

**BOARD OF EDUCATION GUIDELINES**

**RECITATION OF THE PLEDGE OF ALLEGIANCE**

**(Adopted July 26, 2001)**

## Introduction

A primary function of public schools is providing fundamental knowledge to elementary and secondary students about particular subjects, such as English, mathematics, science, and history. However, public education has also supported various community functions as well, including provision for a responsible citizenry. For example, schools have been considered places to teach students to be responsible and participatory members of society.<sup>1</sup>

That no free government, nor the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue; by frequent recurrence to fundamental principles; and by the recognition by all citizens that they have duties as well as rights, and that such rights cannot be enjoyed save in a society where law is respected and due process is observed.

That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has sown so liberally among its people by assuring the opportunity for their fullest development by an effective system of education throughout the Commonwealth.<sup>2</sup>

As directed by § 22.1-202 of the *Code of Virginia*, the following document discusses the constitutional rights and restrictions pertaining to the recitation of the Pledge of Allegiance in the public schools. Historical information and legal precedent is provided along with statutory requirements and Board of Education guidance.

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<sup>1</sup> Diane Ravitch, (1983). *The Troubled Crusade: American Education, 1945-1980*

<sup>2</sup> *Constitution of Virginia*, Article I, §15

## Background

We do honor to the stars and stripes as the emblem of our country and the symbol of all that our patriotism means. We identify the flag with almost everything we hold dear on earth. It represents our peace and security, our civil and political liberty, our freedom of religious worship, our family, our friends, our home. We see it in the great multitude of blessings, of rights and privileges that make up our country.

- Calvin Coolidge, 30th President of the United States, and his sentiments regarding the flag of the United States of America.

In 1942 Congress officially recognized the Pledge of Allegiance. One year later, in June 1943, the Supreme Court ruled that school children could not be forced to recite it. The case, *West Virginia State Board of Education v. Barnette*, ruled that expulsion from school and criminal penalties against the student for not participating in the pledge violated his/her First Amendment rights to free speech and free exercise of religion<sup>3</sup>.

The *Barnette* case made it clear that a state could not require a specific act of respect toward a national symbol. However, court rulings since *Barnette* have supported the authority of many state legislators to enact laws requiring students to recite the Pledge as long as the school exempts students who choose not to participate for religious, philosophical, or personal reasons. The courts have also sustained the decision of a state to include the Pledge of Allegiance in the curriculum of its public schools as part of a local or state goal to provide instruction in patriotism and citizenship. The Supreme Court in *Island Trees Union Free School District v. Pico*, has recognized that public schools are vitally important “in the preparation of individuals for participation as citizens,” and as vehicles for “inculcating fundamental values necessary to the maintenance of a democratic political system.”<sup>4</sup>

Although the Supreme Court has established that no student can be compelled to recite the Pledge of Allegiance (*Barnette*), non-participating students can be required to refrain from any activity that disrupts or distracts those making the Pledge. In *Goetz v. Ansell* (1973), the United States Court of Appeals for the Second Circuit held that a non-participating student must be allowed to engage in “a silent, non-disruptive expression of belief by sitting down” at his or her desk during the Pledge. This does not sanction, however, conduct that “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.”<sup>5</sup> The Supreme Court has not yet quantified what would be construed as disruptive.

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<sup>3</sup> *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, (1943)

<sup>4</sup> *Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982)

<sup>5</sup> *Goetz v. Ansell* 477 F.2d 636 (1973)

## **Code of Virginia, § 22.1-202**

Section 22.1-202 of the *Code of Virginia* addresses instruction in the history and principles of flags of United States and Virginia, the Pledge of Allegiance to the American flag, and guidelines to be developed by the Board of Education.\* The section mandates the following:

1. Instruction in the history and principles of the flag of the United States and the flag of the Commonwealth shall be given in one or more grades in every school division. The instruction shall include the Pledge of Allegiance and the appropriate etiquette and conventions for respecting the dignity and appropriate display of such flags.
2. School boards must require the daily recitation of the Pledge of Allegiance in every classroom.
3. All students are required to learn the Pledge of Allegiance and to demonstrate such knowledge.
4. School boards must ensure that an American flag is in place in each classroom of the respective school division.
5. School boards must determine the appropriate time during the school day for the recitation of the Pledge.
6. School boards must provide appropriate accommodations for students who are unable to comply with these procedures due to a disability.
7. School boards must apply their codes of conduct to disruptive behavior during the recitation of the Pledge in the same manner as provided for other circumstances of similar behavior.
8. Students must either stand and recite the Pledge while facing the flag with their right hands over their hearts or in an appropriate salute if in uniform. No student can be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical, or other grounds.
9. Students who are exempt from reciting the Pledge must remain quietly standing or sitting at their desks while others recite the Pledge, not making any display that disrupts or distracts others who are reciting the Pledge.
10. The Office of the Attorney General must intervene on behalf of local school boards and provide legal defense of these provisions.

