



September 15, 2016

OPEN LETTER TO LOUISIANA SCHOOL SUPERINTENDENTS REGARDING  
STUDENTS' FIRST AMENDMENT RIGHTS

By email or fax  
To Superintendents of Schools

This office has learned that in recent days, students around Louisiana have chosen to exercise their First Amendment rights by opting not to stand for the Pledge of Allegiance at their schools. This letter is to advise you that schools may not punish students for refusing to stand for the Pledge or to salute the flag. Any such punishments violate the clear rulings of the U.S. Supreme Court and the fundamental rights of your students.

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
LOUISIANA  
PO BOX 56157  
NEW ORLEANS, LA 70156  
T/504.522.0617  
WWW.LAACLU.ORG

In 1943, the U.S. Supreme Court ruled, in *West Virginia State Board of Education v. Barnette*, 319 U.S. 62 (1943) that students have the right to refuse to salute the flag. More than two decades later, students' free speech and expression rights were confirmed in *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969) which upheld students' rights to engage in nondisruptive silent protests. Following these rulings, the U.S. Fifth Circuit, which covers Louisiana, affirmed that students' rights extend to the refusal to stand for the Pledge of Allegiance. *Banks v. Bd. of Public Instruction*, 314 F. Supp. 285, 294-96 (S.D. Fla. 1970), *aff'd*, 450 F.2d 1103 (5th Cir. 1971).

Moreover, a school may not punish indirectly – through such measures as sanctions for “insubordination” - what it may not punish directly. *Holloman ex. rel. Holloman v. Harland*, 370 F.3d 1252 (11<sup>th</sup> Cir. 2004). Simply put, any punishment of a student who lawfully exercises a Constitutional right is impermissible.

We trust that you will inform all teachers in your district of the rights of their students to engage in First Amendment-protected activities. Schools are where students learn about our government, and your schools must educate your students correctly about the rights that we all share.

If you have any questions, please feel free to contact me at any time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marjorie R. Esman".

Marjorie R. Esman  
Executive Director