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DPS:2010-51

MEMORANDUM

TO: District Superintendents

FROM: Dr. Frances Haithcock

DATE: March 12, 2010

SUBJECT: Guidance on Pledge of Allegiance, Florida Statute 1003.44(1) related to *Frazier v Winn*, 11th Circuit Court of Appeals Opinion, 535 F.3d 1279 (11th Cir. 2008)

Background

This memorandum concerns the legal challenge by an 11th grade high school student related to Florida's pledge of allegiance requirements. The opinion issued by the 11th circuit court is attached.

Currently, Florida law requires that the pledge be recited each school day. With a written request by a student's parent or guardian, a student may be excused from reciting the pledge. The litigation focused on how students may be excused from reciting the pledge and, when excused, whether a student must remain standing, and whether the parental consent component of the statute is constitutional. The specific Florida Statute reference is detailed below.

1003.44 Patriotic programs; rules.—

(1) Each district school board may adopt rules to require, in all of the schools of the district, 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. When the national anthem is played, students and all civilians shall stand at attention, men removing the headdress, except when such headdress is worn for religious purposes. The pledge of allegiance to the flag, "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one

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nation under God, indivisible, with liberty and justice for all," shall be rendered by students standing with the right hand over the heart. The pledge of allegiance to the flag shall be recited at the beginning of the day in each public elementary, middle, and high school in the state. Each student shall be informed by posting a notice in a conspicuous place that the student has the right not to participate in reciting the pledge. Upon written request by his or her parent, the student must be excused from reciting the pledge. When the pledge is given, civilians must show full respect to the flag by standing at attention, men removing the headdress, except when such headdress is worn for religious purposes, as provided by Pub. L. ch. 77-435, s. 7, approved June 22, 1942, 56 Stat. 377, as amended by Pub. L. ch. 77-806, 56 Stat. 1074, approved December 22, 1942.

Court Findings

First, the court reaffirmed the longstanding United States constitutional rule that if a student is excused from reciting the pledge, the student has a right to remain quietly seated during the pledge.

Therefore, the last sentence of the Florida Statute **may not** be applied to students who are excused from the pledge recitation (*When the pledge is given, civilians must show full respect to the flag by standing at attention...*).

Second, the court rejected the plaintiff's across-the-board challenge to the statute's requirement for parental consent before a student may be excused from reciting the pledge. Nonetheless, the opinion leaves open the possibility that the parental consent requirement can differ, or may not apply at all, depending upon the maturity of the student or if it is for a specific group of students (such as high school students). In a specific instance, a mature student may not be required to have a parental consent in order to opt out of pledge recitation. The opinion does not state how that determination is to be made or offer any guidance in making that determination.

Furthermore, Frazier's counsel, the ACLU of Florida, has indicated the possibility exists to challenge future controversies that may arise if students refuse to stand and recite the pledge without advance parental consent.

Guidance to Districts

Students who have been granted written permission not to recite the pledge are not required to stand and may remain seated during the recitation period. District counsel should also review the written opinion to determine how the consent provision should be applied to students in different grade levels and to students with different maturity levels.

FH/jb