

P.O. BOX 56157
NEW ORLEANS, LA 70156
P: 504-522-0617
F: 888-533-0911

MARJORIE R. ESMAN
EXECUTIVE DIRECTOR

KATIE SCHWARTZMANN
LEGAL DIRECTOR

June 3, 2009

by fax 985-447-4077
and by regular mail
Mr. Kevin George
Principal
Thibodaux High School
1355 Tiger Drive
Thibodaux, LA 70301

Re: Brady Chiasson

Dear Mr. George:

We are writing you on behalf of Thibodaux High School student Brady Chiasson, regarding an incident that occurred in February, 2009.

On February 4, Brady, then in eleventh grade, exercised his Constitutional right not to stand for the recitation of the Pledge of Allegiance. Brady has principled reasons for not choosing to stand for or recite the Pledge, and he was acting in accordance with those principles, as he had since the start of the school year. Assistant Principal Valencia Pierre, who was covering the American History class that morning, instructed Brady to stand and, when he declined to do so, sent him to your office.

According to school records, Brady was ordered to serve detention on February 10 from 2:30 to 3:30. The detention was for "willful disobedience," imposed for his failure to stand for the Pledge when told to do so. This letter is to request that the detention, and all references to the incident leading up to the detention, be permanently expunged from Brady's school record.

Since 1943, the law has been clear that students cannot be compelled either to stand for or to recite the Pledge of Allegiance. In that year the U.S. Supreme Court ruled, in *West Virginia State Board of Education v. Barnette*, that students have the right to refuse to salute the flag. Students' free speech and expression rights were confirmed in *Tinker v. Des Moines Independent School District*, which upheld students' rights to engage in nondisruptive silent protests. Following these rulings, the U.S. Fifth Circuit, which covers Louisiana, has ruled that students' rights extend to the refusal to stand for the Pledge of Allegiance. *Banks v. Board of Public Instruction of Dade County*.

We understand that Lafourche Parish has no school board requirement that students stand for the pledge, nor could there be any such requirement. Louisiana law allows, but does not require, schools to permit, but not require, students to recite the Pledge:

(2)

Each parish and city school board in the state shall also permit the proper authorities of each school to allow the opportunity for group recitation of the Pledge of Allegiance to the Flag.

LSA R.S. 17:2115(a).

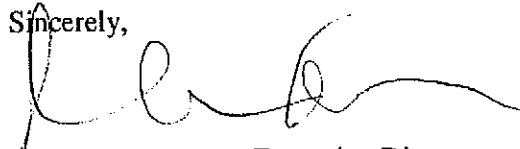
Clearly Brady was acting in accordance with his Constitutional and statutory rights when he honored his principles by remaining seated during the Pledge. Because of his legal right to act as he did, your office was without authority to impose any penalty on him. In *Holloman ex. rel. Holloman v. Harland*, the U.S. 11th Circuit Court of Appeal held that a school official may not punish indirectly – through such measures as “insubordination” - what may not be punished directly. Because Ms. Pierre lacked legal authority to require Brady to stand for the Pledge, he cannot be found to have engaged in “willful disobedience” for having refused to do so.

Simply put, the detention imposed on Brady, which he served on February 10, 2009, was an unlawful penalty imposed on a student who was legally exercising his Constitutional rights. That detention must therefore be permanently expunged from Brady's record and his record must be restored to condition that it would be had no punishment been imposed.

In addition, we trust that you will ensure that neither Brady nor any other student will be compelled to stand for or recite the Pledge of Allegiance or be punished in any way for refusing to do so.

Please let us know within ten days of your receipt of this letter that you have cleared Brady Chiasson's record of all evidence of his February detention that his record will in no way reflect any action taken against him for his exercise of his Constitutional rights. We hope that we can amicably and expeditiously resolve this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marjorie R. Esman', with a long horizontal flourish extending to the right.

Marjorie R. Esman, Executive Director
Katie Schwartzmann, Legal Director