

April 19, 2013

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David Rocah, Esquire
Staff Attorney
American Civil Liberties Union of Maryland
3600 Clipper Mill Road, Suite 350
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Re: Damascus High School

Dear Mr. Rocah:

I have been asked to respond to your letter transmitted by email on April 9, 2013, to Dr. Joshua P. Starr, superintendent of schools; Mr. Christopher S. Barclay, president of the Board of Education of Montgomery County; Mr. Robert Domergue, principal of Damascus High School; and Ms. Karen Rose, Assistant Principal of Damascus High School, regarding Enidris Siurano-Rodriguez, a Grade 10 student at the high school. This office serves as General Counsel to the Montgomery County Public Schools ("MCPS").

Following receipt of your letter, MCPS staff, on behalf of the Superintendent, was directed to follow-up with the school regarding interactions between school staff and the student and her parents over Ms. Siurano-Rodriguez's decision not to stand during the morning pledge of allegiance. As you noted in your letter, the administrative regulation implementing the Board of Education's Policy on Students Rights and Responsibilities states specifically that "[s]tudents have a right . . . [t]o not be compelled to participate in patriotic exercises, or be penalized or embarrassed for failure to participate."¹

The school system's review of the circumstances differs from your understanding of the facts as set forth in the letter, particularly with respect to the intent and tone of the interactions. As a result, I am compelled to briefly state the facts based on the school system's review.

Ms. Jennings had not previously noticed that the student was not standing for the recitation of the pledge of allegiance over the public address system. The student apparently sits in the back of the room where she is not visible when the students in front stand. When the bell rings and the morning announcements begin, including the pledge of allegiance, students are chatting or texting, finishing homework, sleeping, and listening to music through ear buds. Because of this, some of the students may not have heard the announcement to stand for the pledge of allegiance so the teacher repeats the announcement for those who may not have heard it. Ms. Siurano-Rodriguez was not treated any differently or "harassed," as you characterized it; the teacher assumed she was working on something and did not hear the announcement. When she noticed that the pattern continued, she contacted her assistant principal to ask about the policy. The assistant principal responded that she likes to speak directly with students to make sure everything is okay.

¹ JFA-RA, Section IV, H.2.a).

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The conversation with the assistant principal occurred on April 4, 2013. It apparently was a wide ranging conversation that included acknowledgement of the student's right not to stand or to say the pledge. Contrary to your characterization of the encounter as a "diatribe" which the student left crying, the student's demeanor during this discussion was described as calm and her decision as resolute.

Administrative personnel at schools often contact parents when there have been interactions between students and administrators and the assistant principal told the student that she would be contacting her mother to let her know of the conversation.² The contact with the student's mother is noticeably absent from your understanding of the facts as set forth in your letter. Again, the assistant principal expressed her acknowledgement of the student's right not to stand if she did not want to stand for the pledge of allegiance. That acknowledgement also was conveyed to the teacher at 7 a.m. on April 5, 2013.

Mr. Siurano emailed the principal and assistant principal on April 5, 2013, stating that his daughter did not have to stand; however, when the assistant principal called him on April 9 to acknowledge his email and tell him that the school agreed, he stated that he had already sent an email. He did not appear to be receptive to any additional information and the conversation ended abruptly.

I obviously cannot know how Ms. Siurano-Rodriguez interpreted the interaction between her and the teacher or between her and the assistant principal, but the administration of Damascus High School has taken the concerns you expressed on behalf of the student and her parents seriously and has taken a series of actions to address this matter. The principal has spoken to the staff involved and sent an email to staff reminding them that students are not required to stand for the pledge of allegiance. He also made personal phone calls to Ms. Rodriguez (4/12) and to Mr. Siurano (4/14) to apologize and he spoke directly to the student and apologized (4/15), all of which were accepted.³

Your letter noted that in the past five (5) years your office has contacted MCPS twice about an incident at one of the school system's 202 schools and has "heard from other families" at four additional schools⁴ whose concerns were resolved by the families using mechanisms in place, apparently without any intervention by your office.

² Your characterization of the question about the primary language spoken at home, as an "offensive" "assumption" that the parents did not speak English, is uncalled for and unjustified. MCPS students come from 164 countries and speak 184 languages. Schools At A Glance, 2012-2013. Knowing the primary language spoken at home facilitates communication between the school and home and, in fact, assuming that everyone speaks English could be interpreted to constitute unlawful discrimination based on national origin.

³ Your request for written assurance that "there are or will be no reports about his matter in her school file" is unnecessary as there no basis for suspecting that the school – which recognized the student's right not to stand and which, through its principal, personally apologized – then would turn around and create a "report" to place in the student's school file.


⁴ You stated in your letter that in the past 10 years, the ACLU has received more complaints about this issue from Montgomery County than any other jurisdiction in the state. Since it is the largest school system in the state, with more students, more schools, and more employees than any other jurisdiction in the state, I would not find it surprising if your office received a larger number of complaints, nor would I necessarily conclude, as you seem to imply, that there is a systemic problem.

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MCPS takes its responsibility to respect the constitutional rights of its 148,779 students very seriously. It has policies and regulations in place that affirm that commitment and responsibility. It has ongoing training and utilizes multiple avenues of communication to inform its 22,236 employees of those responsibilities and, most importantly, it has mechanisms, as you noted, for parents and students to bring shortcomings to the attention of higher level staff for redress. Those mechanisms are there because there is constant staff turnover and an employee may miss a training or fail to read a memorandum or simply make a mistake. I would welcome any suggestions you have for "ensuring that *all* teachers and administrators throughout the system" are, at all times, without exception or the need for intervention and correction, aware of and properly implement the school system's policies, including the right of students not to stand during the pledge of allegiance.

I cannot remember a time when MCPS has failed to be responsive to a matter brought to its attention by your office. I trust that the ability of these two entities to communicate and resolve issues in good faith will continue. Please feel free to contact me by telephone at (410) 740-4600 or (301) 621-5255 or by email at jsb@carneykelehan.com to discuss this or any other matter so that we can collaborate to the mutual benefit of our clients.

Very truly yours,



Judith S. Bresler

Copy to:

Mr. Christopher S. Barclay
Dr. Joshua P. Starr
Mr. Robert Domergue