

THE RUTHERFORD INSTITUTE

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INTERNATIONAL OFFICE
CENTRAL AND EASTERN EUROPE
Budapest, Hungary

November 13, 2012

Via E-mail and U.S. Mail

Dr. Brian Woods, Superintendent
Northside Independent School District
5900 Evers Road
San Antonio, TX 78238

Re: Student Locator Project

Dear Dr. Woods,

The Rutherford Institute is contacting you with regard to Andrea Hernandez' religious objection to participating in your district's "Student Locator Project." The Institute is providing legal representation to Andrea and her father. While Andrea continues to appeal school officials' rejection of her request to be excused from participating in the program, I am writing to provide you with additional detail about the principles of First Amendment law that require you to grant her request. Texas statutory law, moreover, specifically protects Ms. Hernandez' right to be free from substantial burdens upon her religious beliefs that are imposed by governmental entities.

According to our information, the Student Locator Project adopted by your District is an effort to increase public funding for the District by increasing student attendance rates. As currently enforced by school officials, the Project requires every student to wear an identification badge containing a Radio Frequency Identification ("RFID") chip that allows administrators to track the location of students on school grounds.

Ms. Hernandez and her father have sincere religious objections to the policy, which school officials have acknowledged. While administrators have offered to allow Ms. Hernandez to wear a badge that would give the appearance of participation in the Project but without the imbedded RFID chip, this is not an adequate accommodation

Dr. Brian Woods, Superintendent
November 13, 2012
Page 2

because it still requires Ms. Hernandez to demonstrate “support” for a program that is in violation of her religious beliefs, and which, for that reason, she cannot support in word, in action, or even in appearance.

As you know, students do not shed their First Amendment rights at the schoolhouse gate.¹ An integral component of the First Amendment’s protection of free speech is the freedom of citizens to refrain from expressing solidarity with ideas to which they, personally, object. In the landmark case of *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), the United States Supreme Court struck down a regulation requiring students to salute the American flag, finding it to “invade[] the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.”²

Ms. Hernandez objects to wearing the SmartID badge because, as school officials have admitted, her wearing the badge on her person (with or without the imbedded chip) is an *expression* of support for the program. Indeed, it is precisely this *expression* of unity and support that administrators have stated to be the rationale behind the requirement that Ms. Hernandez don the badge like all other students and staff. By coercing Ms. Hernandez to express solidarity with other members of the school community in supporting the Student Locator Project, school officials are violating her First Amendment rights.

Additionally, under Texas’ statutory law, school officials may not enforce the policy against Ms. Hernandez unless they can demonstrate that the resulting burden on her religious beliefs is the least restrictive means of furthering a compelling government interest.³ Even assuming that your District has a compelling interest in securing additional public funding through increased student attendance rates (a proposition which is far from being established), requiring students to wear the badges despite their religious objections to doing so is not the least restrictive means of furthering any such interest. A number of other ways of combatting attendance problems are apparent, including, for instance, tailoring this particular program to students who have a record of skipping classes without justification.

The Rutherford Institute is adamantly opposed to your District’s attempt to steamroll individual students’ rights to think and behave as individuals. By virtue of the First Amendment, students in our society are at liberty to conscientiously choose which

¹ See *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503 (1969).

² 319 U.S. at 642.

³ Tex. Code Ann. § 110.001 *et seq.*

Dr. Brian Woods, Superintendent
November 13, 2012
Page 3

governmental programs they will support and which they will oppose, and the Institute will stand steadfastly behind them as they do so. On behalf of Ms. Hernandez and other students in your District who may have religious or philosophical objections to this Project, we demand that you accommodate students' requests to opt out of the blanket Student Locator Project.

Sincerely yours,



John W. Whitehead
President

Cc: Jerri Lynn Ward, affiliate attorney
Steve and Andrea Hernandez