



FIRE

Foundation for Individual
Rights and Expression

July 11, 2023

Principal Julie Williams
Alexandria-Monroe High School
One Burden Court
Alexandria, Indiana 46001

Sent via U.S. Mail and Electronic Mail (juliewilliams@alex.k12.in.us)

Dear Principal Williams:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Alexandria-Monroe High School's ("Alexandria's") discipline of student Jace Lower for walking in the hallway during the Pledge of Allegiance. While Alexandria may set aside time for students to recite the pledge or salute the flag, the First Amendment protects student rights to abstain from this ritual in a non-disruptive manner, as Lower did.

On March 22, Lower arrived to school late.² He was walking through a hallway to his first period class when Alexandria began to broadcast the Pledge of Allegiance over the school's PA system. You and other Alexandria staff members in the hallway told Lower to stop walking, to which he responded that he was not required to stop for the pledge and was going to be late for class. You then cited Lower for insubordination and assigned him one day of in-school detention.

Students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."³ The First Amendment protects not only the right to speak and engage in expressive conduct, but the right to *refrain* from doing so.⁴ That includes the right to participate—or to refuse to participate—in patriotic ceremonies.

Eighty years ago, in *West Virginia State Board of Education v. Barnette*, the Supreme Court invalidated a requirement that schoolchildren salute the flag.⁵ Even in the dark days of World

¹ You can learn more about FIRE's mission and activities at thefire.org.

² The factual narrative in this letter represents our understanding of the pertinent facts, but we appreciate that you may have additional information to offer and invite you to share it with us.

³ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

⁴ *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

⁵ 319 U.S. 624 (1943).

War II, the Court recognized that requiring students to stand in symbolic reverence of a national symbol is contrary to our national commitment to freedom of conscience: “[I]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”⁶

Just as standing for the Pledge of Allegiance is a symbolic, expressive act,⁷ so too is stopping for the pledge. In each case, the physical act is part of participation in the ritual or, at the very least, a way to show respect for it. Compelling students to stand or stop for the pledge not only violates their First Amendment rights, it also renders the act a “gesture barren of meaning.”⁸ As the *Barnette* Court explained: “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.”⁹

To be sure, Alexandria may regulate student expression or other conduct that “materially and substantially interfere[s]” with the school’s operation or invades the rights of others.¹⁰ But there is no evidence Lower’s refusal to stop walking produced either of these outcomes. While it might have upset others who believe that participating in the Pledge of Allegiance is an important expressive act, that reaction cannot overcome the First Amendment’s protection of Lower’s decision, just as the anger that greeted Marie and Gathie Barnett’s refusal to salute the flag did not overcome their right to adhere to the dictates of their consciences.¹¹ School officials may not prohibit or compel speech out of “a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”¹² The peaceful and nondisruptive refusal to endorse a specified viewpoint cannot be grounds for punishment.

Students should graduate high school with a thorough understanding and appreciation of fundamental principles like freedom of speech that hold together our democratic republic. Importantly, students learn not only from textbooks, but from observing the conduct of authority figures. By modeling freedom of speech in its policies and practices, Alexandria would both respect students’ First Amendment rights and send a powerful message about the importance of this principle.¹³ Students will learn that free speech is not just an abstract

⁶ *Id.* at 642.

⁷ *Id.* at 632 (recognizing that a flag salute is symbolic speech and “[s]ymbolism is a primitive but effective way of communicating ideas”).

⁸ *Id.* at 633.

⁹ *Id.* at 641.

¹⁰ *Tinker*, 393 U.S. at 505, 513.

¹¹ The case caption incorrectly spells the students’ last name as “Barnette.”

¹² *Id.* at 504.

¹³ *Mahanoy Area Sch. Dist. v. B. L.*, 141 S. Ct. 2038, 2046 (2021) (explaining “America’s public schools are the nurseries of democracy” and that “schools have a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, ‘I disapprove of what you say, but I will defend to the death your right to say it’”).

concept to be discussed in the classroom, but a living, breathing principle essential to the “pluralistic, often contentious society in which they will soon be adult members.”¹⁴

FIRE calls on Alexandria to remove the infraction from Lower’s disciplinary record and affirm the school’s commitment to its First Amendment obligations. We respectfully request a substantive response to this letter no later than July 25, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Terr', written in a cursive style.

Aaron Terr
Director of Public Advocacy, FIRE

¹⁴ Bd. of Educ., *Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 868 (1982).

Authorization and Waiver for Release of Personal Information

I, Jace Lower, born on July 5th, 2005, do hereby authorize Alexandria Monroe High School (the "Institution") to release to the Foundation for Individual Rights and Expression ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

I have reached or passed 18 years of age or I am attending an institution of postsecondary education.

In waiving such protections, I am complying with the instructions to specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom disclosure may be made, as provided by 34 CFR 99.30(b)(3) under the authority of 20 U.S.C. § 1232g(b)(2)(A).

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights and Expression, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:
Jace Lower
E23D1646CE9046C

7/10/2023

Student's Signature

Date