

January 18, 2011

Sraga
SHauser, LLC

Priority Briefing

MOMENT OF SILENCE NOW IN EFFECT

The Silent Reflection and Student Prayer Act (105 ILCS 20/1) was amended in 2007 to make the observation of a brief period of silence at the beginning of a school day mandatory for all public schools. After the mandatory moment of silence law went into effect, a public school student, Dawn Sherman, through her father, Robert Sherman, filed a lawsuit against Dr. Christopher Koch, State Superintendent of Education, challenging the required moment of silence as unconstitutional. The federal district court concluded that the amendment violated the Establishment Clause of the United States Constitution (as encouraging prayer) and was also unconstitutionally vague. The federal district court enjoined all public school districts and Dr. Koch from implementing or enforcing the moment of silence. Dr. Koch appealed this decision to the Seventh Circuit Court of Appeals. On October 15, 2010, the Seventh Circuit Court of Appeals reversed the decision of the lower court, but sent the case back to the lower court without immediately lifting the injunction.

On January 14, 2011, the district court judge ordered that the injunction preventing implementation of the amendment be lifted such that public school districts must now observe the moment of silence. **Thus, as of this week, all schools should be in compliance with this mandate.**

In its opinion, the Court of Appeals approved of one school district's implementation of the statute as follows:

The district made a school wide morning announcement, "We will now have a brief period of silence." After fifteen seconds, the announcer began the Pledge of Allegiance.

The Illinois State Board of Education announced last week that this example, while not the exclusive way for schools to implement the mandate, is one way it could be done. However, ISBE has no intention of limiting school districts' flexibility to implement the moment of silence as best fits the districts.

For the history of this law, see our Priority Briefings of April 28, 2008, and October 25, 2010. Please contact us if you have any questions.