



May 10, 2016

RE: Changes to Florida law regarding the Pledge of Allegiance

Dear Administrator:

The Florida legislature recently passed CS/CS/HB 7029, an education bill which, in part, changes Florida law with respect to students' recitation of the Pledge of Allegiance in public schools. I am writing to alert you to your district's new obligations to protect the constitutional rights of your students as they relate to students' rights to opt out of participation in Pledge ceremonies.

Florida law now requires that school districts inform “by a written notice published in the student handbook or similar publication [...] that the student has the right not to participate in reciting the pledge.” This change to Florida Statute §1003.44 will take effect on July 1, 2016.

Section 1003.44 previously required schools to post this notification in a conspicuous place for students to see.

The U.S. Supreme Court settled the right of students to opt out of Pledge participation—including standing during its recitation—more than 70 years ago in *West Virginia State Bd. of Education v. Barnette*, 319 U.S. 624 (1943). Any requirement to force any student to participate in Pledge rituals is an infringement upon that student's constitutional rights of conscience and constitutional freedoms of speech and religion, and to infringe on those rights would be actionable as a constitutional violation.

The statute also states “[e]ach district school board may adopt rules to require ... programs of a patriotic nature to encourage greater respect for the government of the United States and its national anthem and flag, **subject always to other existing pertinent laws of the United States** or of the state.” (emphasis added). The U.S. Supreme Court's ruling in *Barnette* supersedes any part of Florida Statute §1003.44 that may suggest a student has to stand for the pledge.

In accordance with Florida statute §1003.44, we request assurance that: 1. written notices will be placed in your district's student handbook(s) that inform students of their right not to participate—by saying or standing—in the pledge, and in cases where students cannot read or need special accommodation, oral or other means of communication be used to tell students of their constitutional rights not to participate; 2. that staff be instructed that under no

circumstances should they attempt to persuade students to refrain from exercising their right to nonparticipation, question students about their nonparticipation, or characterize opting out as misconduct or unpatriotic; and 3. that no disciplinary or other retaliatory measures of any kind be taken toward any student for nonparticipation in pledge rituals.

We will, after the start of the 2016-2017 school year, request a copy of your district's student handbook(s) to verify compliance with Florida's law requiring your district to notify students of their rights under the Constitution.

The students in your school district have the same constitutional rights as every citizen. Teachers and the school have no authority to question their reasons or motives. If students do not wish to participate in the Pledge ritual, it is their constitutional right to do so. In *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506-07 (1969), the Supreme Court stated: "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).

American Atheists is a national nonprofit with more than 270,000 supporters and members across the country, including in Florida. The mission of the American Atheists Legal Center is to protect the separation of religion and government and the rights of atheists and religious minorities.

The Central Florida Freethought Community is a local non-profit educational organization dedicated to preserving the separation of state and church across Florida.

We hope you will recognize your district's obligation under Florida law and the U.S. Constitution that we have raised and address them properly and promptly.

Sincerely,

Amanda Knief
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American Atheists

David Williamson
Founder
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