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ADVISORY ON THE PLEDGE OF ALLEGIANCE

This memo is intended to advise the public and school officials about state law and the pledge of allegiance in Massachusetts public schools. In general, while state law requires that schools must conduct the pledge to the flag, neither students nor teachers may be compelled to recite the pledge or even compelled to stand during the pledge.

Section 69 of Chapter 71 of the Massachusetts General Laws states that “[e]ach teacher at the commencement of the first class of each day in all grades in all public schools shall lead the class in a group recitation of the ‘Pledge of Allegiance to the Flag.’” However, it has long been a recognized principle of constitutional law that students may not be compelled to stand and recite the pledge of allegiance to the flag. In West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642 (1943), the U.S. Supreme Court ruled that a compulsory flag salute would violate students' right to freedom of expression. The Court said: "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."

Many courts have also held that this right includes the right to remain seated while others stand. See, e.g., Banks v. Board of Public Instruction, 314 F. Supp. 285, 296 (S.D. Fla. 1970), aff'd 450 F.2d 1103 (5th Cir. 1971); Lipp v. Morris, 579 F.2d 834, 836 (3rd Cir. 1978) (standing during the pledge "is an unconstitutional requirement that the student engage in a form of speech"); Goetz v. Ansell, 477 F.2d 636, 638 (2nd Cir. 1973) (standing for the pledge "can no more be required than the pledge itself"); Rabideau v. Beekmantown Central School District, 89 F.Supp.2d 263 (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.") This is a natural extension of Barnette's rule that a school cannot enforce uniformity of thought "by word or act." 319 U.S. at 642.

It would also be improper to require a student to leave the classroom while the other students say the pledge. Removal from the classroom is a form of punishment, and a student's non-disruptive exercise of free speech rights cannot be the basis for punishment. See Frain v. Baron, 307 F.Supp. 27, 33-34 (E.D.N.Y. 1969) (school is enjoined 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").

Nor can teachers be compelled to conduct the pledge, despite the language of the statute quoted above. In Opinion of the Justices, 372 Mass. 874 (1977), the Supreme Judicial Court held that if

a law like G.L. c. 71, § 69 were to be enacted, it would be unconstitutional insofar as it requires teachers to lead their classes in a recitation of the pledge of allegiance to the flag. According to the SJC, the rationale of the Barnette decision applies as much to teachers as to students in the public schools.

Any attempt by a governmental authority to induce belief in an ideological conviction by forcing an individual to identify himself intimately with that conviction through compelled expression of it is prohibited by the First Amendment.

Opinion of the Justices, 372 Mass. at 879.