

Pledge of Allegiance

The Background:

The General Assembly passed Public Chapter 841 effective July 3, 2002. The law requires public school students to recite the Pledge of Allegiance daily, unless students or their parents object to participation on religious, philosophical, or other grounds. The law further directs the State Board of Education to develop guidelines for the administration of the law. The Board's guidelines must include, but are not limited to, provisions that address the following:

1. The initiative and involvement of local school boards of education, 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
4. Relevant state and federal constitutional concerns, such as freedom of speech and religion.

STATE BOARD OF EDUCATION GUIDELINES RECITATION OF THE PLEDGE OF ALLEGIANCE

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. Public education also supports various community functions, including provision for a responsible citizenry. The United States Supreme Court has recognized that public schools are “vitaly 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.”¹

Local school boards and their administrative and educational employees can play a key role in transmitting and instilling the knowledge and values of our society into the lives of our young citizens of Tennessee.

In 2002, the Tennessee General Assembly enacted Public Chapter 841, requiring the daily recitation of the Pledge of Allegiance in public schools.² This statute requires the State 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. As directed by that act, the State Board of Education furnishes these guidelines on the Pledge of Allegiance. The Board also includes guidelines on the use of the United States’ flag in public schools. The purpose is to guide decision makers who will provide every student, teacher and staff person the opportunity to recite the Pledge of Allegiance and who will respect the individual’s legally protected right not to participate in the pledge.³

¹ *Bd. of Educ., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 864 (1982).

² States can include the Pledge of Allegiance in the public school curriculum as part of a local or state goal to provide instruction in patriotism and citizenship. *Bd. of Educ., Island Trees School Dist.*, 457 U.S. at 864.

³ Schools cannot compel school children to recite the Pledge of Allegiance. To do so would violate their rights to free speech and free exercise of religion guaranteed by the First Amendment to the United States Constitution. *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 644 (1943) (concurring opinion, Murphy, J.).

State Board of Education Guidelines

Pledge of Allegiance

Local education agencies shall adhere to the following:

1. Each local board of education shall determine the appropriate time during the school day for the recitation of the Pledge of Allegiance.
2. At the time designated, unless they are exempt, students shall stand and recite the Pledge of Allegiance while facing the flag with their right hands over their hearts or in an appropriate salute if in uniform.
3. No student shall be compelled to recite the Pledge of Allegiance if the student or the student's parent or legal guardian objects on religious, philosophical or other grounds to the student participating in such exercise. The school or board of education shall exempt the student from participation.
4. Students who are exempt from reciting the Pledge of Allegiance shall remain quietly standing or sitting at their desks while others recite the Pledge of Allegiance and shall make no display that disrupts or distracts others who are reciting the Pledge.⁴
5. The board of education's code of conduct shall apply to disruptive behavior during the recitation of the Pledge of Allegiance in the same manner as provided for other circumstances of such behavior.
6. Teachers and other school staff who have religious, philosophical, or other grounds for objecting to saying or leading the Pledge of Allegiance are exempt from leading or participating in the exercise.
7. If a teacher chooses not to lead the Pledge, the teacher or principal shall designate another suitable person to lead the class.
8. Each board of education shall provide appropriate accommodations for students, teachers or other staff who are unable to comply with these procedures due to disability.

⁴ Schools have clear authority to require that non-participating students refrain from any activity that disrupts or distracts those making the Pledge. *Goetz v. Ansell*, 477 F.2d 636, 638 (2nd Cir. 1973).

Appropriate Etiquette and Display of the Flag

To take care that schools appropriately display the United States flag ⁵ during the school day, local education agencies should adhere to the following:

1. The United States flag when displayed indoors on a staff 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 of the speaker.
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 of 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. Exempt individuals should remain silent, sitting or standing.
6. The flag should be folded neatly and ceremoniously when stored.
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.⁶

⁵ The United States Flag Code, 4 U.S.C. §§ 1, *et seq.*, contains specific instructions on how and when the flag is to be displayed and how it is to be handled. See 4 U.S.C. § 5. The Flag Code is "advisory and does not proscribe behavior." See *Dimmitt v. Clearwater*, 985 F.2d 1565, 1572 (11th Cir. 1993).

⁶ American Legion Posts regularly conduct a dignified flag burning ceremony. Contact your local American Legion Hall to inquire about the availability of this service.

Conclusion

These guidelines and their underlying principles require thoughtful consideration when applied to particular situations. Public school authorities should become familiar with the guidelines in order (1) to make informed decisions, (2) to make the activity, the Pledge of Allegiance, available to all who wish to participate, and (3) to respect the rights of students, teachers and staff who choose not to participate.