

## MOMENT OF SILENCE CASE

To All School Districts:

You should have all received last week a notice from the State Superintendent about the pending court case involving the Moment of Silence Law. On October 12, 2007, I sent an email to many of you describing the law itself, which made mandatory the previously optional classroom moment of silence. Soon after that, a lawsuit challenging the constitutionality of the law was filed in the United States District Court in Chicago. The recent notice explains various developments in the lawsuit. Although the notice is very detailed, we thought we should summarize for you the options being offered to your District as well as every school district in the State.

Even though the legal challenge to the Moment of Silence Law was initially filed against the State and just one school district by just one family, it is being converted into a "class action." This means that the existing parties will represent not only themselves, but a whole class of defendants and a whole class of plaintiffs. The class of defendants will be every public school district in Illinois because the validity of the law affects every Illinois public school district in the same way. Whatever the judge decides, therefore, will be binding on your district and every other district even though you were not part of the original lawsuit.

Your district cannot escape being part of the case. The only choices you have are these:

- 1) **Do nothing.** You will be bound by the decision, whatever it ultimately is. (There will probably be an appeal to the United States Court of Appeals after District Court Judge Robert Gettleman makes his final decision.) Failing to act only means that you lose an opportunity to have a voice in how the case should be decided.
- 2) **Join the case as an active Defendant.** This would require employing your attorney to formally intervene in the case at the District's own expense. The only advantage is if your District feels strongly that its view of the Law is not being adequately represented by the current Defendants. Those Defendants include Township High School District 214 (in Northwestern Cook County), which has taken a neutral position on the validity of the statute, and the State Superintendent, who has a duty to defend the statute because of his position. An outside advocacy group, the Alliance Defense Fund, is participating as a friend-of-the-court to defend the law.
- 3) **File written objections.** The notice says that written statements or objections may be filed without using a lawyer by mailing them to Brian McCarthy, one of School District 214's attorneys.

At this time, only High School District 214 and the State are prohibited from implementing the Moment of Silence Law. But, regardless of whether or how you participate, the current preliminary injunction (that is, a temporary order while the case proceeds) is likely to be extended to all districts by the court on May 29. Until then, there

is nothing prohibiting you from continuing your current practice, whatever that might be. After the injunction is extended to all districts, the State will not be able to force any district to have a moment of silence. What is unclear from the notice and the court's ruling is whether and to what extent school districts will be able to hold moments of silence, not because the law requires it, but because the district chooses to.

If you have any questions about this case, please call us.

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