



STATE OF NEW JERSEY

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NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

Relating to

UNCONSTITUTIONAL FLAG SALUTE STATUTE

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Introduction

Section 18A:36-3 of the New Jersey Statutes requires public schools to display the American flag and for students to stand and recite the flag salute. The statute allows students with conscientious scruples against the pledge or salute not to participate but requires them to stand at attention during the ceremony. That provision, requiring students to stand was held unconstitutional in by the United States Court of Appeals in *Lipp v. Morris* 579 F.2d 834 (C.A.N.J.,1978). Although the provision has been unenforceable for thirty years, it has never been removed from the statute. School officials who consult the statute may be led to believe that it is still the law and attempt to enforce it. That causes needless controversy. The Commission recommends that the unconstitutional provision be excised. The following amendment to 18A:36-3 will accomplish that result.

18A:36-3. Display of and salute to flag; pledge of allegiance

Every board of education shall:

(a) Procure a United States flag, flagstaff and necessary appliances therefore for each school in the district and display such flag upon or near the public school building during school hours;

(b) Procure a United States flag, flagstaff and necessary appliances or standard therefore for each assembly room and each classroom in each school, and display such flag in the assembly room and each classroom during school hours and at such other time as the board of education may deem proper; and

(c) Require the pupils in each school in the district on every school day to salute the United States flag and repeat the following pledge of allegiance to the flag: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all," which salute and pledge of allegiance shall be rendered with the right hand over the heart, except that pupils who have conscientious scruples against such pledge or salute, or are children of accredited representatives of foreign governments to whom the United States government extends diplomatic immunity, shall not be required to render such salute and pledge or to stand during it ~~but shall be required to show full respect to the flag while the pledge is being given merely by standing at attention, the boys removing the headdress.~~