



May 9, 2008

Superintendent Bernie Lipp
Dilworth-Glyndon-Felton Schools
School District #2154
108 N Main St
Dilworth, MN 56529

VIA FACSIMILE and U.S. Mail

Dear Superintendent Lipp,

The ACLU-MN was disappointed to learn that three Junior High students in your District were disciplined for failing to stand during the Pledge of Allegiance. According to a May 9, 2008 article in the Star Tribune, the students were disciplined for violating a formal district policy requiring all students to stand during the pledge. If this information is true and accurate, the school district's policy is in clear violation of the First Amendment.

Direct or indirect pressure designed to force individuals to pledge allegiance, violates the fundamental freedoms that the American flag is meant to represent. It is well settled constitutional law that public schools cannot compel students to participate in the Pledge of Allegiance. Both a student's choice to remain silent and a student's choice to remain seated while others recite the Pledge are protected by the First Amendment.¹ I am enclosing an ACLU-MN publication entitled "A Primer on the Pledge of Allegiance in Public Schools" for additional information on student's rights and the responsibility of schools to protect those rights.

¹ See e.g. Frazier v. Alexandre, 434 F.Supp.2d 1350 (S.D.Fla.,2006), (noting that since the U.S. Supreme Court's 1943 Pledge decision in West Virginia State Board of Education v. Barnette, "federal courts have established a body of caselaw that irrefutably recognizes the right of students to remain silent and seated during the pledge."); Walker-Serrano ex rel. Walker v. Leonard, 325 F.3d 412, 417 (3d Cir.2003) ("For 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."); Rabideau v. Beekmantown Central School District, 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."); Lipp v. Morris, 579 F.2d 834, 836 (3d Cir.1978) (law requiring students "to show full respect to the flag while the pledge is being given merely by standing at attention" found unconstitutional); Goetz v. Ansell, 477 F.2d 636, 637-38 (2d Cir.1973) (affirming student's right to remain quietly seated during the pledge of allegiance and finding student cannot be forced to leave the room for not participating) Banks v. Board of Public Instruction, 314 F. Supp. 285, 296 (S.D. Fla. 1970), (holding that "[t]he right to differ and express one's opinions, to fully vent his First Amendment rights, even to the extent of exhibiting disrespect for our flag and country by refusing to stand and participate in the pledge of allegiance, cannot be suppressed by the imposition of suspensions."

AMERICAN CIVIL
LIBERTIES UNION OF
MINNESOTA
450 NORTH SYNDICATE
SUITE 230
SAINT PAUL, MN 55104
T/651.645.4097
F/651.647.5948
SUPPORT@ACLU-MN.ORG
WWW.ACLU-MN.ORG

Although the ACLU-MN has not yet been contacted by any of the parents or students involved, and we are unable to provide you with formal legal advice; we wish to ensure that you understand your responsibilities and the consequences the school may face if students were to initiate legal action to challenge their discipline. Because the law on this matter is clearly established, we believe that school officials would likely not be protected by qualified immunity in the event of a lawsuit over this incident. In addition, if the district has a formal written policy requiring students to stand during the pledge, it is likely that the school district, as an entity, would face liability for violating the student's rights. Because the student's rights are protected by the U.S. Constitution, litigation could also result in the school having to pay the students' attorney's fees and costs.

We respectfully suggest that you take immediate steps to remedy this situation. At a minimum, your policies should be immediately changed to ensure that students are in no way compelled to participate or stand during the pledge of allegiance. All staff, students and parents should be informed about the policy change and staff involved in violating students' rights should face discipline. Finally, the district should take remedial steps with the students who were disciplined. This may include a formal apology to the students; removal of any reference to the discipline from their records; and ensuring that these students are not subject to retaliation or harassment by staff and other students.

This issue represents a classic "teachable moment" where the school can help to instill the values of good citizenship by modeling respect for the U.S. Constitution and the rights and values that our flag represents.

Please notify us of the steps that you take to remedy this situation.

Sincerely,



Charles Samuelson
Executive Director