylvania 19312

Sent via U.S. Mail and Electronic Mail (meisingera@tesd.net)

Dear Dr. Meisinger:

FIRE's Student Press Freedom Initiative,¹ the Journalism Education Association,² the Pennsylvania School Press Association,³ and the Student Press Law Center⁴ are concerned that Conestoga High School is prohibiting *The Spoke* student newspaper from publishing its annual senior destinations map. This act of censorship defies district policy governing the relationship between school administration and student media, not to mention the First Amendment. As such, Conestoga must allow *The Spoke* to publish its senior destinations map without threat of adverse action.

¹ The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan, nonprofit dedicated to defending freedom of expression. Founded in 1999 as the Foundation for Individual Rights in Education, FIRE's sole focus before the expansion of our mission in June 2022 was defending student and faculty rights at our nation's colleges and universities. FIRE's Student Press Freedom Initiative (SPFI) defends free press on campus by advocating for the rights of student journalists across the country.

² The Journalism Education Association (JEA) supports free and responsible scholastic journalism by providing resources and educational opportunities, by promoting professionalism, by encouraging and rewarding student excellence and teacher achievement, and by fostering an atmosphere which encompasses diversity yet builds unity.

³ The Pennsylvania School Press Association (PSPA) recognizes and supports student journalism programs in Pennsylvania through regional and statewide competitions, publication critiques, awards and recognition, mentorship for advisers, and other resources. The mission of PSPA is to promote excellence and responsibility in scholastic journalism through developing students who possess sound journalism skills, demonstrate ethical decision making and recognize, uphold, and advocate First Amendment rights through responsible citizenship and informed media consumption.

⁴ Founded in 1974, the Student Press Law Center (SPLC) is the nation's only legal assistance agency devoted exclusively to supporting, defending, and educating high school and college journalists about the rights and responsibilities embodied in the First Amendment and supporting the student news media in covering important issues free from censorship. The SPLC is a nonpartisan, nonprofit organization.

I. Conestoga Administration Forbids Publication of Senior Destination Map

The Spoke, CHS's student-run newspaper, has published a senior destination map in its final issue each year since the 1960s.⁵ The map reflects what graduating seniors—including those entering college, entering vocational school, beginning a military career, taking a gap year, starting an apprenticeship, or pursuing other post-graduation options—will be doing the next year. As *The Spoke* editors have explained, this map is in many ways the newspaper's final act in chronicling the history of the graduating class, whose story they have told for four years. In addition to normal distribution channels, this map has also traditionally been sold at the school's graduation ceremony. *The Spoke* collects the information used to create the map via a survey distributed to the senior class. The survey is conducted entirely by student editorial staff and is fully voluntary. Students wishing not to have their information included may simply abstain from responding. The map has included—and will include this year—an editorial note explaining that the map only includes information about those who responded and does not include all student destinations.

On April 14, *Spoke* adviser Laura Howard reached out to you to inquire about whether the newspaper could share the senior destination map survey on Schoology, a learning management and social medium maintained by the school for use by students and teachers. When publication staff, including editor Ben Shapiro, had still not heard back from you by April 24, their planned date to publish the survey, they posted the survey on *The Spoke* Instagram and website, but not on Schoology. Shortly after the survey posted, Shapiro received an email from Howard saying you had asked “to chat” with Howard and asking Shapiro to “hold off on posting [the survey] to Instagram” until after that conversation took place.⁶ Shapiro informed Howard that *Spoke* staff had already posted the survey.⁷

The following day, you met with *The Spoke* editorial board to insist that no school resources be used to support or promote the senior destination map because, you asserted, the map does not align with the district's equity goals. You claimed it highlights individuals who can afford more prestigious colleges, and that one student had cried to their guidance counselor out of concern over being judged if their peers saw what college they plan to attend.

At the time of the April 25 meeting, Shapiro understood this to mean *The Spoke* could not share the survey on Schoology or sell the map at graduation. However, after this meeting, it was brought to his attention that your indication that the school will not support publication of the map in any way may mean the district may not pay to print this year's final issue of *The Spoke* if it included the map.

