

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

3450 FOURTEENTH STREET, SUITE 420  
RIVERSIDE, CALIFORNIA 92501-3862  
(951) 683-1122

FAX (951) 683-1144  
WWW.AALRR.COM

CERRITOS  
(562) 653-3200

FRESNO  
(559) 225-6700

IRVINE  
(949) 453-4260

PASADENA  
(626) 583-8600

PLEASANTON  
(925) 227-9200

SACRAMENTO  
(916) 923-1200

SAN DIEGO  
(858) 485-9526

OUR FILE NUMBER:

005080.00141  
12556004.1

October 23, 2014

***VIA EMAIL AND FIRST CLASS MAIL***

Monica Miller, Esq.  
Appignani Humanist Legal Center  
1777 T Street NW  
Washington DC 20009-7125

**Re: San Jacinto Unified School District / Pledge of Allegiance Complaint**

Dear Ms. Miller:

This shall constitute the response to the San Jacinto Unified School District to your letter dated October 9, 2014. We appreciate the opportunity you provided to complete our inquiry into the issues raised, and to formulate a thorough and appropriate resolution.

Your inquiry has triggered a needed clarification and restatement of district policy. First, however, some clarification of the facts is warranted. In your letter, you address an interaction between your client's son I.C. and his teacher, Mr. Burns. In our review of the facts, we have determined that I.C., after several weeks in Mr. Burns' classroom during which he stood for the Pledge of Allegiance, first asserted his desire to remain seated during the Pledge on Thursday and Friday, October 2-3, 2014. He did so without notice by or interaction with Mr. Burns. On Monday and Tuesday, October 6-7, 2014, I.C. again remained seated during the Pledge and on these days he was noticed and questioned by Mr. Burns about his choice and his rationale. On Tuesday, I.C. provided Mr. Burns with an information card asserting the legal authority for his choice to remain seated. Mr. Burns told him he would research the matter. On Wednesday, October 8, 2014, Mr. Burns confirmed to I.C. that he indeed should be allowed to remain seated quietly during the Pledge and Mr. Burns assured him he would be allowed to do so. Your October 9, 2014, letter arrived via email the next day, after the matter had been resolved.

There are differing accounts concerning the actual words used by I.C. and Mr. Burns. Both seemed to agree that there was no hostility or failure of polite respectful demeanor. We acknowledge that it is possible Mr. Burns' questions concerning I.C.'s rationale for sitting (i.e. religious preference vs. a patriotism issue) went beyond a necessary or appropriate inquiry. However, the facts have not established any basis for your assertion that "the student here does not deserve to be disciplined..." At no time has there been any threatened or actual discipline, even by implication, in this matter. We feel you overstated your case by contending, in the press, that I.C. was "badly mistreated."

Monica Miller, Esq.  
October 23, 2014  
Page 2

Your letter also goes a bit too far in your interpretation and application of related case law. Many of the cases you cite, and in particular *West Virginia State Board of Education v. Barnette* (1943) 319 U.S. 624, do not squarely address the right to sit during the Pledge. You correctly point out that *Barnette* only addresses saluting the flag and reciting the Pledge, and not the direct question of whether a student may sit during the Pledge. *Id.* at 642. Other cases you cited similarly address the right to be free of mandatory participation, including recitation, but not the sit/stand issue.

We acknowledge that some courts in other Circuits have clearly stated the position you assert. However, we take issue with your only citation to a 9<sup>th</sup> Circuit case, *Newdow v. United States Congress* (9<sup>th</sup> Cir. 2002) 328 F.3d 466 on the grounds that the case was overturned by the U.S. Supreme Court in *Elk Grove Unified School District v. Newdow* (2004) 542 U.S. 1. Accordingly, we are aware of no binding precedent in California that supports your position on the right to remain seated during the Pledge.

Nevertheless, the San Jacinto Unified School District has accepted this position as the overwhelming trend and likely the interpretation of the California courts the next time the issue arises. The District's Administrative Regulation 6115 contains the following language: "Individuals may choose not to participate in the flag salute for personal reasons." The District's administration will be issuing a clarification to all school staff through the site principals, clearly stating it is the District's policy to allow students to remain quietly seated during the Pledge, without questioning or interference. The only exception will be in the case a teacher has reasonable concern for the well-being of a student. For example, where a student traditionally has been observed participating in the Pledge, and is then observed seated with his head down in an out-of-character manner, a teacher might confirm that the student is feeling well and is not seated due to illness.

The District will also take the same opportunity to address your second concern, regarding the message displayed in Mr. Burns' classroom promoting "prayer." While we could engage in an academic discussion of whether the word "prayer" without any reference to any particular religion is not inherently non-secular (consider prayer to the almighty dollar, or in our profession, a prayer for relief), the District desires to resolve these potential Constitutional arguments with a clarification of its existing Board Policy ("BP") on Recognition of Religious Beliefs and Customs. Board Policy 6141.2 contains the following language: "Staff shall not endorse, encourage or solicit religious or anti-religious expression or activities among students during class time." The administrative directive will reinforce with staff that any non-secular materials, including signs, posters and banners, and any other non-secular objects or icons, are not appropriate in the instructional setting and shall not be displayed in a manner that is visible to students within the normal course and scope of instructional time.

The District's administrative directive to site Principals will also include a directive to review student handbooks at each site to ensure compliance with the Board Policy and Administrative Regulation noted above, and the proper interpretation and application as stated herein.

Monica Miller, Esq.  
October 23, 2014  
Page 3

You have requested an apology to I.C. and his family. The District agrees that an apology is appropriate under these circumstances and one will be issued in the coming days.

You have requested assurance that students and teachers be advised that students may remain seated for the Pledge, and any written policy requiring standing for the Pledge be rescinded. The District responds that its administrative directive to staff will accomplish the goal stated in your request. There is no such written policy to be rescinded, and the policies in place are a sufficient and proper statement of the law.

You have requested that teachers be instructed that they should not attempt to dissuade students from non-participation, question them about non-participation, or characterize non-participation as wrongful. The District agrees, except for the narrow example stated herein, and its administrative directive shall so-state.

You have requested that no discipline or retaliation result from non-participation in the Pledge. The District states that this remains its policy and protocol, and the directive shall so-state.

Finally, you have requested that the "banner" in Mr. Burns' classroom promoting prayer be removed. The District responds that it has directed the removal of the sign in question (it was taken down last week) and its administrative directive will state a broader policy against non-secular messages and materials.

The District appreciates the opportunity to properly and thoughtfully address these issues. As you surely know, there is a very narrow balance between the rights of free expression on both sides of this issue, as those rights pertain to both employees and students. Given all of the conflicting beliefs and viewpoints that may be found at a particular school site, it is a complex and sensitive matter to remain neutral as required by law. The District endeavors to do so, and anticipates that its efforts and assurances in response to your letter will sufficiently resolve your concerns.

If you have any questions, please contact the undersigned.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Mark W. Thompson

cc: Diane Perez, Superintendent  
Matt Hixson, Asst. Superintendent, Personnel Services  
Richard De Nava, Asst. Superintendent, Business Services