

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

November 3, 2017

SENT VIA EMAIL & U.S. MAIL
carlos.rios@sfdrcisd.org

Dr. Carlos Rios
Superintendent
San Felipe Del Rio CISD
P.O. Drawer 428002
Del Rio, TX 78842-8002

Re: Forced participation in Pledge of Allegiance is unconstitutional

Dear Superintendent Rios:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to constitutional concerns over the Midland Independent School District's current Pledge of Allegiance policy. FFRF is a national nonprofit organization with more than 29,000 members across the country, including over 1,200 members in Texas. Our purposes are to protect the constitutional separation between state and church and to educate the public on nontheism.

We understand that on October 18, San Felipe Memorial Middle School Principal Dr. Celia Zuniga-Barrera made an announcement over the school's public address system ordering the entire student body to stand for and participate in the Pledge of Allegiance. We understand that Principal Zuniga-Barrera has similarly instructed teachers to make sure that their students stand during the pledge.

We write to ensure that district take corrective action, so that its employees know that they cannot force students to recite the pledge, to stand during its recitation, or to otherwise observe the pledge and so that district students know that they are free to participate or not participate as they so choose.

Students must not be singled out or punished in any way for choosing not to participate in the Pledge of Allegiance. The Supreme Court ruled over seventy years ago that compelling a student to recite the Pledge and salute the flag infringed upon a student's First Amendment rights. *See W. Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 633-34 (1943) (Murphy, J., concurring) ("I am unable to agree that the benefits that may accrue to society from the compulsory flag salute are sufficiently definite and tangible to justify the invasion of freedom and privacy that is entailed . . ."). The *Barnette* ruling assured students that their beliefs would be protected. The Court stated, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Id.* at 642.

Multiple courts have reiterated that students have a constitutional right not to be forced to participate in the Pledge of Allegiance and that any punishment administered in reaction to a student exercising that right violates the Constitution. *See Holloman v. Harland*, 370 F.3d 1252, 1268 (11th Cir. 2004) (stating that verbally chastising a student for "failing to salute the flag or expressing his opinion in a non-disruptive fashion" would violate the Constitution as a matter of law); *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.”) (citation omitted); *Goetz v. Ansell*, 477 F.2d 636, 637-38 (2d Cir. 1973) (holding that students have the right to remain seated during the Pledge of Allegiance); *Frain v. Baron*, 307 F. Supp. 27, 33-34 (E.D.N.Y. 1969) (holding that schools may not “[treat] any student who refuses for reasons of conscience to participate in the Pledge in any different way from those who participate”).

To the extent that Texas Education Code - EDUC § 25.082 requires schools to force students to participate in the Pledge of Allegiance, it is in conflict with federal law, which trumps state law on this issue. Almost ten years ago, the Eleventh Circuit addressed this rule in *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279 (11th Cir. 2008). In *Winn*, the Court of Appeals held first that the section of Florida’s similar pledge statute, Fla. Stat. Ann. §1003.44(1), which required all students and citizens to stand during recitation of the pledge, was unconstitutional. *Winn*, 535 F.3d at 1282 (“The ‘standing at attention’ provision should not be enforced.”). The court then interpreted the language in the Florida statute that required students to get parental permission if they wished to abstain from reciting the pledge and held that it was not unconstitutional *on its face*, but went on to state, “[w]e stress that we decide and hint at nothing about the Pledge Statute’s constitutionality as applied to a specific student or a specific division of students.” *Id.* at 1286. This statement by the court is an invitation for any student who is denied the right to abstain fully from participating in the pledge to bring a lawsuit.

Students must not be singled out or otherwise penalized for exercising their right of conscience. If the district’s policies are otherwise, then those policies must be changed. If principal Zuniga-Barrera and other employees are misinformed about the district’s policies, they must be educated so that their students have a right to be free from any forced participation in the pledge.

We request that San Felipe Del Rio CISD investigate this situation and take steps to ensure that its policies concerning the Pledge of Allegiance respect the right of conscience of its students and that all district teachers, administrators, *and students* are informed of those policies. Please respond in writing outlining the steps that the district will take to ensure that this well-established constitutional law is observed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sam Grover', with a long horizontal line extending to the right.

Sam Grover
Associate Counsel