In a vote taken after an April 27 *Spoke* editorial board meeting discussing the map, a majority of editors supported keeping the map substantially the same as previous years. While some

⁵ See, e.g., *Many Seniors to Attend College*, THE CONESTOGA SPOKE, Jun. 11, 1964, at 6 (available at http://spoke.advantage-preservation.com/viewer/?i=f&by=1964&bdd=1960&d=01011952-12312022&fn=conestoga_spoke_usa_pennsylvania_berwyn_19640611_english_6&df=41&dt=50&cid=3006). This recitation of facts is based on our current understanding. We appreciate that you may have additional information to offer and invite you to share it with us.

⁶ Email from Howard to Shapiro, Apr. 24, 2023, 8:04 AM (on file with author).

⁷ Email from Shapiro to Howard, Apr. 24, 2023, 8:06 AM (on file with author).

editors voted to make substantial changes to the way the map is curated,⁸ no member of the editorial board voted to eliminate the map. The editorial board took a similar vote on May 5, and a majority remained in favor of publishing the map without substantial changes.

Shapiro spoke with his advisers on May 1, who shared that you had indicated that if the advisers allow *The Spoke* to publish the senior destinations map, the school may consider them in violation of their contracted duties.

II. District Policy and State Law Prohibit Administration from Censoring *The Spoke*

Conestoga should reverse its decision to prohibit *The Spoke* from publishing the senior destinations map because that pronouncement violates both district policy and state law protecting student journalists' rights. While *The Spoke* is subject to prior review by its advisers, school policy permits advisers to remove content only if it is "obscene or libelous" or "would cause a substantial disruption or interference with school activities."⁹ This policy tracks with the standard for student expression set out by the Supreme Court of the United States in *Tinker v. Des Moines*, stating that findings "of 'substantial' disruption must be based on more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."¹⁰

Pennsylvania state law additionally affirms that "[s]tudents have a right and are *free as editors of other newspapers* to report the news and to editorialize[.]"¹¹ Tracking district policy, the law allows school officials to regulate content in student publications only for "obscene or libelous material and . . . material that would cause a substantial disruption or interference with school activities."¹²

There can be no serious argument that the senior destinations map is obscene, libelous, or would cause a material and substantial disruption to the activities of Conestoga. Nonetheless, Conestoga and district officials appear to claim the map could cause such a disruption. This is, quite simply, preposterous.

History demonstrates that the senior destinations map causes no such disruption. In the more than 50 years *The Spoke* has published this annual map, it has caused no riots, no walk-outs, no classroom disruptions, and no physical fights. Even disregarding this historical fact, it is difficult to imagine such disruption spawning from the map. Importantly, the *Tinker* standard—which district policy follows—does not authorize school officials to suppress speech simply because it might upset other students or make them uncomfortable.¹³ The types of

⁸ For example, one editor proposed excluding names of colleges from the map, and another editor suggested student names be left out.

⁹ Tredyffrin-Easttown School District Regulation 5332.

¹⁰ *Id.* See also *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969).

¹¹ 22 Pa. Code § 12.9(g)(1) (emphasis added). This right is qualified only by a provision allowing schools to exercise prior review and a provision requiring that "students who are not members of the newspaper staff . . . have access to its pages." § 12.9(g)(4) and (5).

¹² § 12.9(g)(2).

¹³ See *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2047 (2021) (holding that a campus controversy that "upset" some students and caused some in-class discussions did *not* rise to the level of a material and

disruptions to “classwork” or that cause “substantial disorder” contemplated in *Tinker* generally involve expression that is itself disruptive (like a student speaking out of turn during class), or expression reasonably expected to spawn a physical disruption (like a walk-out or riot).¹⁴ Publishing the senior destinations map falls far short of *Tinker*’s threshold for substantial disruption.