11. The Board of Education, in consultation with the Office of the Attorney General, must develop guidelines on constitutional rights and restrictions relating to the recitation of the Pledge in the public schools.

\* See the Appendix for the complete text of the Code section.

### **Board of Education Guidelines**

In order to promote the ideals and patriotism expressed in the Pledge while adhering to constitutional principles; the General Assembly enacted Va. Code § 22.1-202 in 1996. This statute requires the Board of Education, in consultation with the Office of the Attorney General, to develop guidelines on constitutional rights and restrictions relating to the recitation of the Pledge in the public schools. The Board of Education's guidelines must include, but are not be limited to, provisions that address the following:

1. The initiative and involvement of local school boards, individual schools, administrators, teachers, and students;
2. The propriety and constitutionality of any recitation or participation requirements;
3. Appropriate etiquette and conventions for respecting the dignity and appropriate display of the flag of the United States and the flag of the Commonwealth; and
4. Relevant state and federal constitutional concerns, such as freedom of speech and religion.

#### The Involvement of Local School Boards

Local school boards and their administrative and educational employees, can play a key role in transmitting and instilling the American culture into the lives of our young citizens of the commonwealth. Through lessons taught through the social studies curriculum to holiday observances school children can become familiar with the beliefs, symbols, and rituals of American society.

Early exposure to the practice of reciting the Pledge of Allegiance can be an ideal opportunity to teach young children about the history and values of the United States. As the young students mature, concepts behind the 31 words of the Pledge could become embedded into the curriculum along with such topics as citizenship, democracy, and government.

Whatever the method a school division may choose to employ to instill a sense of patriotism, the Pledge of Allegiance can be an important first step in citizenship education and civic values. Understanding the Pledge can also provide the

foundation for future understanding of more complex documents such as the Declaration of Independence and the United States Constitution.

### The Constitutionality of any Recitation or Participation Requirements

Following the 1892 celebration of the 400<sup>th</sup> anniversary of Christopher Columbus' venture to the Americas, school children around the country began to pledge their loyalty to the American flag. Flags began to appear atop every schoolhouse in the nation and laws were passed to compel schoolchildren to salute the flag. It was not long before opposition to this requirement ensued.

On November 6, 1935, two children were expelled from a Pennsylvania school for refusing to stand up and recite the Pledge of Allegiance with their classmates. Their father was arrested and fined, and the children were forced to attend another school. Believing that the school board's action was unjust, the father took the school district to court. In 1940 the Supreme Court ruled for the school district, which mandated that all students must recite the Pledge of Allegiance. By the end of 1940, 43 states required all students to salute the American flag.

In 1943 a similar case was heard by the Supreme Court. Once again students refused to participate in a school requirement to recite the Pledge of Allegiance due to religious convictions. This case involved a group of Jehovah's Witnesses in West Virginia who refused to recite the Pledge because they believed it would violate the Biblical commandment not to worship any graven image. School officials expelled the students, threatening to send them to a reform school for juvenile delinquents and to bring criminal charges against their parents. The students and their parents claimed that requiring any recitation of the Pledge violated their First Amendment rights to free speech and free exercise of religion. This time, the Supreme Court agreed. Ironically, the decision was handed down on Flag Day, June 14, 1943.

Although our nation was then engaged in World War II, the Court reasoned that the West Virginia requirement was not justified by the need to promote national unity or patriotism:

To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds.<sup>6</sup>

This issue has never since advanced to the Supreme Court, and this ruling remains the law of the land. However, the decision did not bar the recitation of the Pledge of Allegiance, but merely prohibits any law that would make the exercise compulsory without exemptions for religious, philosophical, or personal

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<sup>6</sup> *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, (1943)

reasons, in the public schools of the nation. Twenty-four states currently require students to salute the American flag.<sup>7</sup>

