



December 5, 2014

Via Email

Dr. James Meza Jr., Superintendent; james.meza@jppss.k12.la.us
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Germaine Gilson, Chief Student Support Officer; germaine.gilson@jppss.k12.la.us
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Gerard LeBlanc, Principal; gerard.leblanc@jppss.k12.la.us
Thomas Jefferson High School
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Mark Morgan, School Board President; mark.morgan@jppss.k12.la.us

RE: Constitutional violation

Dear Dr. Meza Jr., Mr. Morgan and Mr. LeBlanc,

Several students from Thomas Jefferson High School have contacted our office to request assistance with regard to a serious constitutional violation that is occurring under the authority of your school and school district. One of these students, Ms. Sydni Austin, reports that she was wrongfully threatened with punishment by her principal for exercising her constitutional right to opt out of the Pledge of Allegiance. As you should know, the right of students to opt out of Pledge participation was settled long ago by the United States Supreme Court in *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943). Consequently, any actions by your school or its agents infringing upon that right would be actionable as a serious constitutional violation.

Ms. Austin does not wish to participate in the Pledge exercise in any manner. As such, since December 1, 2014, she has exercised her right to remain silently seated at her desk during the exercise. On December 5, 2014, however, the school principal Gerard LeBlanc made a morning announcement stating that all students are required to stand for the Pledge of Alliance. Ms. Austin received permission to speak to the principal regarding this matter during first period. Principal LeBlanc told Ms. Austin that she is required to stand for the Pledge and that she should also do so out of “respect” and “courtesy.” Ms. Austin, citing the *Barnette* decision, informed him that she would be exercising her right not to stand for the Pledge.

The principal responded to Ms. Austin by asking her if she was 18 years-old, to which she responded, “No, in a month sir.” The principal then said: “Well, then you aren't a full citizen. You can't vote.” The assistant principal agreed. Ms. Austin informed the principal of the *Tinker* ruling, which holds that students have a First Amendment right to freedom of speech, regardless of their age, and that she would not be participating in the Pledge. As a punishment, Principal LeBlanc told Ms. Austin that she would be required to report to the principal's office *every morning* that she refuses to participate in the Pledge. Ms. Austin reluctantly said “okay” to which Principal LeBlanc replied, “Where you will stand with me.” She once again informed him she would not be standing for the Pledge. At that point, Principal LeBlanc demanded that Ms. Austin bring her mother into school on Monday December 8, 2014, for a meeting with the principal. Another student similarly reports that the principal announced that all students will have to stand for the Pledge or else they will be punished.

Based on the above, we demand the following assurances: (1) That students and teachers in your school district be advised that students may stay seated for any Pledge exercise at the school and that any written policy containing a standing requirement be rescinded; (2) That teachers be instructed that under no circumstances should they attempt to persuade students to refrain from exercising the right to nonparticipation, question students as to the reason for nonparticipation, or characterize opting out as misconduct or otherwise wrongful; and (3) That no disciplinary or other retaliatory measures of any kind will be directed toward any student for nonparticipation in the Pledge exercise.

We also specifically demand that you excuse Ms. Austin from any requirement of having to report to the principal's office each morning that she refuses to stand for the Pledge, and excused from having to bring her mother into the office for a meeting regarding the Pledge.

The American Humanist Association (AHA) is a national nonprofit organization with over 360,000 supporters and members across the country, including many in Louisiana. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the First Amendment rights to free speech and religious liberty. Our legal center includes a network of cooperating attorneys from around the country, including Louisiana, and we have litigated constitutional cases in state and federal courts from coast to coast.

Since the Supreme Court's ruling in *Barnette*, federal courts have irrefutably recognized the First Amendment right of students to remain silent and seated during the Pledge.¹ That “students have a constitutional right to remain seated during the Pledge is well established.” *Frazier v. Winn*, 535 F.3d 1279, 1282 (11th Cir. 2008) (per curiam), *cert. denied*, 558 U.S. 818 (2009) (finding that all public school students have the First Amendment right not to stand during the Pledge). *See also Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1274, 1278-79 (11th Cir. 2004) (noting that the right to remain seated and silent during the Pledge is “clearly established”); *Walker-Serrano ex rel. Walker v. Leonard*, 325 F.3d 412, 417 (3d Cir. 2003) (“For

¹ In *Barnette*, the Supreme Court held that public school officials are forbidden under the First Amendment from compelling students to salute the flag or recite the Pledge. 319 U.S. at 642. Notably, the Court was aware that the government might demand other “gestures of acceptance or respect: . . . a bowed or bared head, a bended knee,” *id.* at 632, and reiterated that the government may not compel students to affirm their loyalty “by word or *act.*” *Id.* at 642 (emphasis added).

