

**Education Alert
October 2017**

STUDENTS KNEELING DURING PATRIOTIC ACTIVITIES

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Given professional athletes' recent protests, kneeling and/or linking arms during the National Anthem, the question has arisen about students' right to kneel and/or link arms during patriotic activities, such as the National Anthem or pledge of allegiance.

Students have free speech rights in school, unless the speech would substantially interfere with school discipline or the rights of others. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969). For example, in West Virginia State Board v Barnette, 319 US 624 (1943), the Supreme Court found it unconstitutional for schools to compel students to salute the flag and state the pledge of allegiance. The Court stated that "[t]o 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." Given the Supreme Court's protection of a student's right to abstain from the pledge of allegiance, the Supreme Court would likely also protect a student's right to free speech in other patriotic rituals, like the national anthem.

These Federal cases are consistent with Massachusetts Law. Massachusetts General Law, Chapter 71, Section 82 states that "[t]he right of students to freedom of expression in the public schools of the commonwealth shall not be abridged, provided that such right shall not cause any disruption or disorder within the school." The statute clarifies that "freedom of expression" includes the right to "assemble peaceably on school property for the purpose of expressing their opinions." This right to freedom of expression was upheld in Pyle v. South Hadley, 423 Mass. 283 (1995), where the Supreme Judicial Court ruled that students, under Massachusetts law, had a right to engage in vulgar, non-school-sponsored speech as long as it did not cause a disruption at school.

Consequently, absent a disruption to the school environment, administrators should not take any action when students decide to kneel and/or link arms during patriotic activities, as a court would likely interpret any punishment on those grounds to violate a student's right to free speech.

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If you have any questions about this issue, please contact Felicia Vasudevan or the attorney responsible for your account, or call (617) 479-5000.

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