### Appropriate Etiquette and Display of the Flag

The United States Flag Code, Public Law 107-7, was reauthorized in 2001 to specify and unify the traditional ways in which we give respect to the flag. The Flag Code contains specific instructions on how and when the flag is to be displayed and how it is to be handled. However, the Flag Code is “merely advisory and does not proscribe behavior.”<sup>8</sup> To ensure that appropriate etiquette and display of the American flag is carried out during the school day school divisions should adhere to the following:

1. The United States flag when displayed indoors should always be positioned to its own right. The flag should be placed to the right of the speaker (public address system) or staging area. Other flags should be to the left.
2. The United States flag should be at the center and at the highest point of the group when a number of flags of states, localities, or societies are grouped for display. No flag or pennant displayed in a school should be placed to the right or above the flag of the United States.
3. When displaying the flag against a wall, vertically or horizontally, the flag's union (stars) should be at the top, to the flag's own right, and to the observer's left.
4. No part of the flag should come in contact with the ground.
5. When reciting the Pledge of Allegiance, individuals should be standing at attention, facing the flag with the right hand over the heart. When not in uniform, men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute.
6. The flag should be folded neatly and ceremoniously when stored.

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<sup>7</sup> Education Commission of the States, (2001)

<sup>8</sup> *Dimmitt v Clearwater* (1993, CA11 FL) 985 F2d 1565, 7 FLW Fed C 168.

7. The flag should be cleaned and mended when necessary.
8. When the flag is so worn that it is no longer fit to serve as a symbol of our country, it should be destroyed by burning in a dignified manner<sup>9</sup>.

### Constitutional Concerns, Freedom of Speech and Religion

The Supreme Court has ruled that particular forms of ceremony are immune from constitutional examination. Although the high court has struck down a New York school prayer law in 1962,<sup>10</sup> the passive display of the Ten Commandments in Kentucky schools in 1980,<sup>11</sup> and a moment-of-silence law in Alabama in 1985,<sup>12</sup> governmental practices such as the Pledge of Allegiance, legislative prayer, the reference to God in court proceedings, and even the Christmas holiday have been permissible, notwithstanding the "Establishment Clause."

The "Establishment Clause" according to Thomas Jefferson was intended to erect "a wall of separation between church and State."<sup>13</sup> The Supreme Court first explored the meaning of the establishment clause in the 1947 case *Everson v. Board of Education*. The high court concluded that neither a state nor the federal government could set up a church, pass laws that aid one religion, aid all religions, or prefer one religion to another.<sup>14</sup> In 1971, the Supreme Court's landmark case of *Lemon v. Kurtzman* established a three-pronged test to analyze alleged establishment clause violations. To withstand scrutiny under this test, a challenged governmental practice must: (1) have a secular purpose; (2) have a primary effect which neither advances nor inhibits religion; and (3) not foster excessive entanglement with religion.<sup>15</sup>

While the Pledge contains the phrase "one Nation under God," its recital in the public schools is not a violation of the Establishment Clause of the Constitution of the United States. The United States Supreme Court has implicitly recognized the phrase to be a constitutionally permissible acknowledgment of the historic role of religion in American life. In *Lynch v. Donnelly* (1984), the Supreme Court pointed out that, "One nation under God, as part of the Pledge of Allegiance... is recited by many thousands of public school children - and adults - every year."<sup>16</sup>

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<sup>9</sup> American Legion Posts regularly conduct a dignified flag burning ceremony, often on Flag Day, June 14th. Contact your local American Legion Hall to inquire about the availability of this service.

<sup>10</sup> *Engel v. Vitale*, 370 U.S. 421, 422, 424 (1962)

<sup>11</sup> *Stone v. Graham*, 449 U.S. 39, 39, 41 (1980)

<sup>12</sup> *Wallace v. Jaffree*, 472 U.S. 38, 56 (1985)

<sup>13</sup> *Reynolds v. United States*, 98 U.S. 145, 164 (1879)

<sup>14</sup> *Everson v. Board of Education*, 330 U.S. 1 (1947)

<sup>15</sup> *Lemon v. Kurtzman*, 403 U.S. 602 (1971)

<sup>16</sup> *Lynch v. Donnelly*, 465 U.S. 668 (1984)

In *McGowan v. Maryland* (1961), the high court opined that "the 'Establishment' Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions."<sup>17</sup> In *School District of Abington Township, Pa. v. Schempp* (1963), the court noted that, "The reference to divinity in the revised Pledge of Allegiance . . . may merely recognize the historical fact that our Nation was believed to be founded under God." Thus reciting the Pledge and including its tenets in a school's curriculum may be no more of a religious exercise than the reading aloud of Lincoln's Gettysburg Address, which contains an allusion to the same historical fact.<sup>18</sup>

### **Conclusion**

All of the foregoing information requires thoughtful consideration when applied to particular circumstances. The United States Supreme Court has consistently emphasized the tenets of the 1943 *Barnette* case, restricting compulsory participation in the recitation of the Pledge. Public school authorities should become familiar with the general concerns of law in order to make an informed decision.