over fifty years, the law has protected elementary students' rights to refrain from reciting the pledge of allegiance to our flag. Punishing a child for non-disruptively expressing her opposition to recitation of the pledge would seem to be as offensive to the First Amendment as requiring its oration.”) (citation omitted); *Rabideau v. Beekmantown Cent. Sch. Dist.*, 89 F. Supp. 2d 263, 267 (N.D.N.Y. 2000) (“It is well established that a school may not require its students to stand for or recite the Pledge of Allegiance or punish any student for his/her failure to do so.”) (citing *Barnette*, 319 U.S. 624; *Russo v. Cent. Sch. Dist. No. 1*, 469 F.2d 623 (2d Cir. 1972)).

Indeed, the federal appellate courts have been unanimous in concluding that public school officials are prohibited from compelling students to stand during the Pledge. *See, e.g., Frazier*, 535 F.3d at 1282; *Holloman*, 370 at 1274-79; *Circle Sch. v. Pappert*, 381 F.3d 172, 178 (3d Cir. 2004); *Walker*, 325 F.3d at 417; *Lipp v. Morris*, 579 F.2d 834, 836 (3d Cir. 1978) (ruling that a state statute requiring students to stand during the Pledge was an unconstitutional compulsion of expression); *Goetz v. Ansell*, 477 F.2d 636, 637-38 (2d Cir. 1973) (holding that a student has the right to remain quietly seated during the Pledge and cannot be compelled to leave the room if he chooses not to stand); *Banks v. Bd. of Public Instruction*, 314 F. Supp. 285, 294-96 (S.D. Fla. 1970), *aff'd*, 450 F.2d 1103 (5th Cir. 1971) (concluding that a rule requiring students to stand during the Pledge was unconstitutional). *See also Newdow v. United States Cong.*, 328 F.3d 466, 489 (9th Cir. 2002) (noting that schools may not “coerce impressionable young schoolchildren to recite [the Pledge], or even to stand mute while it is being recited by their classmates.”).

Federal district courts and state courts have also consistently ruled that students have a constitutional right to remain silent and seated during the Pledge. *See Rabideau*, 89 F. Supp. 2d at 267; *Frain v. Baron*, 307 F.Supp. 27, 33-34 (E.D.N.Y. 1969) (enjoining school from “excluding [students] from their classrooms during the Pledge of Allegiance, or from treating any student who refuses for reasons of conscience to participate in the Pledge in any different way from those who participate.”); *State v. Lundquist*, 262 Md. 534, 554-55 (Md. 1971) (state statute requiring teachers and students to salute the flag during the Pledge violated the First Amendment freedom of speech clause). *Cf. Sheldon v. Fannin*, 221 F. Supp. 766, 768 (D. Ariz. 1963) (enjoining elementary school from suspending Jehovah’s Witness students solely because they silently refused to stand for the national anthem).

The students here do not deserve to be disciplined merely because they choose to exercise their constitutional rights. Indeed, instead of rote recitation, these students have given thoughtful consideration of the underlying political issues raised by the exercise, and this should, if anything, earn the respect of their teachers. In *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506-07 (1969), the Supreme Court famously declared: “**It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.**” (citing *Barnette*, among other cases)

In *Banks*, the court applied *Tinker* to the act of refusing to stand for the Pledge and held: “The conduct of Andrew Banks in refusing to stand during the pledge ceremony constituted an expression of his religious beliefs and political opinions. His refusal to stand was no less a form of expression than the wearing of the black armband was to Mary Beth Tinker. He was

exercising a right ‘akin to pure speech.’” 314 F. Supp at 295. Importantly, not only do students have the right to silently sit during the Pledge, but they also have a right to affirmatively protest the Pledge exercise. *See Holloman*, 370 F.3d at 1273-74 (raising fist during Pledge was protected speech even if fellow classmates found it objectionable and distracting). Referring to *Banks*, the Eleventh Circuit pointed out in *Holloman* that “its ruling was not based on Banks's First Amendment right to remain silent, *but his First Amendment right to affirmatively express himself*.” 370 F.3d at 1273-74 (emphasis added).

We are most hopeful that you will recognize the concerns raised by this letter and address them properly. Please respond within seven (7) days. We thank you in advance for your attention to this matter.

Very truly yours,
Monica Miller, Esq.