

**National
Coalition
Against
Censorship**

Dr. Kamela Patton
Superintendent, Collier County Public Schools
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Naples, FL 34109

By electronic mail: patton@collierschools.com

September 27, 2016

Dear Superintendent Patton,

I am writing on behalf of the Youth Free Expression Program, an initiative of the National Coalition Against Censorship that seeks to combat the forms of censorship that suppress young people's rights to free speech. We are seriously concerned about Collier County Public Schools' recent statement that "students who participate in district athletic programs" who do not wish to stand for the national anthem must provide their principal with a written parental request for excusal. This demand exerts a chilling effect on students' free speech rights and is likely to undermine the educational process by preventing political debate on contentious issues. We urge the District to reconsider its position and affirm that student-participants who wish to express their political beliefs by kneeling during the national anthem do not need parental permission to do so.

While school officials indisputably have the right to restrict speech that is reasonably expected to disrupt school activities, they should refrain from adopting policies that unnecessarily restrict student speech. The concern about possible disruption during national anthem does not justify a parental permission requirement. Just as student-participants without parental permission notes can non-disruptively sit or kneel, those with notes can still disrupt the anthem should they choose to do so. The District's new policy thus unduly restricts the right of student-participants to engage in respectful and non-disruptive political speech during school activities as affirmed by the Supreme Court in *Tinker v. Des Moines* 393 U.S. 503 (1969).

Moreover, there is no justification for the selective application of the policy, which requires "students who participate in district athletic programs"—but not students who attend games "as a member of the public"—to obtain parental permission before sitting or kneeling for the anthem. A student's decision to quietly sit or kneel during the national anthem cannot in itself constitute a disruption, regardless of whether the student is a participant in an event or a member of the audience. Indeed, many schools across the county have witnessed student-participants kneel during the national anthem with no disruption of school events.

In addition to infringing upon the free speech rights of student-participants, the policy undermines educational goals. One of our educational system's fundamental objectives is to prepare young adults to exercise the rights and shoulder the responsibilities of citizenship. Although kneeling during the national anthem can express myriad viewpoints, it has recently and prominently been used to protest police shootings of unarmed African-American civilians. Regardless of their views on the issue, it is clear that students will benefit from the

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**NCAC PARTICIPATING
ORGANIZATIONS**

Actors' Equity Association
American Association of
School Administrators
American Association of
University Professors
American Association of
University Women
American Booksellers for Free
Expression
American Civil Liberties Union
American Ethical Union
American Federation of Teachers
American Jewish Committee
American Library Association
American Literary Translators
Association
American Orthopsychiatric Association
American Society of Journalists &
Authors
Americans United for Separation of
Church & State
Association of American Publishers
Authors Guild
Catholics for Choice
Children's Literature Association
College Art Association
Comic Book Legal Defense Fund
The Creative Coalition
Directors Guild of America
The Dramatists Guild of America
Dramatists Legal Defense Fund
Educational Book & Media Association
First Amendment Lawyers Association
Free Speech Coalition
International Literacy Association
Lambda Legal
Modern Language Association
National Center for Science Education
National Communication Association
National Council for the Social Studies
National Council of the Churches
National Council of Jewish Women
National Council of Teachers of English
National Education Association
National Youth Rights Association
The Newspaper Guild/CWA
PEN American Center
People For the American Way
Planned Parenthood Federation
of America
Project Censored
SAG-AFTRA
Sexuality Information & Education
Council of the U.S.
Society of Children's Book Writers
& Illustrators
Student Press Law Center
Union for Reform Judaism
Union of Democratic Intellectuals
Unitarian Universalist Association
United Church of Christ
Office of Communication
United Methodist Church,
United Methodist Communications
Women's American ORT
Woodhull Sexual Freedom Alliance
Writers Guild of America, East
Writers Guild of America, West

opportunity to discuss the sociopolitical implications of police shootings, race relations, and political protest. These controversial issues have risen to the forefront of national discourse in this election year and have generated passionate and thoughtful commentary from across the political spectrum. All students would benefit from the opportunity to debate the issues and lead protests if they wish to do so.

Worse, some practical considerations show that the policy would restrict a much broader range of student speech than intended. Many students will, for whatever reason, fail to obtain timely parental permission from parents who support their desire to protest. Others would be effectively prevented from starting or joining a spur-of-the-moment kneeling protest even in cases where parents would support the protest because parental permission has to be signed and submitted before an event. Finally, the policy may impermissibly restrict the speech of students who are legally adults. Just as it would be grossly inappropriate for the state to require eighteen-year-olds to have parental permission before voting for a certain candidate or campaigning, it should not require them to have parental permission to kneel during the national anthem.

The District's recent policy declaration appears to be based on a flawed reading of Florida §1003.44(1), which details patriotic programs in public schools. The statute requires students to obtain parental permission to be excused from participation in the Pledge. However, the same statute does not mention a parental permission requirement for students who wish to kneel.

Public schools in Orange County recently grappled with this same issue of parental permission. Although the District initially interpreted the parental permission requirement of §1003.44(1) to apply to both the Pledge and the national anthem, it later changed course. According to a District-issued statement, “unlike the provisions in state law regarding the Pledge of Allegiance, **a written note from a parent is not required**” for excusal from the national anthem.

We urge Collier County Public Schools to follow Orange County's example and refrain from extending the parental permission requirement of §1003.44(1) to the national anthem. As Justice Scalia observed in *Brown v. Entertainment Merchants Association*, although “parents have traditionally had the power to control what their children say and hear [...] it does not follow that the state has the power to prevent children from hearing or saying anything *without their parents' prior consent*” 684 U.S. ___, 131 S.Ct. 2729, 2736 n. 3 (2011). Justice Scalia noted that if the state had this power, it could categorically ban minors from attending political rallies without prior written parental consent. Like attendance at a political rally, kneeling during the national anthem, which is generally intended to signify disapproval of current or historical governmental actions, is a form of protected political speech.

We urge the District to reexamine its requirement that students obtain parental permission before kneeling during the national anthem in view of the serious concern that such a requirement imperils students' ability to exercise their right to free speech and subsequently deprives them of the educational benefits that result from the robust discussion generated by acts of political expression. By removing obstacles to protests, the District can help its students obtain the rhetorical, analytical, and logical skills necessary for success in their future political and professional endeavors.

Please let me know if I can be of any further assistance in this matter.

Svetlana Mintcheva, Director of Programs
National Coalition Against Censorship

A handwritten signature in black ink, appearing to read "Svetlana Mintcheva". The signature is fluid and cursive, written over a white background.

Cc: District General Counsel Jon Fishbane, fishbj@collierschools.com