The court cases mentioned in this document must "not be viewed as setting the precise limits to the necessary constitutional inquiry, but serve only as guidelines with which to identify instances in which the objectives of the Establishment Clause have been impaired."<sup>19</sup>

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<sup>17</sup> *McGowan v. Maryland*, 366 U.S. 420, 466 (1961)

<sup>18</sup> *School District of Abington Township V. Schempp*, 374 U.S. 203, (1963)

<sup>19</sup> *Meek v. Pittenger*, 421U.S. 349, 359 (1975)

## Appendix

### VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION CHAPTER 666

An Act to amend and reenact § 22.1-202 of the Code of Virginia, relating to the Pledge of Allegiance in the public schools of the Commonwealth.

[S 1331]

Approved March 25, 2001

Whereas, Congress enacted the statute setting out the Pledge of Allegiance during the early stages of World War II at a time when national unity and concentrated effort were essential; and

Whereas, during the difficult days of World War II and the decades that have followed, the Pledge of Allegiance has symbolized our strength; and

Whereas, the Pledge of Allegiance is recited daily by many children and adults in the United States; and

Whereas, the Pledge of Allegiance symbolizes our national ideals and is an expression of our patriotic sentiment; and

Whereas, it is in our national and state interest to teach the children of our country about the history and values of the United States; now, therefore

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-202 of the Code of Virginia is amended and reenacted as follows:

§ 22.1-202. Instruction in history and principles of flags of United States and Virginia; pledge of allegiance to American flag; guidelines developed by the Board.

A. Instruction in the history and principles of the flag of the United States and the flag of the Commonwealth shall be given in one or more grades in every school division. The instruction shall include the pledge of allegiance and the appropriate etiquette and conventions for respecting the dignity and appropriate display of such flags.

In recognition of the civic heritage of the United States of America, all students shall be required to learn the Pledge of Allegiance and to demonstrate such knowledge.

B. To promote compliance with constitutional restrictions as well as observance of constitutional rights, the Board of Education shall, in consultation with the Office of the Attorney General, develop guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools. The Board's guidelines shall include, but shall not be limited to, provisions which address the following: the initiative and involvement of local school boards, individual schools, administrators, teachers, and students; the propriety and constitutionality of any recitation or participation requirements; appropriate etiquette and conventions for respecting the dignity and appropriate display of the flag of the United States and the flag of the Commonwealth; and relevant state and federal constitutional concerns, such as freedom of speech and religion.

These guidelines shall not be subject to the requirements of the Administrative Process Act (§ 9-6.14:1 et seq.). However, to provide appropriate opportunity for involvement by the general public, teachers, and local school boards, the Board of Education shall conduct public hearings prior to establishing such guidelines. Thirty days prior to conducting such hearings, the Board shall give written notice by mail of the date, time, and place of the hearings to all local school boards and any other persons requesting to be notified of the hearings and publish notice of its intention to hold such hearings in the Virginia Register of Regulations. Interested parties shall be given reasonable opportunity to be heard and present information prior to the adoption of such guidelines.

C. Each school board shall require the daily recitation of the Pledge of Allegiance in each classroom of the school division and shall ensure that the flag of the United States is in place in each such classroom. Each school board shall determine the appropriate time during the school day for the recitation of the Pledge. During such Pledge of Allegiance, students shall stand and recite the Pledge while facing the flag with their right hands over their hearts or in an appropriate salute if in uniform; however, no student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise. Students who are thus exempt from reciting the Pledge shall remain quietly standing or sitting at their desks while others recite the Pledge and shall make no display that disrupts or distracts others who are reciting the Pledge. School boards shall provide appropriate accommodations for students who are unable to comply with the procedures described herein due to disability. The school board's code of conduct shall apply to disruptive behavior during the recitation of the Pledge in the same manner as provided for other circumstances of such behavior.

D. The Office of the Attorney General shall intervene on behalf of local school boards and shall provide legal defense of the provisions of this section.