Memorandum

To: Frank Eisner
From :Student #1
Subject: Gardenton Board of Education – Proposed Communications Code for Gardenton High School.

I have reviewed the proposed communications code for Gardenton High that was submitted by Dr. Kantor and conducted research of the relevant statutory and case law and have prepared some suggested modifications. As a starting point, it is important to note that the state of Franklin's protections from restrictions on free speech in the school setting is broader than those provided by the U.S. Constitution and case law. *Leeb v. Delong,* Fra. Ct. App. (1995). So of special concern will be any provisions that may be construed as censorship based on disagreement with the views expressed, or designed to avoid controversial issues. This memo will discuss the provisions of the code sequentially starting with the preamble.

It is clear that Gardenton School Board has drafted the preamble broadly to address nearly all student expression that can occur under the school's authority. The State of Franklin utilizes a "forum analysis" to determine what type of restrictions may be placed upon expression in a particular forum by the government's interest in limiting the use of the forum for its intended purposes verses the interest in those who wish to use it to further their expression *Lopez v. Union High School District,* F. S.C. (1994). The Franklin Supreme Court has determined that "Official school publications" including theatrical productions, videos, newspapers, and yearbooks are limited public forums, and that the school officials must demonstrate that the regulation of student expression advances a compelling state interest. *Id.* It would seem that the preamble is

limiting the scope of the restrictions on expression to those that would be classified as a "limited public forum," and so it must demonstrate that the restrictions further a compelling state interest.

Provision one is pretty straight-forward, and requires little analysis. It is consistent with U.S. Supreme Court and Franklin Supreme Court precedent (*Hazelwood School District v. Kuhlmeier,* S.Ct. (1988); *Lopez v. Union High School District F.S.C. (1994))* and is a near quote of the relevant statutory language. Franklin Education Act, Sec. 48 makes specific allowance for school official sot maintain professional standards of English and Journalism.

Provision two is problematic. The use of the language "good taste" is vague and it would be hard to argue that such vague language would meet the requirement that the restrictions be narrowly construed as required by *Lopez.* It is also possible that this language opens the code up to challenges that the restrictions are based upon the content or ideas behind the expression rather than the profanity other offensive material that the expression may contain.

Provision three seems to on its face fit within the parameters of the "professional standards of English and journalism" language of Sec. 48 of the Franklin Education Act, but the board may want to strike the "to the satisfaction of the teacher" language as this may open the board up to challenges that the restriction is too subjective and not narrowly tailored to further a compelling interest. The remaining language is sufficient to achieve the board's goals of maintaining and fostering a climate where journalistic integrity may flourish.

Provision four seems to be in line with the decision in *Hazelwood,* but in practice would seem to be too restrictive to be practicable in a high school setting where nearly all subjects of stories and photographs would be minors. Also as mentioned above in the state of Franklin,

schools cannot rely on pedogological purposes as a compelling state interest in terms of restricting expression *Leeb,* F. Ct. App. (1995).

Provision five is has two major flaws. Subsection c is in direct contradiction of *Leeb,* and *New York Times v. Sullivan,* S. Ct. (1964) which governs the restrictions that may be placed on defamatory material of a public figure. This Subsection should be deleted. Subsection D is vague and can be construed to limit speech on the basis of the idea expressed and as such is contra to the holding in *Lopez,* and Sec. 48 of the Franklin Education Act.

Provision six is mostly harmless.