III. Even Under the *Hazelwood* Standard, Censorship of the Map is Unconstitutional

Beyond violating district policy and state law, Conestoga’s censorship of the senior destinations map violates the First Amendment. In *Hazelwood v. Kuhlmeier*, the Supreme Court determined what constitutional standard applies to administrative regulation of content in school-sponsored student publications in the K-12 environment.¹⁵ In cases where a publication bears the imprimatur of the school, is produced as a classroom activity, and has not been set aside as a “forum for student expression,” the school may regulate a school-sponsored publication’s content for “legitimate pedagogical purposes.”¹⁶ However, when a publication is set aside “by policy or by practice” as a forum for expression by student journalists or the student body generally, *Tinker* applies and schools may regulate only unlawful content (such as libel or obscenity) or content reasonably expected to create a material and substantial disruption.¹⁷

District policy allowing regulation of *The Spoke* only in instances of unlawful content or that which would cause a substantial disruption demonstrates the district’s intent to set aside *The Spoke* as a forum for student expression, and thus *Tinker*—not *Hazelwood*—provides the applicable standard. This conclusion is buttressed by *The Spoke*’s online description as a “public forum[] for student expression,”¹⁸ and reinforced by Conestoga’s longstanding practice of allowing *Spoke* student editors to make content determinations for the paper. This means that when school officials cannot justify regulation of *The Spoke*’s content under *Tinker*’s material and substantial disruption test, that censorship violates not only policy, but also the Constitution.

For the sake of argument, even if *Hazelwood*’s “reasonably related to legitimate pedagogical concerns” standard controlled this matter, censorship of the senior map would not pass constitutional muster,¹⁹ as the school’s intent in prohibiting the senior map appears connected not to a reasonable educational lesson it hopes to teach journalism students, or concern for

substantial disruption.) See also *Reineke v. Cobb Cty. Sch. Dist.*, 484 F. Supp. 1252, 1259 (N.D. Ga. 1980) (holding that newspaper content “provok[ing] discussion and comment among the students” or causing controversy does not constitute material and substantial disruption).

¹⁴ See *Tinker*, 393 U.S. at 513.

¹⁵ 484 U.S. 260 (1988).

¹⁶ *Id.* at 273.

¹⁷ See *id.* at 267; *Tinker*, 393 U.S. at 509.

¹⁸ *About, THE SPOKE*, <https://spoke.news/about> (last visited May 3, 2023).

¹⁹ *Hazelwood*, 484 U.S. at 273. See also, *Dean v. Utica Community Schools*, 345 F. Supp. 2d 799 (E.D. Mich. 2004) (finding school district’s censorship of student newspaper article “indefensible” under *Hazelwood*’s “legitimate pedagogical concerns” standard where the judge found the student article non-biased, fair, grammatically correct, well researched and well written.)

access to education by other students, but rather hopes of avoiding a student’s discomfort. *Hazelwood* does not permit administrators to censor student journalists merely because other students may dislike or take offense to their reporting.²⁰

IV. Conclusion

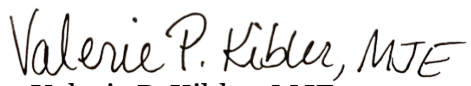
District policy and Pennsylvania state law prohibits Conestoga from acting against *The Spoke* for publishing content that, while controversial among school officials and some students, poses no threat of causing a material and substantial disruption to the classroom or general order at the school. Further, because school policy demonstrates an intent to establish *The Spoke* as a forum for student expression, any attempt at censorship that fails to meet *Tinker*’s disruption standard will violate not only district policy, but also the First Amendment.

Conestoga must make clear it will allow *The Spoke* to publish its senior destinations map—and all future controversial content—without threat of funding cuts or loss of its advisers. Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on May 16, 2023.

Sincerely,



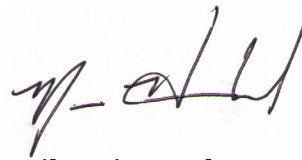
Lindsay Rank
Student Press Counsel, Student Press
Freedom Initiative
Foundation for Individual Rights and
Expression



Valerie P. Kibler, MJE
Valerie P. Kibler, MJE
JEA President



Aaron Fitzpatrick, MJE
Pennsylvania School Press Association
President



Mike Hiestand
Senior Legal Counsel
Student Press Law Center

Cc: Dr. Richard Gusick, Superintendent of Schools
Arthur McDonnell, Board Secretary

²⁰ Schools have “an interest in protecting a student’s unpopular expression . . . America’s public schools are the nurseries of democracy. Our representative democracy only works if we protect the ‘marketplace of ideas.’ That protection must include the protection of unpopular ideas, for popular ideas have less need for protection.” *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2046 (2021).